

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.2576 OF 2023

BETWEEN:

1 . RAJASINGH TAKUR @

2 . PRAMOD MUTALIK H.,

3 . SIDDALINGASWAMY @

4 . VIJAYA KUMAR @

... PETITIONERS

(BY SRI MANJUNATH S. HALAWAR, ADVOCATE)

AND:

STATE OF KARNATAKA
YADGIRI TOWN POLICE STATION
REP BY HCGP
HIGH COURT OF KARNATAKA,
BENGALURU-1.

... RESPONDENT

(BY SRI MAHESH SHETTY, HCGP FOR RESPONDENT)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE CHARGE SHEET FILED BY THE POLICE IN CR.NO.250/2017 OF YADAGIRI TOWN POLICE STATION, YADAGIRI, WHICH IS NOW PENDING ON THE FILE OF LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-82) AT BENGALURU (SPECIAL COURT ELUSIVELY TO DEAL WITH CRIMINAL CASES RELATED TO ELECTED FORMER AND SITTING MPs/MLAs IN THE STATE OF KARNATAKA) FOR THE OFFNEC P/U/S 153A R/W 34 OF IPC AND SECTION 25(1)(AA) OF INDIAN ARMS ACT AND ALL FURTHER PROCEEDINGS.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.06.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners/accused 1 to 4 are before this Court calling in question proceedings in Special C.C.No.2251 of 2022 arising out of crime No.250 of 2017 registered for offences punishable under Sections 153A r/w 34 of the IPC and Section 25(1AA) of the Indian Arms Act, 1959 ('the Act' for short).

2. Facts, in brief, adumbrated are as follows:

On 12-12-2017 an incident takes place at Vanikere Lay-out, Yadagiri District where the petitioners and others joined as a conglomeration to attend Hindu Virat Samvesh ('Samvesh' for short). It is alleged that the participants in the Samvesh had specifically been directed non-usage of arms and making controversial statements. A report then comes to be made to the jurisdictional Police that despite these directions, the petitioners along with others formed an assembly which was unlawful with common intention to instigate people by making provocative speeches and at the end exhibited a sword on the stage. This report

to the jurisdictional Police became a crime in Crime No.250 of 2017 for offences punishable under Sections 153A, 149, 147, 143, 145 of the IPC and Section 25 (1AA) of the Act registered against the petitioners/accused Nos. 1 to 4. On 18-08-2018, the Police conduct investigation and file a charge sheet in C.C.No.133 of 2019 before the learned Magistrate at Yadagiri. The charge sheet was filed for offences punishable under Section 153A r/w 34 of the IPC and Section 25(1AA) of the Act. The learned Magistrate on 28-08-2019 takes cognizance of the offence under Section 190(1)(b) of the Cr.P.C. Since one of the members was a political representative, the petitioners were directed to appear before the competent Court constituted to try offences against MPs/MLAs.

3. The concerned Court then registers C.C.No.14398 of 2022 and issues summons to the petitioners. On 5-08-2022, the Special Court commits the matter to the Court of Sessions as the offence alleged was triable by the Court of Sessions. It is then the Court of Sessions registers the crime as Special C.C.No.2251 of 2022 and again issues summons to the petitioners. The matter was set for

hearing before charge and at that point in time, the petitioners knocked at the doors of this Court in the subject petition.

4. Heard Sri Manjunath S. Halawar, learned counsel appearing for the petitioners and Sri Mahesh Shetty, learned High Court Government Pleader appearing for the respondent.

5. The learned counsel appearing for the petitioners would contend that the proceedings cannot be permitted to continue despite it being at the stage of hearing before charge as the Courts which have taken cognizance for offence under Section 153A of the IPC are specifically barred from taking such cognizance owing to not carrying with it sanction to prosecute the petitioners as is necessary under Section 196 of the Cr.P.C. It is his submission that since Section 196 of the Cr.P.C. would cut at the root of the matter the very proceeding instituted is contrary to law. He would further contend the offences alleged under the Act could not have been laid even as there was no eye witness to the incident and no documents produced to demonstrate that the petitioners have used arms. The allegation is that a sword was taken out and displayed at the event. To this also there was no eye witness to the incident. All the

witnesses are Police witnesses or seizure witnesses of the jurisdictional Police. He would submit that both on the jurisdiction of the matter and on merits further proceedings cannot be permitted to be continued. He would seek quashment of the same.

6. Per contra, the learned High Court Government Pleader would vehemently refute the submissions contending that the petitioners have shown the sword, made provocative speeches and, therefore, it has become an offence under Section 153A of the IPC. He would submit that the plea of sanction having not been taken at any point in time during the proceedings for the last 5 years, the same cannot and should not be permitted to urged at this stage of the proceedings. He would seek dismissal of the petition contending that it is for the petitioners to come out clean in the full blown trial.

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

8. On the afore-narrated date i.e., 12-12-2017 the incident happens at about 6.00 p.m. where these petitioners had organized Samavesh at Vanikere Lay-out where accused No.2, National President of Sree Ramasene along with others became a part of the said conglomeration. It is the case of the prosecution that directions were issued not to use any arms or make any provocative speeches. The allegation is that they have made provocative speeches with regard to certain conversions of members belonging to Hindu community and shown the sword in public. This forms the content of the report made before the jurisdictional Police by the Police who were at the spot and it becomes a crime in Crime No.250 of 2017 for several offences including the one under Section 153A of the IPC and under the Act quoted hereinabove.

9. The Police after investigation filed a charge sheet before the concerned Court. Since one of the accused was a member of the Legislative Assembly, the matter was to be tried before the Special Court for trying offences against elected representatives. The Special Court then takes cognizance of offence and the matter was set at the stage of framing of charges. The issue now would be

whether trial should be permitted to be continued for offences punishable under Section 153A of the IPC and other allied offences, in the absence of sanction as required in law to try the offence under Section 153A of the IPC.

10. Section 153A of the IPC reads as follows:

“153-A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—(1) Whoever—

- (a) *by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or*
- (b) *commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or*
- (c) *organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use*

or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity, for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc.—(2)

Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

To allege offences under Section 153A and try them, it is imperative that the State should accord sanction for prosecution of offences under Section 153A. Section 196 of the Cr.P.C. reads as follows:

"196. 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 153-A, Section 295-A or sub-section (1) of Section 505 of the Indian Penal Code, 1860 (45 of 1860), or***
- (b) a criminal conspiracy to commit such offence, or*
- (c) any such abetment, as is described in Section 108-A of the Indian Penal Code (45 of 1860),*

except with the previous sanction of the Central Government or of the State Government.

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

- (a) any offence punishable under Section 153-B or sub-section (2) or sub-section (3) of Section 505 of the Indian Penal Code, 1860 (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 Section 120-B 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 (1-A) and the District Magistrate may, before according sanction under sub-section (1-A) and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a 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."

(Emphasis supplied)

Section 196 of the Cr.P.C. deals with prosecution for offences against the State and for criminal conspiracy to commit such

offence. Section 196 of the Cr.P.C. begins with a non-obstante clause and reads “No court shall take cognizance” for any offence under Section 153A, 153B, 295A or Section 505 of the IPC or even abatement as obtaining under Section 108A of the IPC. Sub-section (2) of Section 196 of the Cr.P.C. further mandates that no Court shall take cognizance of the offence of any criminal conspiracy under Section 120B of the IPC other than the criminal conspiracy to commit a cognizable offence as described in the provision supra provided where the criminal conspiracy is one of which the provisions of Section 195 would apply. The other offence alleged is under the Arms Act as obtaining under Section 25(1AA). It reads as follows:

“25. Punishment for certain offences.—

...
 (1-AA) *Whoever manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer or has in his possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.*

Whoever would manufacture, sell, transfer, convert, repair, test or prove or expose or offer for sale or transfer or has in his possession for sale or transfer any prohibited arms or prohibited ammunition in

contravention of Section 7 shall become punishable for a term of 7 years or more. When these offences are alleged against the petitioners, the admitted fact is that there is no sanction accorded under Section 196 of the Cr.P.C. as the offences alleged are against the State. Therefore, without sanction being accorded for prosecution, the Court could not have taken cognizance as Section 196 of the Cr.P.C., which mandates that no Court shall take cognizance of the offence under Section 153A of the IPC. Section 153A of the IPC is what is alleged in the case at hand apart from the offence under the Act. Therefore, for want of sanction and the sanction cutting at the root of taking of cognizance, the aftermath of the order of taking of cognizance even at the first instance would tumble down.

11. It is trite law that where an offence alleged has to be tried, it has to be tried in the manner that it is said to be tried, in the statute. The setting of trial is the aftermath of taking of cognizance. Taking of cognizance can be only in the aftermath of according sanction under Section 196 of the Cr.P.C. In the light of no sanction, the proceedings under Section 153A cannot be

permitted to be continued against the petitioners. This would be with regard to the sanction.

12. In the event, sanction would not be taken at the stage of cognizance, it is open for remitting of the matter back to the competent Court to continue the proceedings against the petitioner after obtaining sanction. The issue then would be whether any of the offences alleged or the contents of the charge sheet so filed would in any manner become the ingredients of Section 153A of the IPC. Section 153A of the IPC is quoted *supra*. Its essential ingredients are discussed by the High Court of Andhra Pradesh in ***KOLLU ANKABABU v. TIRUPATHI RAMESH***¹ wherein the High Court of Andhra Pradesh after noticing Section 153A of the IPC has held as follows:

"17. The ingredients necessary for making out an offence under Section 153-A(a) is that the accused person by words either spoken or written etc., promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever.

¹ **2022 SCC OnLine AP 2812**

18. *The ingredients necessary for making out an offence under Section 153-A(b) is the commission of any act which is prejudicial to the maintenance of harmony between different religious racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity.*

19. *The ingredients necessary for an offence under Section 153-A(c) is to organise any exercise, movement, drill etc., so that participates in such activities can be trained to use violence or criminal force against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or communities.*

20. *The language in all the three sub-clauses of Section 153-A require the following conditions to be met before any offence can be said to have been committed within this provision:—*

- a) *The actions should cause enmity between groups; Ill will against one group would not attract the above provisions.*
- b) *These actions should be committed with the intention of causing such enmity.*
- c) *This provision would be applicable only where enmity is caused on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever.*
- d) *The term "or any other ground whatsoever" would have to be read in tandem with the preceding words and as such the scope of this term would be that the grounds would only have to be grounds akin to the preceding grounds set out in the provision.*
- e) *The groups between whom such enmity or disharmony or hatred or ill-will is caused would be*

groups defined on the basis of their religion, race, language, place of birth, caste or community.

- f) Differences or ill-will caused between two groups which are not defined on the basis of the above requirements would not attract the provisions of Section 153-A IPC.”***

(Emphasis supplied)

The High Court considering the fact that Section 153A of the IPC would require several conditions to be met before trial on the said offence has stated that the action should cause enmity between the two groups. Ill-will against one particular group will not attract Section 153A of the IPC. These actions should be alleged to be committed with the intention of causing the said enmity. The provision would become applicable only where enmity is caused on grounds of religion, race, place of birth or any other grounds whatsoever. The terms 'any other grounds whatsoever' cannot be read in isolation; they will have to be read along with the words that are in the other clauses of the provision. Differences or ill-will caused between two groups which are not defined on the basis of the requirement under Section 153A of the IPC would not attract the provision. If what is considered by the High Court of Andhra Pradesh is paraphrased into the facts obtaining in the case at hand,

it would become unmistakably clear that the offences alleged would not touch upon the ingredients of Section 153A of the IPC or in any way are not enough to attract Section 153A of the IPC. Therefore, on the aforesaid grounds permitting further proceedings would become an abuse of the process of law and result in miscarriage of justice.

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

ORDER

- I. Criminal petition is allowed.
- II. Proceedings in Special C.C.No.2251 of 2022 pending before the LXXXI Additional City Civil and Sessions Judge (CCH-82), Bengaluru stand quashed.

**Sd/-
JUDGE**

bkp
CT: MJ