

HIGH COURT OF JAMMU AND KASHMIR
JAMMU

561-A No. 326/2012
Cr.M.A No. 383/2012

Date of order: 03.10.2013

Sheikh Imran and anr.	v.	State of J&K and ors.
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Coram:

HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

Appearing counsel:

For the Petitioner(s)	:	Mr. S.K.Anand, Advocate.
For the respondent(s)	:	MRs. Deepika Mahajan, GA.

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| i) | Whether approved for reporting
in Press /Media | : | Yes/No. |
| ii) | Whether to be reported in
Digest/journal | : | Yes/No. |
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The inherent jurisdiction of the Court is sought to be invoked to quash the criminal proceedings pending before Learned Additional Sessions Judge, Udhampur under Section 153-A of the RPC registered against the petitioners in FIR No. 277 of 2012, Police Station, Udhampur and also seeking quashment of charges framed against the petitioners in case titled *State v. Sheikh Imran and Nawaz Sharif*.

With consent of the parties, the matter is admitted to hearing and taken up for final disposal.

The case of the petitioners in brief is that the petitioners have been arrested by the police of Police

Station, Udhampur in case FIR No. 277/2012 for commission of offence under Section 153-A RPC with the allegation that on 15.08.2012, the petitioners were found wearing green coloured T-shirts over which the name and symbol of Pakistan was inscribed. On being asked by the police party as to why they are deliberately wearing the dress of Pakistan on the independence Day, the petitioners replied that their independence day was on 14th August. The petitioners have done so to promote enmity between different groups on the ground of religion and the act of the petitioners was prejudicial to maintenance of harmony.

The precise allegation against the petitioners were only that the petitioners were wearing T-shirts with Pakistan logo. It is, therefore, on the basis of FIR filed by Police Station, Udhampur and on the basis of investigation conducted by the police and conclusion of the investigation, Challan against the petitioners was presented before the Court of learned Additional Sessions Judge, Udhampur. Cognizance of the offence was taken by the learned Additional Sessions Judge vide order dated 19.10.2012 and *prima facie* charged the petitioners for commission of offence under Section 153-A RPC.

On notice, respondents were granted several opportunities to file response but the same has not been filed, however, record has been produced.

Perusal of the record reveals that District Magistrate, Udhampur vide his order No. 10316/DMU/JC dated 29.09.2012 accorded sanction for launching of prosecution against the petitioners-accused. The District Magistrate, Udhampur has mentioned that the Senior Superintendent of Police, Udhampur vide his letter No. Rdr/FIR-277-UDR/2012/33647-49 dated 28.09.2012 has forwarded the CD file of the above cited case and requested for lodging necessary complaint for launching prosecution against the accused person in FIR No. 277/2012 under Section 153-A RPC, Police Station, Udhampur. It also transpired from the record that no independent complaint was lodged by the District Magistrate/Government before any authority. So the investigation commenced with the registration of FIR for commission of offence under Section 153-A RPC.

The grounds taken in the petition is that the respondents have not complied with the provisions of Section 196 Cr.P. C and, therefore, the FIR as well as the charge framed against the petitioners by learned

Additional Sessions Judge, Udhampur is in violation of the Rules.

To appreciate the controversy, it is apt to refer to Section 196 Cr. P. C, which reads thus:

“196. Prosecution of offences against the State

No Court shall take cognizance of any offence punishable under Chapter VI or IX-A of the Ranbir Penal Code (except section 127, [Section 171-F, so far as it relates to the offence of personation, or punishable under Section 108-A, or section 153-A, or section 294-A, [or section 295-A] or section 505 of the Ranbir Penal code, unless upon complaint made by order of, or under authority from [the Government or District or such other officer as may be empowered by the Government in this behalf.”

Plain reading of the aforesaid provision makes it abundantly clear that no prosecution can be initiated under this section except on a complaint made by the District Magistrate. The expression “upon a complaint” used in the aforesaid provision is explicit and significant.

In the present case, the District Magistrate, Udhampur has accorded sanction, on the basis of letter/report of Senior Superintendent of Police, Udhampur vide No. Rdr/FIR-277-UDR/2012/33647-49 dated 28.09.2012. Police report is not a substitute for a complaint under section 196 Cr. P. C. Cognizance taken by the learned Additional Sessions Judge in respect of offence indicated in Section 196 Cr. P. C, in the

absence of a complaint by the District Magistrate/Government, would amount to defect of jurisdiction of the Court, which cannot be cured under law. In other words, the prosecution is primarily concerned to see that the prosecution in case of offence under Section 153-A RPC, covered by prohibition under Section 196 Cr.P. C, shall not commence without complying with the conditions contained therein.

Mrs. Deepika Mahajan, learned Government Advocate stated that the present case is squarely covered by the judgment rendered in case titled *Mian Abdul Qayoom v. State & ors*, reported as 2011 (1) S.L.J 321. In that case, petitioner seeks quashment of FIR only, whereas in the present case, FIR as well as charges have been framed by the learned Additional Sessions Judge, therefore, this judgment is not applicable in this case.

On perusal of the records, case law cited and in the facts and circumstances of the case, the inevitable conclusion reached is that, cognizance taken by the learned Additional Sessions Judge, Udhampur on the basis of FIR and the Charge framed, is without jurisdiction and an abuse of process of Court, in view of the bar created under Section 196 Cr. P. C.

My view is fortified by the judgments rendered in cases titled *Sonam Ganbo v. State of J&K*, reported as 2001 S.L.J 517, *Naziran Bibi & ors. v. State & ors*, reported in (2005) 0 SriLJ 118 and *Balwant Singh v. State of Punjab*, reported as 1995 SC 1785.

Accordingly, this petition is allowed. FIR No. 277/2012 and the charges framed vide order dated 19.10.2012, so far as they pertained to the petitioners, are quashed. The petitioners shall be released in the aforesaid FIR by the respondents forthwith, if not already been released, provided they are not required in any case whatsoever.

Record be returned to the learned trial Court forthwith.

(Tashi Rabstan)
Judge

JAMMU
03.10.2013
Tilak, Secy.