



IN THE HIGH COURT OF KARNATAKA.

KALABURAGI BENCH

DATED THIS THE 14TH DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

CRIMINAL PETITION NO.200528 OF 2023

BETWEEN:

...PETITIONER

(BY SRI. KADLOOR SATYANARAYANACHARYA, ADVOCATE)

AND:

STATE OF KARNATAKA
THROUGH PSI BABLESHWAR POLICE STATION,
VIJAYAPURA-586113

...RESPONDENT

(BY SRI. GURURAJ V. HASILKAR, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE PROSECUTION LAUNCHED AGAINST THE ACCUSED / PETITIONER IN C.C.NO.1662/2019, ARISING OUT OF CR.NO.39/2017, PENDING ON THE FILE OF THE II ADDL. CIVIL JUDGE AND JMFC-II COURT VIJAYAPUR, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 153 (A) AND 295 (A) OF IPC.

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



ORDER

This petition under Section 482 of Cr.P.C. is filed by the petitioner - accused challenging the proceedings in C.C.No.1662/2019 on the file of the II Additional Civil Judge and JMFC-II Court at Vijayapura, for the offences punishable under Sections 153 (A) and 295 (A) of IPC.

02. The summary of the charge-sheet is that, on 25.02.2017, when Shri. Shivaji Maharaj, Jayanti was being celebrated and also the inauguration of office of the Sri. Ram Sene, Babaleshwar, in Sri. Gurupadeshwar Math, and the Founder President of Sri. Ram Sene, by name Sri. Pramod Mutalik, who was the Chief Guest, in the presence of Police Sub Inspector i.e., complainant and 03 constables, the accused while addressing the gathering stated that the Hindus treat and look after the cow, by giving her the status of mother and worship her, whereas the Muslims kill the cow and eat her. He also expressed that those who kill the cow, their hands must be cut and thus provoked the gathering with deliberate intention to



create disharmony between the two communities. It is also alleged that he abused the people indulging in construction of Masjid and Temples.

03. The learned Magistrate after accepting the charge-sheet took cognizance of the aforesaid offences and issued summons. Taking exception of the same, this petition is filed.

04. Heard the learned counsel for the petitioner – accused and the learned High Court Government Pleader for the respondent – State.

05. The learned counsel for the petitioner – accused submits that, the cognizance taken by the learned Magistrate for the aforesaid offences, in the absence of sanction as specified under Section 196 of Cr.P.C. is one without authority of law. He further submits that, the statement of the independent witnesses have not been recorded. In the absence of any material to substantiate the allegations against the accused, the charge-sheet is filed on the basis of the statement of the police witnesses, is without any substance.



06. The learned High Court Government Pleader for the respondent – State submits that the charge-sheet material discloses that the commission of the aforesaid offences. The learned Magistrate has rightly taken the cognizance of the aforesaid offences. Hence, he submits that the cognizance taken by the learned Magistrate, does not warrant any interference.

07. Considered the submissions made by the learned counsel for the parties.

08. Perusal of the charge-sheet indicates that except the statements of the police personnel, the statement of independent eyewitnesses have not been recorded. Though, the statement of the person who is alleged to have been videographed the function is recorded, no data is retrieved from the video camera to substantiate that the accused has made inflammatory statement.



09. Section 196 of Cr.P.C. specifies that no Court shall take cognizance of an offence punishable under Section 153-A of IPC and Section 295-A of IPC, except the previous sanction of the State Government.

10. In the instant case, the learned Magistrate has taken the cognizance for the aforesaid offences without there being previous sanction by the State Government. Hence, in the absence of previous sanction, the cognizance taken by the learned Magistrate for the above said offences, is one without authority of law. Hence, continuation of criminal proceeding against the petitioner - accused, will be an abuse of process of law. Accordingly, I pass the following;

ORDER

- I. The Criminal Petition is allowed.
- II. The impugned proceedings in C.C.No.1662/2019, on the file of the Additional Civil Judge and JMFC-II, Court at Vijayapura, is hereby quashed.



In view disposal of main petition, the pending I.As. if any do not survive for consideration and hence, they are disposed of.

Sd/-
JUDGE

KJJ
List No.: 1 SI No.: 49

Not An Official Copy