

**A.F.R.**

**Court No. - 16**

**Case :-** APPLICATION U/S 482 No. - 55 of 2016

**Applicant :-** Swami Prasad Maurya

**Opposite Party :-** State Of U.P. And Anr.

**Counsel for Applicant :-** J.S. Kashyap,Ajai Kumar Singh,S.D. Yadav

**Counsel for Opposite Party :-** Govt. Advocate,Dhirendra Kumar Mishra

**Hon'ble Subhash Vidyarthi J.**

1. Heard Sri J.S. Kashyap Advocate, the learned counsel for the applicant, Sri Jayant Singh Tomar, the learned AGA-I for the State, Sri Aseem Kumar Pandey Advocate, holding brief of Sri Dhirendra Kumar Mishra Advocate, the learned counsel for the informant and perused the record.
2. By means of the instant application the applicant has challenged the summoning order dated 20.11.2014 and the proceedings of the Complaint Case No. 963 of 2014 in the Court of Additional Chief Judicial Magistrate, Court No. 21, Sultanpur, under Section 295A IPC.
3. The aforesaid proceedings were initiated on the basis of a complaint filed by the respondent no. 2 stating that on 22.09.2014, a news item regarding a statement made by the applicant was published in a Hindi daily newspaper which hurt religious sentiments of the complainant. The complainant stated that the applicant has knowingly hurt the religious sentiments of persons following Hindu religion.
4. After recording statements under Section 200 and 202 Cr.P.C., on 20.11.2014, the trial Court passed an order summoning the applicant to face trial for committing an offence under Section 295-A IPC. The applicant challenged the summoning order by filing Criminal Revision No. 472 of 2014, under Section 397 Cr.P.C. in the Court of District and Sessions Judge, Sultanpur, on the grounds that the news

article published in the newspaper was not admissible in evidence and it was merely hear-say evidence and that the Court at Sultanpur did not have territorial jurisdiction, as the offending statement was made at Sitapur Road, Lucknow. The learned Additional District and Sessions Judge, Court No. 7, Sultanpur dismissed the revision by means of a judgment and order dated 09.11.2015.

5. Before this Court, the applicant has challenged the summoning order on the ground that the Court has taken cognizance of the complaint without previous sanction of the Government required under Section 196 of the Criminal Procedure Code and, therefore, the summoning order is bad in law.
6. Sri Jayant Singh Tomar, learned AGA-I, and the learned Counsel for the informant have opposed the application and on the preliminary ground that a the ground raised by the applicant before this Court was neither raised before the trial Court nor was it raised before the revisional Court and, therefore, it would be proper for this Court to refrain from entertaining the application under Section 482 Cr.P.C. raising a new ground of challenge to the summoning order. However, the learned Counsel for the respondents could not dispute the contention that no sanction has been accorded by the appropriate Government under Section 196 of the Code.
7. It is settled law that a new plea raising a pure question of law can be raised at any stage and a plea relating to jurisdiction of the Court can also be raised at any stage. Since the plea raised by the learned Counsel for the applicant is purely a question of law and it relates to the jurisdiction of the trial Court to summon the applicant and to try him for offence under Section 295 A of I.P.C., the preliminary objection raised by the learned Counsel for the respondents lacks merit and it is rejected.
8. Sri. Tomar has next submitted that the summoning order has been passed on a complaint and there is no need to obtain sanction from the Government in case a private complaint is filed by a complainant. I am unable to accept this submission also, as Section 196 (a) Cr.P.C. *inter alia* provides that *No Court shall take cognizance of any offence punishable under Section 295 A of the Indian Penal Code (45 of 1860),*

*except with the previous sanction of the Central Government or of the State Government. Sub-section (3) of Section 196 of the Code provides that the Central Government or the State Government may, before according sanction, order a preliminary investigation by a police officer not being below the rank of Inspector.*

9. Section 196 clearly prohibits the Courts from taking cognizance for the offence punishable under Section 295 IPC except with the previous sanction of the Central Government or of the State Government. Section 196 Cr.P.C. does not make any distinction between the cases initiated by lodging an FIR and the case initiated by filing a complaint and the aforesaid statutory provision applies equally to cases initiated in both the aforesaid manners.
10. The learned counsel for the applicant has placed reliance on a decision of this Court in the case of ***Arun Jaitley v. State of U.P.***, 2016 1 ADJ 76, wherein this Court held that the Magistrate has to bear in mind the impact of the prohibition under Section 196 of the Criminal Procedure Code and compliance with its provisions is a prerequisite for taking cognizance.
11. In ***Manoj Rai v. State of M.P.***, (1999) 1 SCC 728, the learned Counsel for the State had admitted that no sanction was given in accordance with Section 196(1) of the Criminal Procedure Code to prosecute the appellants for the offence under Section 295-A of the Penal Code, 1860 and the Hon'ble Supreme Court had quashed the proceedings on this ground. In the present case also, it is not disputed that no sanction has been given in accordance with Section 196 (1) of the Code and, therefore, the trial Court could not have taken cognizance of the offence under Section 295 A of IPC and proceeded to summon and try the applicant for the same and, therefore, the cognizance order, the summoning order and the entire proceedings of the case are bad in law.
12. In view of the aforesaid discussion, this Court is of the considered opinion that the order taking cognizance of the complaint and summoning the applicant to face trial for commission of offence under Section 295A IPC without obtaining mandatory sanction of the

Government as provided under Section 196 Cr.P.C. is not sustainable in law.

13. Accordingly, the application is *allowed*. The summoning order dated 20.11.2014 passed by Additional Chief Judicial Magistrate, Court No. 21, Sultanpur in Complaint Case No. 963 of 2014, and the entire proceedings of the complaint are hereby *quashed*. However, there will be no order as to costs.

**Order Date :- 16.5.2023**

Pradeep/-