

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF SEPTEMBER, 2021

BEFORE

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

CRIMINAL PETITION No.8898/2018

Between:

1. Sri. Karunakarareddy
S/o. Changareddy
Aged about 55 years
BJP Assembly
Candidate
Harapanahalli Taluk
Davanagere 583 131.

Present Address:
R/at 5th Ward
Acharya Badavane
Harapanahalli Taluk,
Davanagere 583 131.
2. Sri. Kotragowda
S/o. Bhothana Gowda
Aged about 40 years
R/at Ranimasalavada Village
Harapanahalli Taluk
Davanagere 583 131.
3. Sri. Shekara Gowda
S/o. Hanamantha Gowda
Aged about 60 years
R/at Ragimasalavada Village
Harapanahalli Taluk
Davanagere 583 131.
4. Sri. Mahanthesha Naika
S/o. Late Gopala Naik

Aged about 26 years
R/at Anemegala Tanda Village
Harapanahalli Taluk
Davanagere 583 131.

... Petitioners

(By Sri. B. Sappannavar, Advocate)

And:

1. State of Karnataka
By Halavagalu Police Station
Halavagalu
Davanagere District
Represented by SPP
High Court of Karnataka
Bengaluru 560 001.

2. Sri. Ravi L
BEO,
Flying Scwad
Halavagalu PS Limits
Davanagere 583 131.

... Respondents

(By Sri. Rachaiah, HCGP for R1;
R2-Served)

This Criminal Petition is filed under Section 482 of Cr.P.C. praying to call for the entire records in C.C.No.207/2018 on the file of the Senior Civil Judge and JMFC Court, Harapanahalli and to quash the charge sheet No.27/2018 at Annexure-C dated 02.05.2018 registered in C.C.No.207/2018 on the file of the Senior Civil Judge and JMFC, Harapanahalli.

This Criminal Petition coming on for admission this day, the Court, made the following:

ORDER

The petitioners have challenged the continuance of proceedings in C.C.No. 207/2018 and has sought for quashing of the Charge Sheet No. 27/2018 dated 02.05.2018. It is seen that charge sheet has been filed under Section 171H of IPC as regards the accused.

2. The case that is made out in the information given to the Investigating Officer at Annexure-B is that the complainant, who was the Block Education Officer and Chief of Flying Squad, during the Assembly Election held in May, 2018 was informed by the Election Officer that on 01.05.2018 at about 11.00 a.m., accused No.1 who was the candidate had put up Shamiyana within the premises of Chowdeshwari Temple without written permission from the Election Commission and conducted the election program and public meeting with the assistance of accused Nos. 2 to 4. Upon enquiry and after having collected photographs, complaint was lodged with respondent No.1 and FIR was registered as regards the offence under Section 171H of

IPC. After obtaining permission, investigation was conducted and charge sheet was filed, copy of which is produced at Annexure-C. The charge sheet would make out an offence under Section 171H of IPC.

3. Learned counsel for the petitioner would point out to Section 171H of IPC and submits that as regards petitioner No.1 i.e., accused No.1, Section 171H of IPC cannot be invoked as Section 171H of IPC relates to acts done by person other than the candidate.

4. Learned HCGP submits that as regards accused Nos. 2 to 4, who are the other petitioners, the matter would require looking into the evidence and it would be premature at this stage for the Court to enter upon appreciation of evidence and liberty must be reserved to the other accused to seek appropriate remedy before the trial Court at an appropriate stage.

5. Heard both sides.

6. There is substantial merit in the contention of the petitioners that as regards petitioner No.1 the offence under Section 171H of IPC as made out would not lie. Section 171H of IPC reads as follows:

"171H. Illegal payments in connection with an election:—Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate."

7. Clearly, the person who is an accused under Section 171H of IPC would be a person other than the candidate. In light of the same and in light of the only offence being made out in the charge sheet is Section 171H of IPC, the case against petitioner No.1 as regards the offence under Section 171H of IPC cannot be permitted to be continued as Section 171H of IPC would not apply as regards the petitioner No.1, i.e., accused No.1.

8. Accordingly, proceedings against petitioner No.1 / accused No.1 in C.C.No. 207/2018 is liable to be set aside. The charge sheet No.27/2018 as regards petitioner No.1 is set aside and the petition as regards petitioner No.1 is **allowed**.

As regards the other petitioners, i.e., petitioner Nos. 2 to 4 / accused Nos. 2 to 4, learned counsel for the petitioners seeks permission to withdraw the petition. Accordingly, the petition as regards petitioner Nos. 2 to 4 / accused Nos. 2 to 4 is **dismissed**. All contentions of the said petitioners are kept open to be taken up while assailing

the continuance of proceedings as against the said accused before the trial Court at an appropriate stage.

**Sd/-
JUDGE**

VP

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