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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF FEBRUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE K.NATARAJAN

CRIMINAL PETITION NO. 10435 OF 2022

BETWEEN:

1. A MANJU

...PETITIONER

(BY SRI. MANJUNATH B R.,ADVOCATE)

AND:

1. STATE OF KARNATAKA BY
HASSAN CITY POLICE
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATKAA
BANGALORE 560 001

2. BALAKRISHNA G.M

...RESPONDENTS

(BY SRI. B.J. ROHITH, HCGP FOR R1 AND R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C. PRAYING TO QUASH ENTIRE PROCEEDINGS IN
C.C.NO.3944/2019 UNDER SECTION 188 OF IPC AND UNDER
SECTION 126 OF REPRESENTATION OF PEOPLE ACT WHICH IS





PENDING ON THE FILE OF PRL.CIVIL JUDGE AND J.M.F.C AT HASSAN.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioner-accused under Section 482 of Cr.P.C. for quashing the criminal proceedings in C.C.No.3944/2019 arising out of Crime No.56/2019 registered by the Hassan City Police Station, Hassan for the offence punishable under Section 188 of the Indian Penal Code, 1860 (for short 'IPC') and Section 126 of Representation of People of Act, 1950 (for short 'R.P. Act'), pending on the file of Prl. Civil Judge and JMFC, Hassan.

2. Heard the arguments of learned counsel for the petitioner and learned High Court Government Pleader for the respondents.

3. The case of the prosecution is that the complainant-Balakrishna G.M., who is said to be the flying squad of the election was appointed for monitoring the violation of election rules at Lok Sabha M.P. elections, deputed to the Hassan Constituency has filed a complaint alleging that on 17.04.2019,



the complainant came to know that the petitioner who is said to be the BJP Lok Sabha candidate for Hassan constituency said to be conducted press meet at Mallige Hotel, Hassan. In spite of imposing curfew under Section 144 of Cr.P.C., the petitioner by violating the order has said to be conducted the press meet and thereby violated the promulgation of the Authority which is punishable under Section 188 of IPC and 126 of R.P. Act. The Police after registering the FIR filed the charge-sheet, which is under challenge.

4. The learned counsel for the petitioner has contended that as per Section 195 of Cr.P.C., the Police cannot register FIR, the complainant required to file a complaint before the Court under Section 200 of Cr.P.C. and the FIR cannot be registered by the Police and there is a gross violation of the procedure stated in the Cr.P.C. and further contended that Section 126 of the R.P. Act is non-cognizable offence. Without permission of the Court, the FIR cannot be registered and charge-sheet cannot be filed and thereby, the charge-sheet is not sustainable. Hence, prayed for quashing the same.



5. Learned counsel also submits that in view of the violation of Section 195 of Cr.P.C., the proceedings cannot be continued which is abuse of process of law. In the similar matter, the Co-ordinate Bench of this Court has quashed the criminal proceedings in respect of the same petitioner in W.P.No.16510/2018 dated 09.08.2021.

6. *Per contra*, learned High Court Government Pleader objected the petition and however, fairly admits that the complainant required to file complaint under Section 200 of Cr.P.C. The complaint under Section 154 of Cr.P.C. is not sustainable in view of the bar under Section 195 of Cr.P.C.

7. Having heard the arguments and on perusal of the records, admittedly, the FIR has been registered by the Police on the complaint of one Balakrishna G.M. who is said to be appointed as a Flying Squad for the M.P election of Lok Sabha, Hassan Constituency. It is alleged that on 17.04.2019, the petitioner said to be held the press meet by violating the order of the Authority. Admittedly, the Police registered FIR and filed charge-sheet. Section 195(1)(a)(i) of Cr.P.C. states, of any offence punishable under sections 172 to 188 (both inclusive)



of the Indian Penal code, where except on the complaint in writing of the Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate. Section 195 of Cr.P.C. reads as under:

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

In view of the bar under Section 195(1)(a)(i) and (iii) of Cr.P.C., the Magistrate is barred to take cognizance without filing complaint by the complainant under Section 2(d) read with Section 200 of Cr.P.C. The Police have no authority to



register the FIR without permission of the Court for non cognizable offence. Therefore, the criminal proceedings against the petitioner is not sustainable under the law and have to be quashed.

8. It is noticed by this Court in various cases, especially in the cases registered by the police on the complaint of public authorities, especially by the Election Commission of flying squad during the period of election, there were number of FIRs registered by the Police on the complaint filed by the flying squad and it is noticed by this Court that these complaints were directly registered by the Police and issuing FIR even without obtaining the order of the Magistrate in the non-cognizable offence as required under Section 155 of Cr.P.C. Most of the cases were registered by the Police on the complaint filed by the flying squad, it remains only as an empty formality during the election and finally in most of the cases, the Police used to file 'B' final report when the candidate elected in the election as a winning candidate or files the charge-sheet against the loosing candidate, even though the police knowing very well that in a non-cognizable offence, the FIR cannot be registered without permission of the Magistrate.



There is a gross violation of the procedures by the police in spite of this Court quashes the criminal proceedings and despite the quashing of FIRs, the police registering the FIRs without obtaining permission from the Magistrate under Section 155 of Cr.P.C. in non-cognizable offence and they are facilitating the accused persons to escape from the clutches of law even though huge amounts were seized by the flying squad apart from other articles etc. Therefore, it is necessary for this Court to issue direction to the Higher Police Authority as well as Chief Election Commission of India and the Election Commission of Karnataka to provide proper training to the officials as mentioned below:

- (i) If any such non-cognizable offences were found committed, the informant have to obtain permission under Section 155(2) of Cr.P.C. by very informant shall approach the Magistrate under Section 155(1) of Cr.P.C. and thereafter, the Magistrate shall accord permission under Section 155(2) of Cr.P.C. by application of mind by following the judgment of the Co-ordinate Bench in the case of ***Vaggeppa Gurulinga Jangaligi (Jangaligi) vs. The State of Karnataka, Through PSI, Kagwad Police Station, Belagavi*** reported in ***ILR 2020 KAR 630*** and then the police to register the FIR and file the charge sheet.



(ii) In respect of offences punishable under Section 188 of IPC, though it is cognizable offence, the complainant or the flying squad shall not file any complaint before the Police under Section 154(1) of Cr.P.C., but, the complainant can seize the materials by preparing panchanama in the presence of witnesses, based upon the power conferred by the Election Commission of India and thereafter, the Election Commission of India may authorize the complainant to file the complaint under Section 2(d) read with Section 200 of Cr.P.C. along with the documents before the Magistrate as per Section 195(1)(a)(iii) of Cr.P.C. Then, the Magistrate can take cognizance and dispensed with the recording of sworn statement of the complainant-public servant and then pass the order by issuing the process under Section 204 of Cr.P.C. in accordance with law.

9. With the above said observations and directions, I proceed to pass the following order:

The criminal petition is **allowed**.

The criminal proceedings against the petitioner in C.C.No.3944/2019 arising out of Crime No.56/2019 registered by the Hassan City Police



Station, Hassan, pending on the file of Pri. Civil Judge and JMFC, Hassan is hereby quashed.

The Registry is directed to send the copy of this order to the following:

- 1) The Election Commission of India;
- 2) The Election Commission of Karnataka;
- 3) The Additional Chief Secretary to the Government of Karnataka, Department of Home Affairs;
- 4) Director General and Inspector General of Police, Bengaluru, for compliance and to follow the procedures mentioned at paragraph No.8(i) and (ii) in future, without fail.

**Sd/-
JUDGE**

GBB
List No.: 2 Sl No.: 9