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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1st DAY OF OCTOBER, 2020

BEFORE

THE HON'BLE MR.JUSTICE B.A.PATIL

CRIMINAL PETITION No.3786/2020

BETWEEN:

Mohammed Shariff
S/o K. Abdul Haji
Aged about 52 years
R/at No.14-143/1
Mazil Manzil, Parlia
B. Mooda Village
Bantwala Taluk
D.K.District-574 219.

...Petitioner

(By Sri Lethif B. Advocate)

AND:

1. The State of Karnataka
by Konaje Police Station, D.K.District,
Represented by State Public Prosecutor
High Court Building
Bengaluru-560 001.
2. Inspector of Police
by Konaje Police Station
D.K.District-575 019.

...Respondents

(By Sri.V.S.Hegde, SPP-II)

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This Criminal Petition is filed under Section 482 of Cr.P.C. praying to quash the FIR in Crime No.16/2020 for the offence punishable under Section 153A of IPC on the file of the VII JMFC Court, Mangaluru City, Dakshina Kannada, which is produced at Annexure-A and etc.,.

This Criminal Petition having been heard and reserved on 22.09.2020 coming on for pronouncement of Orders '**through Video Conference**' this day, the Court made the following:-

ORDER

The present petition has been filed by the petitioner under Section 482 of Cr.P.C. to quash the FIR in Crime No.16/2020 for the offence punishable under Section 153A of Indian Penal Code pending on the file of VII J.M.F.C. Court, Mangaluru City, Dakshina Kannada.

2. I have heard the learned counsel Sri.Lethif B. for the petitioner-accused and Sri.V.S.Hegde, SPP-II for the respondents

3. Though the said case has been listed for admission, with consent of the learned counsels appearing for the parties, the same has been taken up for final disposal.

4. The gist of the case is that on 17.02.2020 the Popular Front of India organization held a function in the name of Founding day at Derlakatter Ground, Belma Village, Mangaluru City. On the said day, complainant had been deputed along with other Police Officers on duty. At about 3.45 p.m. the programme was commenced in the presence of Sri.Mohammed Sakib, the State President, P.F.I., K.M.Shariff, National Committee Member, P.F.I., Fiaz Doddamane, C.F.I. State President, Iliyas Tumbe, State President, S.D.P.I., Sri.Ataulla Jokatte, District President, S.D.P.I., A.K.Ashraff, District President, P.F.I., Iqbal Bellare, State Committee Member, P.F.I., Aboobakkar Kulai, Secretary, P.F.I., D.K. District and nearly about 1500 members have attended the said programme.

5. It is further alleged that at about 4.53 p.m. to 5.15 p.m. the member National Committee, P.F.I., by name K.M.Shariff had started delivering his speech and while delivering his speech he had commented the Supreme

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Court and “Nagapura Management, Supreme Court, Central Government” has giving their agenda to the Court. Further it is alleged that, their Secular Organization had compared with extremist and they are ready to serve the country by dedicating their life. It is also further stated that they decided to do Muslim Free India and they decided to social boycott against the community and blaming their community as terrorism. It is further alleged that they were going to construct Babri Masjid on the same place by social change and protect the independence as if security guards by wearing uniforms and they belong to Allah’s Party, Amith Shah and Modi were belong to Demon party and they themselves are going to finish on their own. The speech was delivered by the guest as allegedly insulted the Hindu Religion and provoked the Muslims to revolt against Hindu Religion so as to create enmity between the two religion in the speech. On the basis of the said complaint, a case has been registered in Crime No.16/2020.

6. It is the submission of the learned counsel for the petitioner that the police have registered a case under Section 153A of IPC. The ingredients of the said Section are not found in the said case. It is his further submission that the charge sheet material does not disclose the ingredients so as to come to the conclusion that the said statement provoked two religion, there is no another religion which has been stated in the said statement. If there is no allegation as against another religion, the provisions of Section 153A of the IPC is not attracted. It is necessary that at-least two such groups of communities should be involved. Mere insulting the feeling of one community or group without any reference to other community or group cannot constitute an offence. In that light, he relied upon the decision in the case of **Bilal Ahmed Kaloo Vs. State of Andhra Pradesh** reported in **AIR 1997 SC 3483**. It is his further submission that there must be an attempt to promote or disharmony or feeling of the community, hatred or ill-will between different religious racial language or

regional groups or castes, if it does not having any intention to promote the feelings of enmity, hatred between different classes of people, then the said provision is not applicable. In that light, he relied upon the decision in the case of **Manzar Sayeed Khan Vs. State of Maharashtra and another** reported in **(2007) 5 SCC 1**. It is his further submission that this Court while dealing the case of **Sri.K.N.Shailesh Holla Vs. The State of Karnataka by J.C.Nagar Police Station in Writ Petition No.24900/2018** has also appreciated the said issue and has quashed the proceedings. It is his further submission that when there are no ingredients to substantiate the said fact, the proceedings initiated amounts to nothing but abuse of process of law and the same is liable to be quashed. On these grounds he prayed to allow the petition.

7. *Per contra*, the learned State Public Prosecutor vehemently argued and submitted that already the investigation has been completed and charge sheet has been filed. It is the petitioner who has made a speech so as

to promote the feelings of enmity, hatred or ill-will between the two religion. The petitioner-accused has also been charge sheeted under Section 109 of IPC. Even by reading of the statement attracts the provisions of Section 153A of IPC. It is his further submission that the speech of the petitioner-accused is the innuendo, to promote the feelings of enmity, hatred or ill-will between other religions and the Muslim religion. In the said statement, two religions are there. It is his further submission that the statement which has been made the tone and the demeanor of such statement creates hatredness, prejudice, enmity, ill-will between the Hindus and Mohammedans. It is his further submission that this aspect of the matter has not been taken into consideration by the Hon'ble Apex Court and this Court in the citations quoted by the learned counsel for the petitioner. In that light, the said ratio is not applicable to the present facts of the case on hand. It is his further submission that whether it attracts the provisions of Section 153A or B of the IPC, is a matter which has to be

adjudicated only at the time of full-dressed trial and at this pre-matured stage, it cannot be held that there is no material as against the petitioner-accused. On these grounds, he prayed to dismiss the petition.

8. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for the parties and perused the records.

9. The first and foremost contention which has been taken up by the learned counsel for the petitioner-accused is that no ingredients of Section 153A have been satisfied and fulfilled in the charge sheet and no material is available to connect the accused to the alleged crime. For the purpose of brevity I quote Section 153A.

“S. 153 A. Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.-Whoever –

(a) *by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or*

(b) *commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, or*

(c) *organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause*

fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc —(2) *Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.*

10. On close reading of Section 153A of IPC, it indicates that a person either by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or commits any act which is prejudicial to the maintenance of harmony between different religious,

racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, then the said offence constitute and in order to constitute an offence, it is essential that the act of the accused must be with intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-A IPC. This issue also came up before the Hon'ble Apex Court in the case of **Manzar Sayeed Khan Vs. State of Maharashtra and Another (quoted supra)** at paragraph No.16, it has been observed as under:

“16. Section 153-A IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquillity. The gist of the offence is the intention to

promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.”

11. In the case of **Bilal Ahmed Kaloo** at paragraph No.15 it has been observed as under:

“15. The common feature in both sections being promotion of feeling of enmity, hatred or ill-will “between different” religious or racial or language or regional groups or castes and communities it is necessary that at least two such groups or communities should

be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.”

12. On close reading of the said provisions, with reference to the decisions *quoted supra*, in order to attract the provisions of Section 153A of IPC, accused must be making the statement with an intention and the said statement must provoke or promote feeling of enmity, hatred or ill-will between different religious or racial or other language or regional groups or castes.

13. Keeping in view the above said proposition of law, on close reading of the contents of the speech in the contents of the complaint, there are two religions. One is the Muslim community and another one has been indirectly in the form of innuendo, it has been stated with reference to the other religions. Whether he was having an intention or not, is a matter which has to be considered

only at the time of trial. He has to come and explain under what circumstances, with what intention he has made such statement. Since the matter has to be decided by the trial Court, if a detailed discussion is made, it may affect both the parties to the proceedings. In that light, on close reading of the contents of the complaint and other records there appears to be *prima facie* material as against the petitioner-accused.

14. On plain reading of the said statement, it attracts the provisions of Section 153 of the IPC, which is in the form of innuendo. I have given my thought-full consideration to the citations quoted by the learned counsel for the petitioner. I am not having difference of opinion with reference to ratio laid down. But with due respect they are not applicable to the present facts of the case on hand.

15. Taking into consideration the above said peculiar facts and circumstances under which the said speech has

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been delivered and the circumstances existing at that particular point of time and surrounding circumstances have to be analysed to come to a proper conclusion. In that light, a full-dressed trial is required. At this pre-matured stage, I am of the considered opinion that it is not a fit case to exercise the power under Section 482 of Cr.P.C. and to quash the proceedings.

In the light of the discussion held by me above, the petition is devoid of merits. The same is liable to be dismissed and accordingly it is **dismissed**.

However, petitioner-accused has been given liberty to challenge the charge sheet after filing of the same.

IA No.1/2020 does not survive for consideration and the same is accordingly disposed of.

**Sd/-
JUDGE**

*AP/-