

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO.6376/2019 (GM-RES) A/W
CRIMINAL PETITION NO.4811/2020

IN WRIT PETITION NO.6376/2019:

BETWEEN:

SRI. V. SHASHIDHAR

...PETITIONER

(BY SRI G.R. MOHAN, ADVOCATE)

AND:

1. STATE OF KARNATAKA BY YELAHANKA
NEW TOWN POLICE,
STATE PUBLIC PROSECUTOR OFFICER,
HIGH COURT, BENGALURU-560 001,

STATION HOUSE OFFICER
2. CENTRAL CRIME BRANCH,
COTTONPET MAIN ROAD,
BENGALURU-560 053.

...RESPONDENTS

(BY SRI S. VISHWAMURTHY, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482 OF CODE OF CRIMINAL PROCEDURE, 1973 PRAYING TO DIRECT TO THE RESPONDENT THAT THEY HAVE NO JURISDICTION TO INVESTIGATE AND FILE FINAL REPORT BEFORE THE JURISDICTIONAL MAGISTRATE AND CONSEQUENTLY QUASH THE COMPLAINT/CHARGE SHEET IN CC NO.8989 OF 2018 TAKING COGNIZANCE AS PER ANNEXURE-F DATED 10.4.2018 ON THE FILE OF THE I ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGALURU.

IN CRIMINAL PETITION NO.4811/2020:

BETWEEN:

1. MANJUNATH M
2. DHANANJAYA R
3. SHIVAPPA S. MAHASHETTY @ SHIVU MASHETTY

...PETITIONERS

(BY SRI SANDESH CHOUTA, SENIOR COUNSEL FOR
SRI SUNIL KUMAR S., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY YELAHANKA NEW TOWN P.S,
(REPRESENTED BY STATE PUBLIC PROSECUTOR OFFICER,
HIGH COURT OF KARNATKA,
HIGH COURT BUILDING,
BANGALORE-560 001.
2. STATION HOUSE OFFICER
CENTRAL CRIME BRANCH,
COTTONPET MAIN ROAD,
BENGALURU-560 053.

...RESPONDENTS

(BY SRI S. VISHWAMURTHY, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE ENTIRE CHARGE SHEET AND CONSEQUENTLY THE ENTIRE PROCEEDINGS IN C.C.NO.8989/2018 ON THE FILE OF I ADDITIONAL CHIEF METROPOLITAN MAGISTRATE AT BENGALURU FOR THE OFFENCE P/U/S 124-A AND 166 R/W 120(B) AND 109 OF IPC, SECTION 5 OF THE KARNATAKA ESSENTIAL SERVICES MAINTENANCE ACT, 2013 AND SECTION 3 OF THE POLICE (INCITEMENT TO DISAFFECTION) ACT, 1922 AND SECTION 4 OF THE POLICE FORCES (RESTRICTION OF RIGHTS) ACT, 1966.

THESE PETITIONS ARE COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

These petitions are filed challenging the FIR in Crime No.97/2016, hence, they are taken up together and heard and disposed of by a common order.

2. Charge sheet has been laid for the offence punishable under Sections 124A, 166 r/w 120(B) and 109 of IPC, Section 5 of the Karnataka Essential Services Maintenance Act, 2013, Section 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 4 of the Police Forces (Restriction of Rights) Act, 1966, alleging that the accused No.1 who is a dismissed Police Constable formed a Police Association namely Akhila Karnataka Police Maha Sangha (Welfare Body) and stated to be spearheading a movement to instigate the lower rung of the Police force to act against the present elected Government, and that he along with other accused conspired to instigate the Police force to bring hatred and disaffection against the State Government and amongst the general public, with an intention to destabilize and bring down the present Government.

3. It is further submitted that the petitioners had made public speeches, and used electronic social media such as, Facebook, WhatsApp, to create hatred and disaffection against the State Government among the Police force and the public at large. The petitioner-accused No.1 is said to have a Facebook account, on which he had posted provocative photographs with captions like 'Sippayee Dungay' and said to have addressed messages to the rank and file of the Karnataka Police force to go on a mass leave on 4.6.2016, throughout Karnataka State and to join hands in their war against the Government and the Police Department.

4. Thereafter, the Government to control the situation issued a notification dated 31.05.2016, declaring that the Karnataka State Police Force as an essential service under the Karnataka Essential Services Maintenance Act, 2013. However, it is claimed that this did not deter the petitioners to continue with their onslaught through the various media to instigate the members of the Police force not to buckle.

5. Mr. Sandesh Chouta, learned senior counsel for Mr. Sunil Kumar. S, learned counsel for the petitioners in CrI.P.No.4811/2020 and Mr. G.R.Mohan, learned counsel appearing for the petitioner in W.P.No.6376/2019 submits that the charge sheet material does not disclose the commission of the offence alleged against the petitioners-accused. In the absence of any essential ingredients so as to constitute the commission of the offence alleged against the petitioners-accused, the filing of the charge sheet against the petitioners is without any substance. They further submitted that in the absence of any material that the Police personnel went on mass leave or participated in the strike alleged to have called by the petitioners-accused, the charge sheet filed for the offence punishable under the provisions of the Karnataka Essential Services Maintenance Act, 2013, Section 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 4 of the Police Forces (Restriction of Rights) Act, 1966 is not permissible.

6. On the other hand, learned HCGP appearing for the State submits that the petitioners having conspired to instigate

the Police Force with an intention to create hatred and disaffection against the State Government among the general public and to bring down the Government have committed the offences alleged against them. He further submits that the petitioners-accused by calling upon the Police personnel to go on mass leave on 4.6.2016 and to participate in the strike have committed an offence under the Karnataka Essential Services Maintenance Act, 2013, Section 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 4 of the Police Forces (Restriction of Rights) Act, 1966. Hence, he submits that the charge sheet filed against the petitioners-accused does not warrant any interference and sought for dismissal of the petitions.

7. I have considered the submissions made by the learned counsels appearing for the parties.

8. To constitute the commission of offence punishable under Section 124A of IPC, a person must bring or attempts to bring into hatred or contempt to excite disaffection towards the Government established by law in India. The charge sheet

material does not disclose that the petitioners-accused by words or spoken or written were trying to instigate the lower rung of the Police and were only agitating the appalling conditions services under which they function. In the absence of any corroborative material that the petitioners-accused by words, either spoken or written brought or attempted to bring excite disaffection towards the Government, the filing of the charge sheet is without any substance.

9. To constitute the commission of an offence punishable under Section 120A and B of IPC, two or more persons must have agreed to do or cause to be done an illegal act. In the present case, the charge sheet material does not disclose that the petitioners-accused have conspired with each other to do an illegal act, except the allegation that the petitioners instigated the Police personnel to go on a mass leave and to participate in the strike to be held on 4.6.2016. In the absence of any essential ingredients so as to constitute the commission of the offence of criminal conspiracy, the filing of the

charge sheet for the offence punishable under Sections 120A and B of IPC is also held to be without any substance.

10. To constitute the commission of an offence punishable under Section 166 of IPC, a public servant must have intentionally disobeyed any direction of the law. In the present case, there is no material placed along with the charge sheet that the petitioners-accused have deliberately disobeyed any direction of the law.

11. To constitute the commission of an offence punishable under Section 5 of the Karnataka Essential Services Maintenance Act, 2013, any person must instigate or incite any other person to take part in, or otherwise acts in furtherance of strike which is illegal under this Act. In the present case, the alleged strike which was called by the petitioner-accused did not take place in view of the notification dated 31.05.2016, declaring that the Karnataka State Police Force as an essential services under the Act, 2013 and in view of the notification dated 31.05.2016, the registration of the FIR against the petitioner-accused on 2.6.2016 for the strike alleged to have been called

by the petitioner-accused which did not take place is impermissible. Hence, the charge sheet filed against the petitioner-accused for the offence punishable under Section 5 of the Act is also without any substance.

12. To constitute the commission of offence punishable under Section 3 of the Police (Incitement to Disaffection) Act, 1922, a person must have intentionally caused or attempted to cause any act which he knows is likely to cause disaffection towards the Government establishment by law. In the present case, the charge sheet material does not disclose that the act of the petitioner has resulted in disaffection towards the Government establishment by law. However, the petitioner-accused have only acted in promoting the welfare of the Police personnel and furtherance of members of the Police force.

13. In view of the functioning clause contained in Section 4 of the Police Forces (Restriction of Rights) Act, 1966, charge sheet filed against petitioner-accused for the offence punishable under Section 3 of the Police (Incitement to Disaffection) Act, 1922 is also impermissible.

14. The Commission has recommended to repeal the Police Act 1922 since this was a colonial Act introduced to curb nationalist activities making it an offence to spread disaffection among the police and also the Act does not describe what amounts to disaffection, and as a significant curb on the freedom of speech.

15. In the absence of any essential ingredients so as to constitute the commission of the offence punishable under section 3 of the said act, filing of the charge sheet for the aforesaid offence against the petitioner-accused is also impermissible.

16. To constitute the commission of offence punishable under Section 109 of IPC, a person must have abated an offence. In the present case, in the absence of any abatement of commission of offence punishable under the provisions of 109 of IPC, the filing of the charge sheet for the aforesaid offence is also held to be one without any substance.

17. Accordingly, I pass the following:

ORDER

petitions are allowed.

Impugned proceedings in C.C.No.8989/2018, pending on the file of the I Additional Chief Metropolitan Magistrate, Bengaluru in so far it relates to petitioners-accused 1, 4, 5 and 6 is hereby quashed.

Sd/-
JUDGE

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