



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 13215 OF 2023

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BETWEEN:

1. SRI. KRISHNAPPA M.T,
S/O SRI. THIMMAIAH,
AGED ABOUT 65 YEARS,
R/AT MUTHSNDRA VILLAGE,
TURUVEKERE TOWN,
TURUVEKERE TALUK AND SARASWATHIPURA,
TUMKUR DISTRICT - 572 227.
2. SRI. SWAMY,
S/O KEMPEGOWDA,
AGED ABOUT 45 YEARS,
R/AT TURUVEKERE TOWN,
TURUVEKERE TALUK,
TUMKURU DSITRICT - 572 227.

...PETITIONERS

(BY SMT. NANDINI B, ADVOCATE FOR
SRI. BHARGAV G, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY TURUVEKERE POLICE,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU - 560 001.





2. SRI. VISHWANATH,
S/O SHIVAKUMARASWAMY,
AGED ABOUT 48 YEARS,
TURUVEKERE TALUK, TUMKUR DISTRICT,
EDAGI HALLI VILLAGE - 572 227.

...RESPONDENTS

(BY SRI. B.N. JAGADEESHA, ADDL. SPP FOR R1;
R2 - SERVED, UNREPRESENTED)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 17.10.2020 PASSED BY THE SENIOR CIVIL JUDGE AND J.M.F.C., TURUVEKERE IN C.C.NO.372/2020 (ARISING OUT OF CR.NO.181/2020 OF TURUVEKERE POLICE) TAKING COGNIZANCE AGAINST THE PETITIONER FOR THE OFFENCE P/U/S 504 R/W 34 OF IPC, NOW PENDING ON THE FILE OF XLII ADDL.C.M.M. (SPECIAL COURT FOR TRIAL OF CASES AGAINST SITTING AS WELL AS FORMER MPs/MLAs, TRIABLE BY MAGISTRATE IN THE STATE OF KARNATAKA) BENGALURU IN C.C.NO.30808/2021.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioner is before this Court calling in question the proceedings in C.C.No.372/2020 arising out of crime



No.181/2020 for offences punishable under Sections 34 and 504 of the Indian Penal Code, 1860 ('the IPC' for short).

2. Heard learned counsel Smt. Nandini B., for learned counsel, Sri. Bhargav G., appearing for the petitioner and learned Additional SPP, Sri. B.N. Jagadeesha, appearing for respondent No.1.

3. Respondent No.2 though served, remains unrepresented throughout the proceedings and even today.

4. The second respondent is the complainant and claims to be the president of a political party. After the elections, it is the allegation of the complainant that the petitioners on loosing their elections seek to undermine the dignity of the party by derogatory statements or intimidating the complainant. Since the offence was only for intimidation, as obtaining under Section 504 of the IPC, the police on receipt of the complaint render a non cognizable report and place the complaint before the learned Magistrate for obtaining permission to register a crime on a non cognizable offence - 504 read with 34 of the IPC. The learned Magistrate permits registration of a crime. It is then, the crime in crime



No.181/2020 comes to be registered. The police conduct investigation and file a charge sheet in C.C.No.372/2020 for the afore-quoted offences. The concerned Court takes cognizance of the offence and registers C.C.No.372/2020 for offence punishable under Sections 504 and 34 of the IPC and issue summons to the petitioners. The issuance of summons is what has driven the petitioners to this Court in the subject petition.

5. The learned counsel appearing for the petitioners taking this Court through the order granting permission to register a crime would submit that it would cut at the root of the matter, as it bears no application of mind, as is necessary in law. The learned counsel would submit, everything in the aftermath of the registration of a crime would be a nullity on account of the effect at the foundation.

6. The learned Additional State Public Prosecutor, on the other hand, would submit that how the order of learned Magistrate does bear application of mind permitting the registration of the crime. He would take this Court through the order to defend the action and submit that the police have filed



the charge sheet and it is for the petitioners to come out clean in a full bloom trial.

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

8. The afore-narrated facts are a matter of record. The registration of the crime is triggered by presentation of the complaint by the second respondent. Therefore, it becomes necessary to notice the complaint. The complaint dated 24.08.2020 reads as follows:

"ತುರುವೇಕೆರೆ ಪೊಲೀಸ್ ಸಬ್‌ಇನ್ಸ್‌ಪೆಕ್ಟರ್‌ರವರಿಗೆ.

ತುರುವೇಕೆರೆ ತಾಲ್ಲೂಕು ಘಟಕದ ಭಾರತೀಯ ಜನತಾ ಪಾರ್ಟಿಯ ಅಧ್ಯಕ್ಷರಾದ ಹೆಚ್.ಎಸ್.ವಿಶ್ವನಾಥ್ ಬಿನ್ ಶಿವಕುಮಾರಸ್ವಾಮಿ ಆದ ನಾನು ಬರೆದುಕೊಡುತ್ತಿರುವ ಸಿಕ್ಕಾಡು.

ಸ್ವಾಮಿ,

ಏನೆಂದರೆ ನಾನು ತುರುವೇಕೆರೆ ತಾಲ್ಲೂಕು ಘಟಕದ ಭಾರತೀಯ ಜನತಾ ಪಾರ್ಟಿಯ ಅಧ್ಯಕ್ಷರಾಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದೇನೆ. ತುರುವೇಕೆರೆ ತಾಲ್ಲೂಕಿನಲ್ಲಿ ಭಾರತೀಯ ಜನತಾ ಪಾರ್ಟಿಯ ಶಾಸಕರಾದ ಮಸಾಲ, ಜಯರಾಮ್‌ರವರು ಚುನಾಯಿತ ಪ್ರತಿನಿಧಿಯಾಗಿ ಕೆಲಸ ಮಾಡುತ್ತಾ ಜನಪ್ರಿಯರಾಗಿರುತ್ತಾರೆ. ಕಳೆದ ಬಾರಿಯ ಚುನಾವಣೆಯಲ್ಲಿ ಶ್ರೀ ಎಂ.ಟಿ.ಕೃಷ್ಣಪ್ಪನವರು ಪರಾಭವಗೊಂಡಿರುತ್ತಾರೆ. ರಾಜಕೀಯ ದ್ವೇಷದಿಂದ ಮತ್ತು ಚುನಾವಣೆಯಲ್ಲಿ ಸೋತಿರುವ ಕಾರಣ, ಶಾಸಕರಾದ ಮಸಾಲ ಜಯರಾಮ್‌ರವರ ಜನಪ್ರಿಯತೆಯನ್ನು ತಾಳಲಾರದೆ, ಹೊಟ್ಟೆಕಿಚ್ಚಿನಿಂದ ಮತ್ತು ಮಸಾಲ ಜಯರಾಮ್ ರವರಿಗೆ ಸಾರ್ವಜನಿಕರಲ್ಲಿ ಕೆಟ್ಟ ಹೆಸರು ಬರಲಿ ಎಂಬ ಉದ್ದೇಶದಿಂದ ಮತ್ತು ಸಾರ್ವಜನಿಕ ಮುಂದೆ ಶಾಸಕರಾದ ಮಸಾಲ ಜಯರಾಮ್‌ರವರ ಮಾನ, ಮರ್ಯಾದೆ ಹಾಳು ಮಾಡಬೇಕೆಂದ ಉದ್ದೇಶದಿಂದ ಈ ದಿನ ಅಂದರೆ ದಿನಾಂಕ:24-08-2020 ರಂದು ತುರುವೇಕೆರೆ ತಾಲ್ಲೂಕು ಕಛೇರಿಯ ಮುಂಭಾಗದಲ್ಲಿ ಮತ್ತು ತುರುವೇಕೆರೆ ನಗರದ ಇತರ ಎಲ್ಲಾ ವಾರ್ಡ್‌ಗಳಲ್ಲಿ ಮತ್ತು ತುರುವೇಕೆರೆ ತಾಲ್ಲೂಕಿನ ಎಲ್ಲಾ ಹೋಬಳಿಗಳಲ್ಲಿ ಬ್ಯಾನರ್ ಕಟ್ಟಿಸಿರುತ್ತಾರೆ. ಸದರಿ ಬ್ಯಾನರ್‌ನಲ್ಲಿ ಶಾಸಕರಾದ ಮಸಾಲ



ಜಯರಾಮ್ ರವರ ಮಾನ ಮರ್ಯಾದೆ ಸಾರ್ವಜನಿಕರ ಮುಂದೆ ಹಾಳಾಗುವಂತಹ ಬರಹಗಳನ್ನು ಬರೆದಿರುತ್ತಾರೆ. ಅವುಗಳೆಂದರೆ "ದೌರ್ಜನ್ಯದ ಮೂಲಕ ತೆಂಗಿನಸೆಸೆಗಳನ್ನು ಕೀಳಿಸಿ, ಹೆಣ್ಣು ಮಕ್ಕಳ ಮೇಲೆ ಲಾಠಿ ಚಾರ್ಜ್ ಮಾಡಿಸಿದಂತಹ ಕೊಲೆಗಡುಕ ಶಾಸಕ ಮಸಾಲೆ ಜಯರಾಮ್‌ರವರ ವಿರುದ್ಧ ಹಾಗೂ ಈ ಕ್ಷೇತ್ರದ ರೈತರ ಉಳಿವಿಗಾಗಿ ದಿನಾಂಕ:30-08-2020 ಭಾನುವಾರ ಬೆಳಿಗ್ಗೆ 11-30ಕ್ಕೆ ಪ್ರತಿಭಟನೆ" ಎಂಬ ಶೀರ್ಷಿಕೆಯನ್ನು ಒಳಗೊಂಡ ಬ್ಯಾನರ್‌ನ್ನು ಮೇಲೆ ಹೇಳಿದಂತೆ ಅಳವಡಿಸಿರುತ್ತಾರೆ. ಅಲ್ಲದೆ ಸದರಿ ಶೀರ್ಷಿಕೆಯನ್ನು ಒಳಗೊಂಡಂತೆ ಕರಪತ್ರಗಳನ್ನು ಮಾಡಿಸಿ ತಾಲ್ಲೂಕಿನಾದ್ಯಂತ ಸಾರ್ವಜನಿಕರಿಗೆ ಹಂಚಿರುತ್ತಾರೆ. ಸದರಿ ಬರಹಗಳನ್ನು ತುರುವೇಕೆರೆ ತಾಲ್ಲೂಕಿನ ಮಾಜಿ ಶಾಸಕರಾದ ಎಂ.ಟಿ.ಕೃಷ್ಣಪ್ಪನವರು ಮತ್ತು ಸ್ವಾಮಿಯವರು, ಆದ್ಯಕ್ಷರು, ಜೆ.ಡಿ.ಎಸ್. ತುರುವೇಕೆರೆ ತಾಲ್ಲೂಕು ಮೇಲ್ಕಂಡವರು ಮಾಡಿರುವ ಪ್ರಕಟಣೆಯಿಂದ ಜನಪ್ರಿಯ ಶಾಸಕರಾದ ಮಸಾಲೆ ಜಯರಾಮ್‌ರವರಿಗೆ ಮತ್ತು ಭಾರತೀಯ ಜನತಾ ಪಕ್ಷಕ್ಕೆ ಮಾನ ಹಾನಿಯಾಗಿದ್ದು, ಸಾರ್ವಜನಿಕರ ಮುಂದೆ ತಲೆತಗ್ಗಿಸುವಂತೆ ಆಗಿರುತ್ತದೆ. ಏಕೆಂದರೆ, ಮೇಲೆ ಹೇಳಿದ ಎಂ.ಟಿ.ಕೃಷ್ಣಪ್ಪರವರ ಮತ್ತು ಸ್ವಾಮಿಯವರ ಬ್ಯಾನರ್‌ನ ಶೀರ್ಷಿಕೆಗಳು ಶುದ್ಧ ಸುಳ್ಳಿನಿಂದ ಕೂಡಿರುತ್ತವೆ.

ಆದ್ದರಿಂದ ಮೇಲೆ ಹೇಳಿದ ವ್ಯಕ್ತಿಗಳಾದ ಎಂ.ಟಿ.ಕೃಷ್ಣಪ್ಪ ಮತ್ತು ಸ್ವಾಮಿಯವರ ವಿರುದ್ಧ ಕೇಸು ನೋಂದಾಯಿಸಿ ಕಾನೂನು ರೀತಿ ಕ್ರಮ ಜರುಗಿಸಬೇಕಾಗಿ ಪ್ರಾರ್ಥನೆ."

9. The offences alleged are the ones punishable under Section 504 and 34 of the IPC. They are admittedly non cognizable. Therefore, a non-cognizable report was rendered by the jurisdictional police, after interaction on 24.08.2020. The Station House Officer then travels to the Court of the Magistrate seeking permission for registration of a crime for offences punishable under Sections 504 and 34 of the IPC, since the offences alleged were non-cognizable, the nod of the Magistrate under Section 155(2) of the Cr.P.C. was imperative. The learned Magistrate passes the following order:

"The PSI of Turuvekere Police Station approached with requisition seeking permission to proceed with the investigation of non-cognizable case.



It is mentioned that the complainant lodged the written information about alleged insult caused by the proposed accused persons.

As per Section 155(2) of Cr.P.C., there is a bar for the police officer to proceed with the investigation of the non-cognizable case without the order of a Magistrate having jurisdiction to try the case or commit the case for trial.

When, police officer received, the information about non- cognizable case, then necessarily seek from permission the Jurisdictional magistrate to proceed with the investigation.

By considering the request and information of the complainant, it is revealed that the information in a non-cognizable case is received by the police officer. In the interest of justice, it is proper to accord permission to proceed in accordance with Law."

(Emphasis added)

The learned Magistrate records that the Police Officer receives the information about a non-cognizable offence, then necessarily has to seek permission from jurisdictional Magistrate, to proceed with the investigation. This is the procedure that is narrated in the order. The so called application of mind by the learned Magistrate is only in the words "By considering the request and information of the complainant, it is revealed that the information in a non-cognizable case is received by the police officer. In the interest



of justice, it is proper to accord permission to proceed in accordance with Law."

10. The afore-quoted words of the learned Magistrate can by no stretch of imagination be an order, which bears application of mind.

11. The learned Additional State Public Prosecutor seeks to defend this action on the score that it is a lengthy order and it does bear application of mind. I decline to accept the said submission as what is required in law, while the Magistrate grants permission to register a crime, is application of mind, which is ostensibly absent in the afore-quoted paragraph. Therefore, it is not an order that has even a semblance of application of mind. It is rather shocking that Magistrates while granting permission, do not apply their mind and callously grant permission to register the crime while passing orders under Section 155(2) of the Cr.P.C. These acts of passing orders, which bear no reasons or application of mind, have resulted in docket explosion before this Court. Therefore, time and again this Court has directed the



Magistrates not to indulge in passing of such orders. The Magistrates are still passing the same orders, as if it is a frolicsome act.

12. In the case at hand, the afore-quoted paragraph is the reason. It is in fact an order which has no reasons. Merely passing lengthy orders, only to fill up the pages, will not mean an order on application of mind. ***It is the application of mind that is necessary in law and not application of ink; it is not the flow of ink on the paper that is necessary in law, but flow of content depicting such application of mind.***

13. In the light of the aforesaid reasons, the inevitable conclusion is obliteration of the crime. Hence, I pass the following:

ORDER

1. Criminal Petition is allowed.



2. The proceedings in C.C.No.372/2020 pending before the LXXXI Additional City Civil and Sessions Judge, Bengaluru (CCH-82) stands quashed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

JY
List No.: 1 Sl No.: 18
CT: BHK