

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05<sup>TH</sup> DAY OF OCTOBER 2020

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.3768 OF 2020

BETWEEN:

1. MOHAMMED ATAULLA A  
S/O ABDUL RAHAMAN BAVA  
AGED ABOUT 48 YEARS  
R/AT NO.3-191  
THOKURU, MANGALURU TALUK  
DAKSHINA KANNADA DISTRICT-575 011
- 2 . MOHAMMED NAWAZ ISMAIL  
S/O ISMAIL  
AGED ABOUT 45 YEARS  
R/AT NO.19/84/14  
ISMAIL MASTER COMPOUND  
MASTIKATTE, ULLAL  
MANGALURU  
DAKSHINA KANNADA DISTRICT-575 020
- 3 . ABBAS K  
S/O IBRAHIM  
AGED ABOUT 45 YEARS  
R/AT NO.3-33/2  
KENYA HOUSE  
MANGALURU TALUK  
MANGALURU  
DAKSHINA KANNADA DISTRICT-575 010

- 4 . MOHAMMED SAKIB  
S/O LATE ABDUL GANI  
AGED ABOUT 47 YEARS  
R/AT NO.3/4  
BERLIE STREET CROSS  
LONGFORD TOWN  
SHANTHINAGAR  
BENGALURU-560 027
- 5 . ABDUL RAUF BAVA  
S/O U K BAVA  
AGED ABOUT 43 YEARS  
R/AT NO.14/23/1  
HALEKOTE, ULLALA  
MANGALURU TALUK  
MANGALURU  
DAKSHINA KANNADA DISTRICT-575 020
- 6 . ASHRAF A K  
S/O ABDUL RAHAMAN BAVA  
AGED ABOUT 35 YEARS  
R/AT NO.191/1  
JOUHAR BAGH,M P ROAD  
NEAR SYNDICATE BANK  
JOKATTE POST  
MANGALURU TALUK  
MANGALURU  
DAKSHINA KANNADA DISTRICT-575 011
- 7 . MOHAMMED ELYAS  
S/O B. MOHAMMED  
AGED ABOUT 55 YEARS  
R/AT NO.2/385  
SALAM MANZIL  
TUMBE VILLAGE AND POST  
MANGALURU TALUK  
MANGALURU

DAKSHINA KANNADA DISTRICT-574143

...PETITIONERS

(BY SRI: LETHIF B, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA  
BY KONAJE POLICE STATION  
DAKSHINA KANNADA DISTRICT  
REP BY THE SPP  
HIGH COURT BUILDING  
BANGALORE-560001
- 2 . ROOPESH SHETTY  
S/O LATE MAHABALA SHETTY  
AGED ABOUT 33 YEARS  
R/AT MADDOORU HOUSE  
KOTEKKARU POST AND VILLAGE  
MANGALURU TALUK  
DAKSHINA KANNADA DISTRICT-575 019

...RESPONDENTS

(BY SRI: R.D.RENUKARADHYA, HCGP FOR R1;  
VIDE ORDER DATED 29.09.2020 SERVICE OF NOTICE  
TO R2 IS DISPENSED WITH)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C  
PRAYING TO QUASH THE FIR IN CR.NO.14/2020 FOR THE  
OFFENCE PUNISHABLE UNDER SECTIONS 341, 504, 506, 153A,  
149 OF IPC ON THE FILE OF VII JMFC, MANGALURU CITY, D.K.,  
WHICH IS PRODUCED AT ANNEXURE-A.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND  
RESERVED FOR ORDERS ON 29.09.2020 AND COMING ON FOR  
PRONOUNCEMENT OF ORDER, THROUGH VIDEO CONFERENCE,  
THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

This petition is filed under section 482 Cr.P.C. seeking to quash the FIR registered against the petitioners under sections 341, 504, 506,153A r/w 149 IPC.

Heard learned counsel for petitioners and learned HCGP for respondent No.1-State and perused the records.

Notice issued to respondent No.2/complainant could not be served as it is reported that the complainant is not residing in the address given in the complaint and his present whereabouts are not known.

2. FIR in the instant case is registered based on the complaint lodged by the second respondent. In the complaint, it is alleged that on 17.02.2010, at about 3.20 p.m., while the complainant was standing by the side of the road to cross the road, around 200-250 people came in procession and threatened the people not to cross the road and thereafter abused the complainant in vulgar language and threatened him that if he

dared to cross the road, he will not reach home. It is further alleged therein that the mob was behaving in such a manner that by their Unit march, the Hindus should get frightened and on seeing the muslims, they should flee from village. In the complaint, the petitioners have been specifically named and accordingly, FIR is registered against the petitioners under sections 341, 504, 506, 153A r/w 149 IPC.

3. Placing reliance on the decision of the Hon'ble Supreme Court in the case of BILAL AHMED KALOO v. STATE OF A.P., AIR 1997 SC 3483, MANZAR SAYEED KHAN v. STATE OF MAHARASHTRA AND ANOTHER, (2007) 5 SCC 1 and a decision of this Court in W.P.No.24900/2018 dated 27.01.2020, CrI.P.No.3916/2018 dated 17.02.2020, W.P.Nos.19700-19715/2015 dated 06.12.2018, learned counsel for petitioners emphasized that the allegations made in the petition even if accepted on their face value do not constitute the ingredients of any of the offences alleged in the FIR. There are no allegations in the complaint that the petitioners had acted with an intention to promote feeling of ill-will and hatred between religions and

communities, rather, the allegations made in the complaint go to show that it was the imagination of the complainant that the mob was behaving in a manner to create panic and hatred among Hindu groups. This allegation does not satisfy the ingredients of section 153A IPC and therefore, the initiation of criminal action against the petitioners being wholly illegal and baseless and an abuse of process of the court is liable to be quashed.

4. Learned HCGP appearing for respondent No.1-State referring to the allegations found in the complaint would submit that the utterances directed at the complainant are sufficient to make out the ingredients of the offences incorporated in the FIR and moreover, the matter being under investigation, there is no reason to quash the proceedings under section 482 Cr.P.C.

5. I have bestowed my careful thought to the submissions made at the Bar and have carefully scrutinized the FIR and the various decisions relied on by learned counsel for the petitioner.

6. FIR is registered under sections 341, 504, 506, 153A r/w 149 IPC. But a reading of the complaint, in my view, does not prima-facie make out the ingredients of any of the above offences specified therein. There are no allegations in the entire complaint that the complainant was wrongfully confined or restrained by the petitioners or by any member of the mob. On the other hand, the case of the prosecution is that the complainant and others were waiting to cross the road when the procession was passing by. These allegations therefore even if accepted as true do not make out the ingredients of the offence under section 341 IPC.

7. Likewise, the threats alleged to have been issued against respondent No.2/complainant also do not attract the ingredient of sections 504 or 506 IPC. In order to constitute offences under these provisions, the accused ought to have intentionally insulted or given provocation to the complainant or any other persons intending or knowing it to be likely that such provocation will cause him to break public peace. Such allegations are conspicuously absent in the FIR. Likewise, there

are no allegations whatsoever in the complaint that the complainant was criminally intimidated by the petitioners so as to render them liable for prosecution under section 506 IPC. On the other hand, the case of the complainant is that utterances were made while the mob of 200 to 250 persons was holding the procession. Even though the petitioners are named in the FIR, yet there are no specific allegations that any of the petitioners herein either threatened, intimidated or hurled abuses against the complainant. The allegations are general in nature. That apart, it is not the case of the complainant that the procession was being taken illegally without any prior permission of the jurisdictional police. No such contention has been taken by respondent No.1-State either. In the said circumstances, when such a huge procession was being taken, naturally, the police force might have been present at the spot during the occurrence. There is nothing on record to show that the police have taken any action either against the persons holding procession or any member of said group for behaving in an unruly manner or creating any untoward situation during the procession. Under the said circumstances, even the ingredients



of sections 504 and 506 IPC are not made out so as to proceed against the petitioners for the said offences.

8. Coming to the offence alleged under section 153A IPC, is concerned, law is now well settled that in order to bring an action under the said section, the acts alleged against the accused must be intended to promote feelings of enmity, hatred or ill-will between different religious, racial, language or religious groups or castes or communities. As held by the Hon'ble Supreme Court in Bilal Ahmed's case referred above, in order to constitute the ingredient of said offence, it is necessary that atleast two such groups or communities should be involved. Merely inciting the feelings of one community or group without any reference to any other community or group cannot attract either of the offence under section 153A of IPC.

9. In the instant case, there are no allegations whatsoever that the petitioners have committed any acts with intent to promote feelings of hatred between different religious groups, rather, the very basis of the allegations is that the petitioners were behaving in such a manner that on seeing them, Hindus

should get frightened and should run away from the village. This is the imagination or mere assumption of the complainant and not the actual commission of act by anyone of the petitioners. As a result, even the basic ingredient of the offence under section 153A IPC is not satisfied so as to proceed with the investigation against the petitioners.

10. The certified copies of the orders produced by the learned counsel for petitioners reveal that in identical matters this Court has quashed the proceedings initiated against the accused therein for want of prima facie case made out in the FIR. In the instant case also, considering the overall facts and circumstances discussed above, I find that the allegations made in the FIR are baseless and do not prima-facie make out the ingredients of any of the offences so as to warrant investigation by the respondent police. The manner in which the allegations are leveled against the petitioners indicate that the complaint is motivated, vexatious, malafide and the same appears to have been made out of spite and ill-will. In any case, the complainant having failed to make out the basic ingredients of the offences so

as to warrant investigation into the alleged offences, in my view, proceedings initiated against the petitioners being wholly illegal and abuse of process of the Court are liable to be quashed.

Accordingly, the petition is allowed. FIR in Cr.No.14/2020 on the file of learned VII JMFC, Mangaluru, Dakshina Kannada and all consequent proceedings are quashed.

**Sd/-  
JUDGE**

\*mn/-