

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF OCTOBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.513 OF 2022

BETWEEN

SRI SAFWAN
AGED ABOUT 25 YEARS
S/O. SRI. ABDUL RAHIMAN,
R/AT NO. D.NO. 1-99,
BEHIND KONAJE PANCHAYATH OFFICE,
KONAJE PADAVU, KONAJE,
MANGALURU - 574 199

... PETITIONER

(BY SRI HALEEMA AMEEN, ADVOCATE)

AND

STATE OF KARNATAKA
BY KONAJE POLICE STATION,
MANGALORE CITY,
REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BENGALURU

... RESPONDENT

(BY SRI B.J. ROHITH, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE ENTIRE CRIMINAL PROCEEDINGS INITIATED AGAINST THE PETITIONER IN C.C.NO.630/2020 (CR.NO.82/2019 OF KONAJE POLICE STATION) ON THE FILE OF J.M.F.C. - VII COURT, MANGALURU REGISTERED FOR THE OFFENCE P/U/S 153-A READ WITH SECTION 149 OF IPC AND SECTION 3 OF KARNATAKA OPEN PLACE DISFIGUREMENT ACT 1951 AND 1981.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.10.2022 THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This criminal petition is filed by the petitioner accused No.11 under section 482 of Cr.P.C. for quashing the criminal proceedings against him in C.C. No.630/2020 (Crime NO.82/2019 registered by Konaje police) pending on the file of JMFC-VII Court, Mangaluru, for the offence punishable under Section 153-A read with Section 149 of IPC and Section 3 of Karnataka Open Space Disfigurement Act of 1951 and 1981.

2. Heard the learned counsel for the petitioner and learned High Court Government Pleader for the respondent State.

3. The case of prosecution is that *suo moto* complaint was registered by the Konaje police station on 17.11.2019 wherein it was alleged that, on the said date, when the complainant, along with Police Constable

No.941-Ashok Kumar, was on patrolling duty, he received the credible information at about 5.30 p.m., that in front of the house of one Abbas near Badriya Jumma Masjid, some persons belong to People Front of India (PFI) were making slogans against the judgment of the Hon'ble Supreme Court delivered in Ayodhya - Babri Masjid dispute case. A group of people said to be belong to Campus Front of India (CFI) and PFI went inside the Mangaluru University campus and uttered slogans against the judgment of the Hon'ble Supreme Court delivered in Ayodhya-Babri Masjid case. Among them, one Athaulla, Panjalakatte, Imran R.J., Mohd. Asif, Mohd. Riyaz and the petitioner raised slogan against the judgment of the Hon'ble Supreme Court in the aforesaid case. Thereby, the petitioner involved in intending to outrage the religious feelings by affixing all posters and they disputed in the public place. Therefore, the police registered the case and filed charge sheet against the petitioner and others.

4. Learned counsel for the petitioner has contended that the petitioner is innocent of the alleged offence. There is no direct evidence against him. The complaint was registered based upon the hearsay evidence, which is not admissible. The prosecution examined four witnesses and none of the witnesses have stated the name of the petitioner. There are no eye witnesses against the petitioner. It is also contended by the learned counsel for the petitioner that nothing is seized from the possession of the petitioner. Petitioner is not the member of any of the aforesaid organizations and he has been falsely implicated in the case. Hence, prays for quashing the criminal proceedings.

5. Per contra, learned High Court Government Pleader objected the petition and contended that the petitioner is the member of the CFI, which is a student organization, and he has participated in the protest inside the University Campus, Mangaluru. His name was mentioned in the complaint along with other accused. The

petitioner is the person residing in the same locality. The petitioner along with others protested against the judgment of the Hon'ble Supreme Court delivered in Ayodhya-Babri Masjid case and insulted the religious feelings of some of the religions. The petitioner is residing in the university campus area. The witnesses Francis Vegas, Mayaddi, Mohd. Munjeer, have all stated about the incident. The name of the petitioner is also mentioned by the police constable who was on the patrolling duty on the date of incident. There is material placed on record to show that the petitioner had participated in the organization and he uttered the slogan against the judgment of the Hon'ble Supreme Court delivered in Ayodhya-Babri Masjid case and created disharmony or feelings of enmity between the two religions. Therefore, the petitioner is required to face trial and hence, prayed for dismissing the petition.

6. Having heard the arguments of learned counsel for the parties, perused the records.

7. The case of the prosecution is that the *suo moto* complaint was registered by the police against the petitioner alleging that the petitioner is a member of the CFI, which is also a part of the PFI. The petitioner along with others agitated against the judgment of the Hon'ble Supreme Court delivered in respect of Ayodhya - Babri Masjid case. They also affixed the posters in public places near the Badria Jumma Masjid, Deralakatte with a caption "*all should awake against refusal and for justice and to raise slogan*" and also in the university campus at Mangaluru calling the public, especially, the Muslim community to raise slogans against the violation of justice in respect of the judgment delivered in Ayodhya-Babri Masjid case by the Hon'ble Supreme Court.

8. Learned counsel for the petitioner has relied upon the judgment of the Coordinate Bench of this Court in W.P. No.150/2022 (GM-RES) in case of Atul Kumar Sabarwal @ Madhugiri Modi Vs. State and Karnataka and others

decided on 21.03.2022 and also the judgment in the case of Mohammed Ataula. A and others Vs. State of Karnataka and another in Criminal Petition No.3768/2020 decided on 05.10.2020. I have perused the judgments of the cases, cited supra, rendered by the Coordinate Benches of this Court, wherein both the Benches have held that in order to bring an action under Section 153(A) of IPC, the acts alleged against the accused must be intended to promote feelings of enmity, hatred or ill will between two different religions, racial, language or religious groups or caste or communities. As held by the Hon'ble Supreme Court in the case of **BILAL AHMED KALOO VS. STATE OF A.P.** reported in **AIR 1997 SC 3483** and in both the cases, there is no offences alleged against the accused. In Atal Kumar Sabarwal's case, cited supra, similar decision was taken by the Coordinate Bench of this Court and quashed the criminal proceedings. But, the case in hand stands on different footing, where the accused persons being the part of the CFI organizations and the petitioner being the local person residing near the university campus of Mangaluru,

went along with the others with the banner of CFI and protested against the judgment of the Hon'ble Supreme Court delivered in Ayodhya-Babri Masjid case which is nothing but promoting enmity between two groups on the ground of religion, which act is prejudicial to maintenance of harmony in Mangaluru area, where the accused persons agitated against the judgment of the Hon'ble Supreme Court delivered in Ayodhya-Babri Masjid case, and it cannot be taken as very lighter way.

9. However, though there are witnesses, who have stated the presence of the petitioner among the group, who agitated against the judgment of the Hon'ble Supreme Court delivered in Ayodhya-Babri Masjid case, which is nothing but the offences against the State punishable under Section 153-A of IPC. The learned counsel for the petitioner has not argued on the point of law under Section 196 of Cr.P.C., where sanction of the Government is necessary for taking cognizance for the offences punishable under

section 153-A of IPC. The relevant portion of the provision under Section 196 of IPC, reads as under:

196: Prosecution for offences against State and for criminal conspiracy to commit such offence:

(1) No Court shall take cognizance of:-

(a) any offence punishable under Chapter VI or under Section 153-A (section 295A or sub section (1) of section 505) of the Indian Penal Code, 1860; or

(b) a criminal conspiracy to commit such offence; or

(c) any such abetment, as is described in section 108A of the Indian Penal Code, 1860 (45 of 1860),

Except with previous sanction of the Central Government or of the State Government.

10. Learned High Court Government Pleader has also not produced any such sanction granted by the State and also no where in the charge sheet, the police have stated that they have obtained sanction while filing the charge sheet. The learned Magistrate has taken the

cognizance without considering the fact as to whether the prosecution has obtained sanction from the State. Therefore, the criminal proceedings against the petitioner is liable to be quashed for want of sanction.

11. Accordingly, the criminal petition filed by accused No.11 is allowed. The criminal proceedings criminal proceedings against him in C.C. No.630/2020 (Crime NO.82/2019 registered by Konaje police) pending on the file of JMFC-VII Court, Mangaluru, for the offence punishable under Section 153-A read with Section 149 of IPC and Section 3 of Karnataka Open Space Disfigurement Act of 1951 and 1981, is hereby quashed.

**Sd/-
JUDGE**

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