

**Ashwath and Others Vs. The State Through Aland Police Station,
Represented by Addl. State Public Prosecutor**

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Represented by Addl. State Public Prosecutor**

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Court : Karnataka Kalaburagi

Decided On : Jun-12-2017

Judge : B.A. Patil

Appeal No. : Criminal Petition No. 200644 of 2017

Appellant : Ashwath and Others

Respondent : The State Through Aland Police Station, Represented by Addl. State Public Prosecutor

Judgement :

(Prayer: This Criminal Petition is filed under Section 482 of Cr.P.C., praying allow the petition and to set aside the order dated 20.1.2017 for taking cognizance for the offences punishable under Sec. 295-A R/w 149 of IPC and under Section 66 of the Information Technology Act and quash FIR, complaint and entire charge sheet pending against the petitioners on the file of Prl. Civil Judge and JMFC, Aland in C.C.No.7/2017.)

1. The present petition has been filed by petitioners- Accused Nos.1 to 3 and 5 under Sec.482 of Cr.P.C, praying to quash the proceedings in C.C.No.7/2017 pending on the file of Prl. Civil Judge and JMFC, Aland for the offences punishable under Sections 295-A r/w Sec. 149 of IPC and Sec.66 of Information and

Technology Act, 2000.

2. The facts leading to the case are that; the respondents police have filed a complaint alleging that on 4.7.2016 at about 4:30 PM when he was in the police station, one Mois Karbari and Firdosh Ansari along with 500-600 Muslim caste people came to the Police Station alleging that at about 4:00 PM on the same day when they were browsing posts and pictures uploaded on the social media, called as Facebook, they found one group by name 'Hindu Shakti Sangam', which posted the photo with saffron flag on the Aland City Dargha and also posted a photo with foot on the poster of the Dargha. It is further alleged that, some 7-8 persons posted a comment to those photos and by doing so they have hurt the sentiments of Muslim religion and caused social unrest in that locality. It is further alleged that, persons by name, 1) Basawaraj Jeengi, 2) Sangamesh Nipani, 3) Gururaj Deshpande, 4) Janjeet Bhajrangdal, 5) Laxmikanth Swadi, 6) Laxmikanth Busnoor, 7) Laxman Mane, 8) Sooraj Sonar, 9) Aswath Kalekar and some unknown persons by seeing the photo in which the sentiments of the Muslim community is alleged to have commented by saying "Hamara Sapna Ayodha me Ram Ji Ka mandir aur Aland ke Dargha mai Rahanewala Shiva ji ka Banayenge Mandir" and when the complainant checked out on the Facebook, he found it to be true. On the basis of the same, a case has been registered against eight persons and after investigation charge sheet has been filed.

3. After filing of the charge sheet, the learned Prl. Civil Judge and JMFC Court, Aland by order dated 20.1.2017 took the cognizance and has issued the summons.

4. I have heard the learned counsel for the petitioners and the learned High Court Government Pleader for respondent-State.

5. The main grounds urged by the learned counsel for the petitioners are that the petitioners have been falsely implicated in the case. There are no material to constitute the offence alleged against the petitioners. He has further contended that the concerned police have not obtained the sanction as contemplated under Sec. 196 of Cr.P.C for the purpose of prosecuting the accused persons under Sec. 295-A of IPC. He further contended that even though Sec. 66 of the Information

Technology Act, 2000 has been included in the charge sheet, but no ingredients are forthcoming in the complaint or other material. As such, he prayed for quashing the proceedings.

6. Per contra, learned High Court Government Pleader appearing for the respondent-State vehemently argued and contended that there is a material to show that the accused persons have committed the alleged offences and after investigation the charge sheet came to be filed and on the basis of the material available, the Court below has rightly took the cognizance and has issued the summons. There is no illegality or irregularity and the proceedings are pending since long, the petitioners belatedly approached this Court and without there being any cause. On these grounds, he prayed to dismiss the petition.

7. I have gone through the copy of the FIR, complaint and other material produced along with the petition. The learned counsel for the petitioners would contend that the investigation officer in order to take the cognizance under Sec. 295-A of IPC, previous sanction of the Central Government or by the State Government is very much essential as contemplated under Sec. 196 of the Cr.P.C. For the purpose of brevity, I quote Sec. 196 of Cr.P.C, which reads as under;

Sec. 196 of Cr.P.C.

"Prosecution for offences against the 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 153A, [section 295A or sub- section (1) of section 505] of the Indian Penal Code (45 of 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 (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

[(1A) No Court shall take cognizance of-

(a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under Sec. 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit (an offence) punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings;

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction (under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A)] and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155."

8. By going through the said provision of law it indicate that, if the Court wants to take cognizance of the offence under Sec. 295-A or any other section as contemplated in the said section, previous sanction of the Central Government or State Government is must. But, as could be seen from the records, which has been produced before this Court it would indicate that no such sanction has been obtained either by the Investigating Agency or by competent authority so as to prosecute the accused persons for the offence punishable under Sec. 295-A of IPC. When the investigating authority has committed glaring illegality and has investigated the case and has filed the charge sheet without following the provisions of Sec. 196 of Cr.P.C. and even the Court below without looking into

the said provision has taken the cognizance and has issued the summons when the investigation itself is illegal and on the basis of the illegal investigation if the cognizance is taken by the Court below, then under such circumstances the entire proceedings itself is illegal and is liable to be quashed.

9. Leave apart this, even though charge-sheet also shows that the accused persons have been prosecuted under Section 66 of the Information Technology Act. Section 66 is related to the provisions of the punishment if any person dishonestly or fraudulently does any act referred to in Section 43 of the Information Technology Act. Sec. 43 of the Information and Technology Act, 2000 reads as under;

"43. Penalty for damage to computer, computer system, etc.-If any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network,-

(a) accesses or secures access to such computer, computer system or computer network [or computer resource];

(b) downloads, copies or extracts any data, computer data base information from such computer, computer system or computer network including information or data held or stored in any removable storage medium.

(c) Introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

(d) damages or causes to be damaged and computer, computer system or computer network, data, computer database or any other programmes residing in such computer, computer system or computer network;

(e) disrupts or causes disruption of any computer, computer system or computer network;

(f) denies or causes the denial of access to any person authorized to access any computer, computer system or computer network by any means;

(g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder;

(h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system or computer network,

(i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;

(j) steal, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage;] he shall be liable to pay damages by way of compensation to the person so affected.

Explanation.- For the purposes of this section.-

(i) "computer contaminant" means any set of computer instructions that are designed -

(a) to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network; or

(b) by any means to usurp the normal operation of the computer, computer system, or computer network;

(ii) "computer database" means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalized manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network;

(iii) "computer virus" means any computer instruction, information, data or programme that destroys, damages, degrades adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or

some other even takes place in that computer resource;

(iv) "damage" means to destroy, alter, delete, add, modify or re-arrange any computer resource by any means.

(v) "computer source code" means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form."

10. By going through the said Act, if we see the contents of the complaint and other material, no such offence has been said to have been made out in the Section 43 of the said Act, has also not been forthcoming. When the material itself is not available so as to constitute an offence under Sec. 43 of the said Act and when the investigation officer has not obtained the permission as contemplated under Sec. 196 of Cr.P.C., then under such circumstances the entire proceedings which has been initiated on the basis of such material itself is illegal and liable to be quashed.

11. This Court is aware of the fact that the inherent power should not be exercised to stifle a legitimate prosecution. However, by going through the entire facts and circumstances of the case, if no case has been made out and no useful purpose is going to be served if the said case is continued to be tried and decide when there is no material, then under such circumstances, the power of this Court can be exercised under Section 482 of Cr.P.C. and the proceedings can be quashed.

12. Keeping in view the facts and circumstances of the case, I proceed to pass the following;

ORDER

The petition filed by petitioners /Accused No.1 to 3 and 5 under Sec. 482 of Cr.P.C. is hereby allowed.

The proceedings in CC No.07/2017 of Aland Police Station, pending on the file of Prl. Civil Judge and JMFC Aland is hereby quashed in respect of petitioners/Accused No.1 to 3 and 5.

