



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 29TH DAY OF NOVEMBER, 2023
BEFORE
THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR
WRIT PETITION NO. 23145 OF 2023 (GM-RES)

BETWEEN:

MOHAMMAD SHAFI
S/O HAMZA, AGED ABOUT 35 YEARS
R/AT INDIRA NAGAR
SEEBANAKERE POST
THIRTHAHALLI
SHIVAMOGGA DISTRICT-577 432.

...PETITIONER

(BY SRI. LETHIF B.,ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY THUNGANAGAR POLICE STATION
SHIVAMOGGA DISTRICT
REP BY THE SPP, HIGH COURT BUILDING
BANGALORE 560 001.
2. ASSISTANT SUB INSPECTOR OF POLICE
THUNGANAGAR POLICE STATION
SHIVAMOGGA 577 202.
3. THE DEPUTY COMMISSIONER AND DISTRICT
EXECUTIVE MAISTRATE
SHIVAMOGGA DISTRICT
SHIVAMOGGA 577 201.

...RESPONDENTS

(BY SRI. VENKATSATYANARAYAN, HCGP)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482 OF CR.P.C PRAYING TO QUASHING THE SANCTION ISSUED BY THE R3 DATED 16/10/2021 VIDE NO SMGDC - MAG1/MLWO/4/2021(E-79143), DATED 16/10/2021 WHICH IS PRODUCED AT ANNEXURE-A AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:



ORDER

The petitioner is sought to be prosecuted for the offence punishable under Section 505(2) of IPC.

2. The case of the prosecution is that the petitioner had circulated the video stating that the person in the video was assaulted by five persons by Talwar, and they belonged to Sangies. On verification, it was found that the person by name, Mohammad Shafi, petitioner herein had video graphed the incident, and the accused had understood the sign language of the said deaf and dumb person. It is further alleged that the injured deaf and dumb person had sustained accidental injury, which was registered in Crime No.56/2020.

3. The learned counsel for the petitioner submits that, the order passed by the respondent No.1 granting sanction to prosecute the petitioner for the offence punishable under Section 505 of IPC is not a speaking order as stated under Section 196 of Cr.PC. Therefore, the impugned order passed by the respondent No.1 granting sanction is not sustainable in law.

4. The learned High Court Government Pleader submits that, after perusing the material placed, the respondent No.2 has accorded sanction to prosecute, and the same does not warrant any interference. He further submits that the application of mind before passing an order granting sanction is not mandatory, when the material placed along with



the requisition clearly disclose the commission of offence alleged against the petitioner.

5. Considered the submissions of the learned counsel for the parties.

6. Section 196 of Cr.PC states that, no Court shall take cognizance of any offence punishable under Section 505(2) of Indian Penal Code except with the previous sanction of the Central Government or of the State Government. In the present case, the learned Magistrate has taken cognizance on the basis of the order passed by the 2nd respondent.

7. Perusal of the impugned order granting sanction as specified under Section 196A of Cr.PC indicates that, the 2nd respondent, without application of mind and without assigning any reason, has passed the order granting sanction to prosecute the petitioner for the aforesaid offence. A coordinate Bench of this Court in WP No.24900/2018 (DD 27.1.2020) has held as follows:

"12. Be that as it may. As could be seen from the sanction order of Government dated 21.06.2013, it indicates that it has only referred the sending of material and contents of the complaint. Thereafter, stated that the statement of the witnesses and other things, constitute an offence under Section 196 of the IPC. In order to constitute an offence, there must be a sanction of Central Government or the State Government and without there being any sanction; no Court shall take the cognizance of the offence. No doubt the sanction order has been produced. A fair perusal of the sanction order produced by the prosecution indicates that the requisite materials constitute the



alleged offences are not placed before the sanctioning Authority. The sanction has been accorded only on the basis of the requisition made by the DGP and IGP and the said order does not refer to the facts and statement of the witnesses for having perused the same and without satisfying the sanction order itself has been issued. Though it is contended by the learned High Court Government Pleader that the said Section 196 does not say that there must be an application of mind. But when the sanction has to be issued, the object and spirit of the Section if it is taken into consideration, then the frivolous and a false complaint should not be encouraged as it affects the tranquility and the peace of the country in that light, the said provisions has been made. Entire material if it is perused, it indicates that where he has seen the intention of the accused and where he has satisfied and also has not been specifically stated that it is one of the essential ingredients to constitute an offence. In the absence of such material, the sanctioning Authority has not applied its mind before issuing the sanction order dated 21.06.2013. Looking from any angle, the materials produced does not constitute an offence so as to proceed against the accused."

8. In view of the language contained in Section 196 of Cr.PC, which clearly specifies that, it is incumbent on the State Government to pass speaking orders clearly recording reasons while justifying permission to prosecute any citizen, and also the decision of the co-ordinate Bench of this Court in WP No.24900/2018, the impugned order passed by the 2nd respondent granting sanction to prosecute the petitioner is one without application of mind, and the same requires to be quashed.



9. Even otherwise, Section 505(2) of IPC states that whoever makes, publishes or circulates any statement, which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years or with fine or with both. The essential elements to constitute the offence punishable under Section 505(2) of IPC is conspicuously absent, since there is no allegation that the Petitioner circulated the video to promote or attempted to create ill will between religious groups or between two communities. Accordingly, I pass the following:

ORDER

- i) Writ petition is allowed.
- ii) The impugned proceedings in CC No.6845/2021 pending on the file of the learned Additional Civil Judge and JMFC, Shivamogga, stands quashed.

Sd/-
JUDGE