

IN THE COURT OF THE XLII ADL. CJM, AT BENGALURU**Present:** K.N.Shivakumar, 42nd ACJM, Bengaluru*Dated this 16th day of July, 2024***PCR.No.7024/2024****COMPLAINANT** : Mr. Ziaurrahman Nomani**-VS-****ACCUSED** : Mr. Narendra Damodardas Modi**ORDERS UNDER SEC.156(3) of Cr.P.C.**

The complainant filed this complaint under Sec.200 of Cr.P.C against the accused for the offences P/U/Sec.153A, 153B, 295A, 503, 504 & 505(2) of IPC, praying to refer the same for investigation under Sec.156(3) of Cr.P.C to Amruthahalli Police Station. He also filed an affidavit along with documents as to compliance of guidelines of Hon'ble Apex Court in Priyanka Srivatsava's case regarding exhaustion of Sec.154 of Cr.P.C.

2. Heard, perused the complaint and the documents annexed to it.

3. It is alleged in the complaint that the accused who was the star campaigner of Bharatiya Janatha Party for the state of Rajasthan for the Parliamentary elections-2024, while campaigning in Baswara town, Rajasthan on 21.04.2024 made some hate, derogatory, abusive & instigating speech, which was telecasted live across the nation through National channels, which was watched & observed by millions of citizens of this country including the complainant herein. Said speech was not only in violation of model code of conduct, but also promoting hatred,

feeling of enmity between Hindus & Muslims on the ground of religion, intended to insult Muslim community & religion, causing fear in the minds of public & the Muslim community and also provoking communal disharmony in the society. Accordingly, the accused has committed the offences P/U/Sec. 153A, 153B, 295A, 503, 504 & 505(2) of IPC.

4. Before going to discuss the on the merits of the complaint, it is proper to discuss on two legal issues in considering this complaint.

Firstly, regarding territorial jurisdiction of this court & the said police station to enquire or investigate into this complaint, which says that the alleged incident took place in Banswar Town, Rajasthan. In this regard Ld. Senior advocate Sri. B.T. Venkatesh appearing for the complainant has argued that as the offences alleged are affecting the entire community, each member of such community is being affected and as such each of such places would get jurisdiction. In this regard it is settled that complaints for such offences are maintainable out side the actual place of incidents as held by **Hon'ble High Court of Jharkand** in the case of **Swaraj Thackeray Vs. State of Jharkand**, reported in **2008 Cr.LJ 3780**.

Secondly, whether sanction under Sec. 196 of Cr.P.C is required at this stage of the complaint in view of the ratio laid down by Hon'ble Apex Court in the case of **Anil Kumar Vs. M.K.Aiyappa**, reported in **(2013) 10 SCC 705**, which has been referred to larger bench of Hon'ble Apex Court in the case of **Manju Surana Vs. Sunil Arora**, reported in **(2018) 5 SCC 557**. In this regard Ld senior advocate has argued that as said issue has been referred to larger bench, in the interregnum period i.e until the same is decided by larger bench, courts have to fallow general rule as to law of precedents. As such the ratio laid down in **R.R.Chari**

Vs. State of U.P, reported in **AIR 1951 SC 207** has to be followed, as the same is by a three judges bench, whereas the Anil Kumar Vs. M.K Aiyappa's case is by a two judge bench. In support of his arguments he has relied on the decision of **Hon'ble High Court Of Karnataka** in the case of **Abraham T.J Vs. B.S Yediyurappa & ors**, reported in **2022 SCC Online Kar 1604**, wherein it was held as follows;

“par68- At the outset, it is to be noticed that the judgment in R.R.Chari(Supra) and other judgments in the same line are by benches of three judges. Since the judgment in Ayyappa (supra) and L.Narayana swamy (supra) are delivered by bench of two judges, it would be the former judgments that would be binding, which could be the position in terms of the law laid down in K.S. Subramanian case(supra)”

“para51- Thus the court has clarified that the order of reference would not come in the way of ordering investigation under Sec.156(3) of Cr.P.C.”

Thus, in view of the said ratio, this court is of the opinion that till a decision by the larger bench on the said issue under the reference, the law laid down by Hon'ble Apex Court in the case of **R.R.Chari Vs. State of U.P**, reported in **AIR 1951 SC 207** is binding on that issue and as such in the present case sanction under Sec.196 of Cr.P.C at this stage may not be necessary for referring under Sec.156(3) of Cr.P.C.

5. Now let us go to merits of the complaint. No doubt this court at this stage of reference under Sec.156(3) of Cr.P.C need not to go deep into the merits of the case by making a roving enquiry & evaluate evidences. However, definitely it should apply it's mind to the allegations of the complaint to ascertain as to whether such allegations would prima facie satisfy the ingredients of alleged offences & make out any case for investigation, as held by **Hon'ble Apex Court** in the case of **Anil Kumar Vs. M.K.Aiyappa**, reported in **(2013) 9 SCC 869**, wherein it was observed at para 8 as follows;

“ Where a jurisdiction is exercised on a complaint filed in terms of Sec.156(3) or Sec.200 of Cr.P.C, the magistrate is required to apply his mind..... ,. The application of mind by the magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the magistrate to order investigation under Sec.156(3) of Cr.P.C, should be reflected in the order, though a detailed expression of his views is neither required nor warranted.”

6. In the light of the above, alleged portion of the speech as extracted in the complaint is extracted as follows;

“ Iskamatlab yeh sampattiekatthikarkekiskobaatenge? Jinkezyaadabachchehainunkobaatenge...ghuspaithiyon ko baatenge...kya aapkimehnat ki kamayi ka paisa hghuspaithiyon ko diyajaayega? Aapkomanzoorhai yeh? Yeh congress ka manifesto kehrahahai ki wohmata aur behnon ka sone ka hisaabkareng, uskijaankarilenge, aur phir us sampatti ko baantdenge. Aur unkobaatengejinko Monmohan sigh ji ki sarkar ne kaha tha ki sampatti pe pehlaadhikarmusalmanon ka hai.”

which is translated by way of an affidavit by the complainant as follows;

“ It means that by collecting this wealth, whom will it be distributed to? Those who have more children, it will be distributed to them..... will be distributed to the infiltrators..... will the money earned from your hard work be given to the infiltrators? Do you approve of this? This is what the congress manifesto is saying that it will calculate the gold of our mothers and sisters, get that information, and then share with those whom Manmohan Singh’s government had said that the muslims have first right on the property.”

7. Now let us examine whether the said speech and/or the words used in the said speech would attract any of the offences alleged in the complaint i.e, the offences P/U/Sec. 153A, 153B, 295A, 503, 504 & 505(2) of IPC. The primary ingredients of each of said offences could be summarized as follows;

1. **Sec.153A-** *Promoting hatred or ill-will or disharmony or feeling of enmity.*
2. **Sec.153B-** *Prejudicial to national integrity by way of denial or deprivation of rights as citizens or creating hatred or ill-will or feeling of enmity.*
3. **Sec.295A-** *Intended to outrage religious feelings of any class by insulting its religion or religious beliefs.*
4. **Sec.503-** *Criminal intimidation with threat of injury to person or reputation or property of a person or any person in whom that person is interested.*
5. **Sec.504-** *Intentional insult to a person which gives rise to a provocation to such person to cause breach of public peace or to commit any offence.*
6. **Sec.505(2)-** *Creating or promoting enmity or hatred or ill-will between two classes.*

On considering the ingredients as stated above, it appears that Sec.153A, 153B, 295A & 505(2) of IPC are all the species of a common genus and as such same ingredients would attract each of said offences.

8. In the light of the above on careful scrutiny of alleged speech as extracted in the complaint as well as the live extract in the Pen-drive annexed to the complaint, it appears very clear that said speech was an election campaign speech. Further prima-facie it appears that the alleged portion of said speech could be of two parts, first part i.e “***It means that by collecting this wealth, whom will it be distributed to? Those who have more children, it will be distributed to them..... will be***

distributed to the infiltrators..... will the money earned from your hard work be given to the infiltrators? Do you approve of this? This is what the congress manifesto is saying that it will calculate the gold of our mothers and sisters, get that information, and then share with those ” is referring to criticizing an alleged election manifesto of another political party(Congress party), which may be a rival political party to Bharthiya janatha Party and the second part i.e ***“Manmohan Singh’s government had said that the muslims have first right on the property.”*** refers to criticizing a statement alleged to have been made by the Ex- Prime minister Mr. Dr. Manmohan Sigh, who is a congress leader.

9. As held by ***Hon’ble High court of Delhi***, in the case of ***State (Delhi Administration) Vs. Srikanth Shastri***, reported in ***1987 Crl.L.J 1583***, “ *the expression ‘promote or attempt to promote’ in Sec. 153A shows that there has to be mens rea on the part of the accused to commit the offence of promoting disharmony amongst different religions*”. More so, as held by ***Hon’ble Apex Court*** in the case of ***Manzar Sayeed Khan Vs. state of Maharastra***, reported in ***2007 Crl.L.J 2959(SC)*** “*intention to cause disorder or incite people to violence is sine quo non to establish charge of creating disharmony in society*”. Thus it is clear that to attract an offence under the said provisions there must be an intention to promote disharmony among different religions/communities.

10. Further it is pertinent to note that such intention shall be gathered or judged not only from the words used in particular part of such speech, but from the whole speech. More so there must be either an intention to promote such feeling of hatred or such feelings should be promoted as a result of words spoken. It must be the purpose or part of purpose of accused to promote such feeling and mere circumstance that

there may be a tendency is not sufficient to attract said offences. For this view this court is fortified by the decision of **Hon'ble High Court of Calcutta**, in the case of **Ishwar Prasad Sharma vs. Emperor**, reported in **AIR 1927 Cal 747**.

11. In the light of the above, on analyzing the alleged speech as a whole, prima-facie no such intention to harm or degrade the Muslim religion or religious feelings of Muslim community or any other religion or community for that matter could be gathered. Rather it appears that the accused in his entire speech of about 40 minutes, trying to appeal to the gathering/ voters to cast their votes in favour of Bharathiya Janatha party by conveying the good deeds of his party & government and criticizing a manifesto of a rival political party& their government and attempting to convey said manifesto to said gathering/voters. More so in the entire speech no words or phrases that would lower or degrade any religion or community or the customs, beliefs, practices of any such religion or community including Muslim religion/community were used. Rather in his speech he was trying to convey what special schemes & programs were made by their Government for the upliftment of women, children, tribal and minority communities. That being the case how come it be considered that said speech could promote religious disharmony or hatred or feeling of enmity between Muslim community & any other religion and how come any such intention be attached to said speech. At the most it could be considered as a speech that would cause or tend to cause hatred or enmity between two political parties or political classes on the basis of political thesis, which cannot attract any such offences under Sec. Sec.153A, 153B & 505(2) of IPC as held by **Hon'ble High Court of Allahabad**, in the case of **Shivakumar Mishra Vs. State of U.P**, reported in **1978 CrLJ 701 (All)**.

12. That apart on perusal of alleged portion of said speech it appears that except using the word *Muslims* once in the second part as stated herein above i.e “**Manmohan Singh’s government had said that the muslims have first right on the property.**”, no where he used name of any other religions or communities or caste or classes as against Muslim community. More so, it is not the case of the complainant that said gathering to which he was addressing in the alleged campaign was belonged to any particular religion or community or class to infer that he was provoking such religion or community against Muslim community. Rather said gathering might be having citizens belong to different religions , communities, classes & castes including Muslim community. That being the case how come said speech be considered to be promoting any such religious or communal hatred or disharmony or feeling of enmity among different religions or communities including the Hindu & Muslim religions. As held by **Hon’ble Apex Court** in the case of **Bilal Ahmed kaloo Vs. State**, reported in (1997) **7 SCC 431**, “*mere inciting feeling of one group without any reference to other will not attract the provisions of either Sec.153A or 505 of IPC.*” Therefore, even though it can be considered that the accused referred to Muslim community in the second part of alleged speech, as the same was used without reference any other religion or community as against said Muslim community, that may not attract provisions of alleged offences.

13. Further, with regard to the word ‘**Infiltrators**’ & the phrase ‘**those having more children**’ that are used in his speech, it is pertinent to note that he has not referred said words to any person or persons of Muslim religion or community or any other religion or community for that matter. Muslims in India are also citizens of this secular country under the Indian Constitution. If so, they are not the ‘**Infiltrators**’ to this country. That being the case how can it be inferred

that said word used in the said speech refers to Indian Muslims. Such '**Infiltrators**' may be from Pakistan or Bangladesh or China or Srilanka and may be of different religions, but not Indian Muslims. More so, nowhere either in our Constitution or any other law in India, it is provided that only persons from Muslim community should have more children. It is not only the persons belong to Muslim community would have more children, there are several instances of Hindu communities, tribal communities & persons of other religions having more children like the Muslims. That being the case how can it be inferred that said phrase refers to only Muslim community. Therefore even the words used in the alleged speech also would not tend to promote any such religious or communal disharmony or hatred or feeling of enmity between the Hindus & the Muslims as alleged in the complaint.

14. With regard to alleged offences under Sec. 503, 504 of IPC, it is pertinent to note that as already discussed herein above neither the entire speech in issue nor the words or phrases used therein would be referable to Muslim religion or community, the question of such speech or words or phrases causing any such criminal intimidation or intentional insult to any of said community doesn't arise.

15. In view of all the above discussed reasons, it can be concluded that no such intention to promote or attempt to promote any such religious or communal disharmony or hatred or feeling of enmity could be gathered or judged from the alleged speech, rather an intention to criticize a political party or its political thesis & to convey an alleged manifesto of a political party could be gathered. As such the allegations of the complaint as well as the documents annexed to it, would not prima facie satisfy the ingredients of alleged offences P/U/Sec. Sec.153A, 153B, 295A, 503, 504 & 505(2) of IPC and as such do not make out any

case for investigation. Accordingly, this court proceeds to pass the following;

ORDER

The complaint filed by the complainant under Sec.200 of Cr.P.C for the offences P/U/Sec. Sec.153A, 153B, 295A, 503, 504 & 505(2) of IPC as against the accused is hereby rejected as not a fit case to refer U/Sec.156(3) of Cr.P.C for investigation .

(K.N.Shivakumar)
XLII ACJM, Bengaluru.
*(Spl. Court for cases against M.Ps,
MLAs & MLCs in Karnataka)*

