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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 5488 OF 2023 (482)

BETWEEN:

JAGATH PRAKASH NADDA,
AGED ABOUT 63 YEARS,
S/O DR. NARAYAN LAL NADDA,
VIJAYPUR VILLAGE,
P.O., AUHAR,
TEHSIL JHANDUTTA,
BILASPUR DISTRICT,
HIMACHAL PRADESH.

... PETITIONER

(BY SRI. UDAY HOLLA, SR. COUNSEL FOR
SRI. VINOD KUMAR & SRI. PAVAN NARANG NEERAJ &
MRS. POOJA SAVADATTI, ADVOCATES)



AND:

1. STATE OF KARNATAKA,
R/BY HARAPANAHLLI POLICE STATION,
VIJAYANAGAR DISTRICT-583131,
R/BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE-560001.
2. SRI. VEERANNA LAKKANAVAR,
GOVERNMENT OFFICIAL,



ASSISTANT DIRECTOR,
PANCHAYAT RAJ DIVISION,
HARAPANAHALLI TOWN,
VIJAYANAGAR DISTRICT-583131.

... RESPONDENTS

(BY SRI. BELLİYAPPA, SPP FOR R1,
R2 SERVED)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING TO QUASH THE ENTIRE INVESTIGATION IN CRIME NO.89 OF 2023 HARAPANAHALLI POLICE STATION, PENDING ON THE FILE OF PRINCIPAL CIVIL JUDGE (JR. DN.) AND C.J.M. COURT HARAPANAHALLI FOR THE OFFENCE PUNISHABLE UNDER SECTION 171(F) OF THE IPC AT ANNEXURE-B.

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

ORDER

The petitioner is before this Court calling in question registration of crime in Crime No.89 of 2023 pending before the Principal Civil Judge & JMFC, Harapanahalli, Vijayanagara District for offence punishable under Section 171F of the IPC.

2. Heard Sri Uday Holla, learned senior counsel along with Sri. Vinod Kumar, Mrs.Pooja Savadatti and Sri. Pavan Narang Neeraj for the petitioner and Sri B.A.Belliyappa, learned State Public Prosecutor appearing for respondent No.1.



3. Facts adumbrated are as follows:-

The petitioner is the National President of Bharatiya Janata Party ('BJP') and a former Union Minister. He is presently a Member of Parliament from Bilaspur Parliamentary Constituency, in the State of Himachal Pradesh. Elections to the Karnataka State Legislative Assembly were slated to be held on 10th May 2023 for which Election Code of Conduct was put in operation from 30th April, 2023. A public meeting was organized by the BJP on 07-05-2023 at the IB Circle, Harapanahalli Assembly Constituency of Vijayanagar District. At about 1.00 p.m. the petitioner is said to have addressed a public meeting wherein it is alleged that he has wooed or threatened voters which was recorded by the officials of Election Commission. Recordings of the public meeting were published in electronic media and social media. This leads to registration of a complaint before the 1st respondent/Police on 9-05-2023 for the offence punishable under Section 171F of the IPC. Since Section 171F is a non-cognizable offence, the Police registered NC No.11 of 2023 and transmitted the file to the learned Magistrate seeking permission to register a FIR. In terms of Section 155 of the Cr.P.C, for registration of FIR on a



non-cognizable offence, permission of the Magistrate is imperative. The permission comes to be granted. After the grant of permission, the issue becomes crime in Crime No.89 of 2023. The registration of crime leads the petitioner to this Court in the subject petition.

4. The learned senior counsel, would contend that a perusal at the complaint would not indicate any ingredient of Section 171F of the IPC. Therefore, the very registration of crime suffers from want of bona fides. He would further contend that the learned Magistrate has accorded his permission by the word "permitted" which does not bear any application of mind and, therefore, is contrary to law. He would seek quashment of proceedings.

5. Per contra the learned State Public Prosecutor Sri B.A.Belliyappa, would vehemently refute the submissions to contend that the issue is still in the crime stage. At least investigation should be permitted. Without permitting investigation if the Court were to quash the proceedings, it would be contrary to several judgments of the Apex Court which hold that the complaint cannot be treated as an



encyclopedia of offences. He would contend that even if the Court wants to set aside registration of crime on the ground that the learned Magistrate has not applied his mind, the matter could be remitted back to the hands of the learned Magistrate for appropriate action in accordance with law.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The incident that led to registration of crime, is as narrated hereinabove, and would not require any reiteration, as it is a solitary incident of speaking in a public gathering. The allegation is threatening or wooing the voters. A complaint comes to be registered by the flying squad team of election commission on 09-05-2023. Since the entire issue has sprung from the complaint, I deem it appropriate to notice the complaint which reads as follows:

"ಅಲೂಕು ಪಂಚಾಯತಿ ಕಾರ್ಯಾಲಯ, ಹರಪನಹಳ್ಳಿ

ಬಿ.ಬಿ ಸರ್ಕಲ್ ಹತ್ತಿತ ಹೊಸವೇಲೆ ರಸ್ತೆ ಹರಪನಹಳ್ಳಿ

ಫೋನ್ : 08398-280226

Email: ec_tp_hrp@yhoo.com ನಂ.

ತಾ.ಪಂ.ಹಳ್ಳಿ/SFT/04/2023-24

ಬಿನಾಂಕ: 09/05/2023



ಇವರಿಗೆ,
ಅರಕ್ಷಕ ಉಪನಿರೀಕ್ಷಕರು,
ಹರಪನಹಳ್ಳಿ ಪೊಲೀಸ್ ಠಾಣೆ,
ಹರಪನಹಳ್ಳಿ ತಾಲೂಕು.

ಮಾನ್ಯರೇ,

ವಿಷಯ:- ಶ್ರೀ ಜಿ.ಪಿ ನಡ್ರಾ ರಾಷ್ಟ್ರೀಯ ಅಧ್ಯಕ್ಷರು ಭಾರತೀಯ ಜನತಾ ಪಕ್ಷ,
ಇವರುಗಳು ದಿನಾಂಕ 07/05/2023 ರಂದು ಚುನಾವಣಾ ಮಾದಲ ನೀತಿ
ಸಂಹಿತೆ ಉಲ್ಲಂಘಿಸಿರುವ ಕುರಿತು ದೂರು.

ಉಲ್ಲೇಖ:- ಸಾಮಾಜಿಕ ಜಾಲತಾಣ **Twitter**, ಮುದ್ರಣ - ಪ್ರಜಾವಾಣಿ ವಾರ್ತೆ ವಿದ್ಯುನ್ಮಾನ
ಮಾಧ್ಯಮ **Tv9**.

ಈ ಮೇಲ್ಕಾಣಿಸಿದ ವಿಷಯ ಮತ್ತು ಉಲ್ಲೇಖಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಸಾರ್ವತ್ರಿಕ ವಿಧಾನ ಸಭಾ
ಚುನಾವಣೆ 104-ಹರಪನಹಳ್ಳಿ ವಿಧಾನ ಸಭೆ ಕ್ಷೇತ್ರದಲ್ಲಿ ದಿನಾಂಕ 0705-2023 ರಂದು ಶ್ರೀ ಜಿ.ಪಿ ನಡ್ರಾ ರಾಷ್ಟ್ರೀಯ
ಅಧ್ಯಕ್ಷರು, ಭಾರತೀಯ ಜನತಾ ಪಕ್ಷ, ಇವರು ವಿಜಯ ನಗರ ಜಿಲ್ಲೆ ಹರಪನಹಳ್ಳಿ ಪಟ್ಟಣದ **IB** ವೃತ್ತದಲ್ಲಿ ಅಪರಾಹ್ನ
1:00 ಗಂಟೆಯ ಸಮಯದಲ್ಲಿ ಸಾರ್ವಜನಿಕ ಸಭೆಯನ್ನು ಉದ್ದೇಶಿಸಿ ಮಾತನಾಡುತ್ತಾ ಮತದಾರರಗೆ ಆಖ್ಯಾ,
ಬೆದರಿಕೆ, ಒಡ್ಡುತ್ತಾ, ಚುನಾವಣಾ ಮಾದಲ ನೀತಿ ಸಂಹಿತೆ ಉಲ್ಲಂಘಿಸಿರುತ್ತಾರೆ.

ಮುಂದುವರೆದು, ಚುನಾವಣಾ ಮಾದಲ ನೀತಿ ಪಾಲನಲು ನಿಯೋಜಿಸಿದ ಅಧಿಕಾರಗಳ
ವಿಷಯದ ದಾಖಲಾತಿಗಳ ಪ್ರಕಾರ ಶ್ರೀ ಜಿ.ಪಿ ನಡ್ರಾ ರಾಷ್ಟ್ರೀಯ ಅಧ್ಯಕ್ಷರು ಭಾರತೀಯ ಜನತಾ ಪಕ್ಷ, ಇವರು
ಸಾಮಾಜಿಕ ಜಾಲತಾಣ **Twitter**, ಮುದ್ರಣ ಮಾಧ್ಯಮ - ಪ್ರಜಾವಾಣಿ ವಾರ್ತೆ ವಿದ್ಯುನ್ಮಾನ ಮಾಧ್ಯಮ **Tv9**
ನಲ್ಲಿ ಪ್ರಸಾರಗೊಂಡಿರುತ್ತವೆ. ಆದ್ದರಿಂದ ಸಂಬಂಧ ಪಟ್ಟವರ ವಿರುದ್ಧ ದೂರು ದಾಖಲಿಸಬೇಕೆಂದು ಕೋರುತ್ತೇನೆ
ಮತ್ತು ನಿಯಮಾನುಸಾರ ಮುಂಬಿನ ಅಗತ್ಯ ಕ್ರಮ ವಹಿಸಲು ವಿನಂತಿಸುತ್ತೇನೆ.

ತಮ್ಮ ವಿಶ್ವಾಸಿ,

(ವೀರಣ್ಣ ಲಕ್ಷ್ಮಣವರ್)

ಸಹಾಯಕ ನಿರ್ದೇಶಕರು (ಪಂ.ರಾಜ್)

ಮತ್ತು **Flying Squad Team**

ತಾಲ್ಲೂಕು ಪಂಚಾಯತಿ ಹರಪನಹಳ್ಳಿ



ಲಗತ್ತು : C.D. ಹಾಗೂ ಸಾಮಾಜಿಕ ಜಾಲತಾಣಗಳಲ್ಲಿ ಪ್ರಕಟಗೊಂಡ ವರದಿ

ಪ್ರತಿಯನ್ನು :

1. ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು ಹಾಗೂ ಜಿಲ್ಲಾ ಚುನಾವಣಾಧಿಕಾರಿಗಳು, ವಿಜಯನಗರ
ಜಿಲ್ಲೆ ಹೊಸಪೇಟೆ ಇವರ ಮಾಹಿತಿಗಾಗಿ ಗೌರವಪೂರ್ವಕವಾಗಿ ಸಲ್ಲಿಸಿದೆ.
2. ಮೌಲ್ಯ ಮುಖ್ಯ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಧಿಕಾರಿಗಳು ಹಾಗೂ ಎಂ.ಸಿ.ಸಿ
ನೋಡಲ್ ಅಧಿಕಾರಿಗಳು.
3. ಚುನಾವಣಾ ಅಧಿಕಾರಿಗಳು ಹಾಗೂ ಸಹಾಯಕ ಅಯುಕ್ತರು,
ಹರಪನಹಳ್ಳಿ ಇವರ ಮಾಹಿತಿಗಾಗಿ ಸಲ್ಲಿಸಿದೆ.
4. ಸಹಾಯಕ ಚುನಾವಣಾಧಿಕಾರಿಗಳು ಹಾಗೂ ತಹಶೀಲ್ದಾರರು,
ಹರಪನಹಳ್ಳಿ ಇವರ ಮಾಹಿತಿಗಾಗಿ ಸಲ್ಲಿಸಿದೆ.

ಈ ದಿನ ದಿನಾಂಕ: 09/05/2023 ರಂದು 6-00 ಎ.ಎಂ ಗಂಟೆಗೆ ಫಿರ್ಯಾದಿ ರಾಣಿ ಹಾಜರಾಗಿ
ನೀಡಿದ ದೂರನ್ನು ಸ್ವೀಕರಿಸಿ ರಾಣಿಯ ಎನ್.ಸಿ. ನಂ. 11/2023 ಕಲಂ ಪ್ರಕರಣವಾಗಿದ್ದರಿಂದ ಸದರಿ ಎನ್.ಸಿ.ಯಲ್ಲಿ
ತನಿಖೆಯನ್ನು ಮುಂದುವರಿಸಲು ಘನ ನ್ಯಾಯಾಲಯದಲ್ಲ ಪರವಾನಿಗೆ ಕೋರಿದೆ.

ಸಹಿ/-

ತನಿಖಾಧಿಕಾರಿಗಳು

ಹರಪನಹಳ್ಳಿ ಪೊಲೀಸ್ ಠಾಣೆ

ಹರಪನಹಳ್ಳಿ, ವಿಜಯನಗರ ಠಾಣೆ

ಈ ದಿನ ದಿನಾಂಕ : 11/05/2023 ರಂದು ಮಧ್ಯಾಹ್ನ 4-00 ಗಂಟೆಗೆ ರಾಣಿ ಎನ್.ಸಿ. 11/2023 ರಲ್ಲಿ
ಘನ ನ್ಯಾಯಾಲಯದ ಅನುಮತಿ ಪಡೆದು ರಾಣಿ ಗುನ್ನೆ ನಂ.89/2023 ಕಲಂ 171(ಎಫ್) ಐಪಿಸಿ ಪ್ರಕಾರ ಪ್ರಕರಣ
ದಾಖಲಿಸಿ ತನಿಖೆ ಕೈಗೊಂಡಿರುತ್ತೇನೆ.

ಸಹಿ/-

ಪೊಲೀಸ್ ಉಪ ನಿರೀಕ್ಷಕರು

(ಕಾನೂನು ಸುವ್ಯವಸ್ಥೆ)

ಹರಪನಹಳ್ಳಿ ವಿಜಯನಗರ ಜಿಲ್ಲೆ "



The complaint is for the offence punishable under Section 171F of the IPC. Section 171F reads as follows:

"171-F. Punishment for undue influence or personation at an election.—Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

Section 171F punishes those who would commit the offence of undue influence or personation at an election with imprisonment, which may extend to a term of one year. Section 171F requires two ingredients to be present viz., undue influence or personation at an election. Undue influence and personation, are defined under Sections 171C and 171D. They read as follows:

"171-C. Undue influence at elections.—(1) Who ever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or



(b) *induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,*

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) *A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.*

171-D. Personation at elections.—*Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election:*

Provided that nothing in this section shall apply to a person who has been authorised to vote as proxy for an elector under any law for the time being in force insofar as he votes as a proxy for such elector."

Whoever would voluntarily interfere or attempt to interfere with the free exercise of any electoral right commits the offence of undue influence and whoever at an election applies for a voting paper or votes in the name of other person, living or dead is said to be guilty of offence of personation in the elections. What is laid against the petitioner is Section 171F of the IPC. If the



complaint is considered on the touchstone of the contents of Sections 171C, 171D and 171F, what would unmistakably emerge, is a reckless registration of crime and a loosely laid offence.

8. The complaint nowhere narrates that the petitioner has unduly interfered with the free exercise of anyone's electoral right, nor does it narrates that the petitioner is guilty of personation as defined under Section 171D of the IPC in the elections. An incident to become an offence under Section 171F, the minimum requirement is narration in the complaint of the ingredients of undue influence or personation. The allegation is that Code of Conduct has been violated by the petitioner, on speaking at a public gathering on 07-05-2023 by threatening the voters. The complaint is so vague that it would daunt vagueness itself. On such a vague complaint which is loosely made against the petitioner, the crime in Crime No.89 of 2023 is registered and the damocles sword of crime is left hanging on the petitioner projecting it to be an offence.

9. If on the aforesaid facts further investigation is permitted to continue against the petitioner it would become a



classic case of permitting investigation in a reckless registration of crime which on the face of it, would become an abuse of the process of law. Reference being made to the judgment of the Apex Court in the case of **STATE OF HARYANA AND OTHERS v. BHAJAN LAL AND OTHERS¹** in the circumstances would become apposite. The Apex Court has held as follows:

“ ”

102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute

¹ 1992 Supp (1) SC 335



any offence or make out a case against the accused.

- (2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) ***Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.***
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) ***Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the***



accused and with a view to spite him due to private and personal grudge.”

(Emphasis supplied)

The Apex Court lays down 7 postulates of interference at the stage of registration of crime. The **first** postulate is that where the allegations even if they are taken on their face value they would not make out a case against the accused. The **fifth** postulate is that where the allegations in the FIR are so absurd and inherently improbable, it would be a sufficient ground to quash the proceedings. The **seventh** postulate is where a criminal proceeding is manifestly attended with mala fides or is maliciously instituted with a view to spite the accused, such proceedings should be quashed.

10. Three of the aforesaid postulates become completely applicable to the facts of the case at hand. Therefore, permitting further proceedings would be putting a premium upon reckless registration of crime against the petitioner. Thus, this should be nipped in the bud by entertaining the petition in exercise of the jurisdiction of this Court under Section 482 of the Cr.P.C. as the complaint itself nowhere makes out any offence against the petitioner that would become punishable under Section 171F of the IPC. In the light of the issue being



answered on the merit of the matter itself, the submission with regard to non-application of mind by the learned Magistrate while granting permission for registration of FIR and on that score matter being remitted back to the learned Magistrate for re-consideration, would pale into insignificance. Finding no merit in the complaint, the petition deserves to succeed.

11. For the aforesaid reasons, I pass the following:

ORDER

- (i) Petition is allowed.
- (ii) The entire investigation in Crime No.89/2023 of Harapanahalli Police Station, pending on the file of the Principal Civil Judge (Jr. Dn.), CJM Court Harapanahalli stands quashed qua the petitioner.

Sd/-
JUDGE