

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF FEBRUARY, 2022

BEFORE

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

CRIMINAL PETITION No.7626/2021

BETWEEN:

1. Kum. Mayavathi

2. Mr. Sathish Chandra Mishra

National General Secretary &
Member of Parliament
Bahujan Samaj Party

... Petitioners

(By Smt.Pramila Nesargi, Senior Advocate a/w
Sri. C. Jagadish, Advocate)

AND:

1. State of Karnataka
By Jewargi Police station
Jewargi, represented by
Additional State Public Prosecutor.

2. Assistant Director,
Kannada and Culture Department
Sri Kandhagalla Hanumantharaya
Ranga Mandir, Station road
Vijayapura

... Respondents

(By Sri. S. Vishwa Murthy, HCGP)

This Criminal Petition is filed under Section 482 of the Code of the Criminal Procedure Code praying to quash the entire proceedings in C.C.No. 285 of 2014, pending on the file of the Judicial Magistrate First class, Jewargi.

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

ORDER

The petitioners - accused Nos.1 and 2 have called in question the validity of the proceedings in C.C.No.285/2014, which has subsequently been re-numbered as C.C.No.30754/2021 and has been assigned to the XLII Additional Chief Metropolitan Magistrate, Bengaluru.

2. It is the contention of Smt. Pramila Nesargi, learned Senior counsel appearing on behalf of the petitioners that FIR has been registered pursuant

to the information made out at Annexure-C dated 27.04.2013 as regards the offences under Sections 353, 188 read with Section 34 of the Indian Penal Code (For short, 'IPC'). It is submitted that on the face of it insofar as the offence of Section 188 of IPC is concerned in light of Section 195 (1)(a)(i) of Cr.P.C., the complaint must be in writing and that the reference to complaint under Section 195 of Cr.P.C would have to be construed as a complaint under Section 200 of Cr.P.C. Accordingly, it is submitted that in the present case, Annexure-C would not fulfill the legal requirement as required under Section 195 of Cr.P.C. Insofar as offence of Section 353 of Cr.P.C is concerned, it is pointed out that bare reading of the information at Annexure-C would only make out that the accused are supposed to have snatched the currency bundle from the Officer and that there is no use of criminal force.

3. However, it is pointed out that insofar as the Election Commission of India is concerned, compliant was made by the accused to the Election Commission of India and they have made out a reply dated 30.04.2013 at Annexure-H. Attention is drawn to paragraph No.5 of the Communication made out to the second petitioner herein, which reads as follows:

"5. I am further directed to say that Commission has seen the CD of video recording of the checking mentioned in your letter. The Commission found that the officers performed their duty with utmost courtesy, politeness and impartiality. The Commission also noted that during checking of the handbag of Ms. Mayawati, certain amount of cash was found in her possession and the officers were unable to complete the process of counting of that money. As the process was not complete, the officers had to repeat the checking for the second time at the venue of meeting. It may also be noted that when Ms. Mayawati gave the explanation that only Rs.50,000/- out of Rs.1,00,000/- said to be in her possession during

checking, belonged to her and the remaining amount belonged to the General Secretary of the party (i.e., yourself), no seizure of the cash was done by the checking team. It may be noted here that strict checking by various teams in the manner instructed by the Commission has already resulted in the seizure of cash of Rs.13.08 crores in Karnataka so far since the election process started and this money would certainly have disturbed the level playing field and purity of election process."

4. Accordingly, it is submitted that the assertion that search could not be completed is contrary to the record and if that were to be so, the information at Annexure-C is obviously contrary to the factual assertion as the Election Commission of India in their Communication have clearly pointed out to the completion of checking and that the explanation of the first petitioner was accepted.

5. Learned High Court Government Pleader however opposes grant of any relief and would

contend that the very act of preventing counting of the currency notes at the first instance would make out a case insofar as Section 353 of IPC is concerned.

6. Heard both sides.

7. Insofar as the complaint made as regards the offence under Section 188 of IPC is concerned, clearly what is required under Section 195 of Cr.P.C is the filing of a complaint in terms of Section 200 of Cr.P.C. The information at Annexure-C does not stand the test and requirement of the complaint under Section 195 of Cr.P.C and accordingly, proceedings insofar as the offence of 188 of IPC is liable to be set aside on that sole ground itself. It is apt to refer to the relevant paragraph of the decision of this Court in **Criminal Petition No.3964/2021** dated **07.06.2021**, which reads as under:

"5. Clearly what is to be noted is that the information that is given should be to the Magistrate by way of a complaint under Section 2(d) of Cr.P.C and accordingly, on this ground itself, taking cognizance by the Magistrate is irregular. It is clear that what is envisaged by the bar under Section 195 of Cr.P.C. is that no court could take cognizance with respect to the offence under Section 188 of IPC except on a complaint in writing of the Public Servant concerned. The word 'complaint' is to be read in terms of Section 2(d) of Cr.P.C which indicates that a private complaint should be made to the Magistrate. This being the admitted position of law, the petition deserves to be disposed off."

8. Insofar as Section 353 of IPC is concerned, it must be noted that there has to be the use of criminal force or assault. In the facts of this case, what needs to be noted is though there is an assertion that the complainant was prevented from counting the currency notes, the only assertion in the complaint is that the currency note bundle was not permitted to be counted and was snatched away from the hands of the

Official. That by itself which is the version of the complainant would not be sufficient even if accepted as amounting to criminal force as envisaged under Section 353 of IPC.

9. The version of the Election Commission of India in its Communication dated 30.04.2013 which is not a disputed document at paragraph No.5 of the Communication dated 30.04.2013, which is extracted above is clear that the process of counting was not complete during the first instance and subsequently, at the venue of the meeting, explanation of the first petitioner regarding the amount, has accepted that Rs.50,000/- (Rupees Fifty Thousand Only) out of Rs.1,00,000/- (Rupees One Lakh Only) was stated to be in her possession and the remaining belonged to the General Secretary of the Party. That explanation has been accepted and accordingly, it is mentioned in

the said Communication of the Election Commission of India that in light of the acceptance of the explanation there was no seizure of cash by the checking team. Accordingly, it is clear that the process of subjecting the petitioners to questioning regarding the amount has been completed and explanation has been accepted. The aspect of further questioning at the venue of meeting does not come out in the information at Annexure-C and as the meeting also took place on the same day, the information at Annexure-C appears on the face of it to be questionable in light of the reference made by the Election Commission of India in its Communication dated 30.04.2013. For the purpose of invocation of Section 353 of IPC, there has to be use of criminal force and even going by the version made out at Annexure-C, it cannot be stated that the ingredient of use of criminal force has been made out.

10. In view of the explanation of the petitioners having been accepted by the Election Commission of India, the continuance of the present proceedings would not secure the ends of justice.

11. Accordingly, the petition is allowed. The proceedings in C.C.No.285/2014 (renumbered as C.C.No.30754/2021) pending on the file of the XLII Additional Chief Metropolitan Magistrate, Bengaluru is set aside.

As amended cause title has been filed by the petitioners, the same is taken note of.

**Sd/-
JUDGE**

RB