

IN THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI

(CCRIMINAL ORIGINAL JURISDICTION)

WRIT PETITION (CRL.) NO. OF 2020

IN THE MATTER OF:

.....Petitioner

Versus

1. State (NCT of Delhi)
 Through the Commissioner of Police
 Delhi Police Headquarters
 Jai Singh Road, New Delhi
2. The Special Commissioner of Police
 Law and order, Delhi Police
 Delhi Police Headquarters
 Jai Singh Road, New Delhi
3. The Joint Commissioner of Police
 Central Range, Delhi Police
 2nd Floor ,Tower-1, PHQ ,
 Jai Singh Road, New Delhi-110001

.....Respondent

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION
OF INDIA PRAYING INTER-ALIA FOR AN APPROPRIATE WRIT,
ORDER OR DIRECTION TO THE RESPONDENT NO. 1 TO 3 TO
REGISTER A CASE AGAINST THE RESPONDENT NO. 4 FOR THE
OFFENCE U/S 4 OF THE PREVENTION OF INSULTS TO
NATIONAL HONOUR ACT AND U/S 121, 153, 153A, 295, 298,
504 & 505 OF THE I.P.C.

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To,
The Hon'ble Chief Justice of High Court,
And His Companion Judges of the
Hon'ble High Court of Delhi

The humble petition of the
Petitioner above-named

MOST RESPECTFULLY SHOWETH:

1. That the petitioner is a citizen of India and is thus entitled to seek the relief from this Hon'ble Court under Article 226 of the Constitution of India against the respondents violation of his fundamental and legal rights by the respondent no. 1 to 3 directing them to register a case against the respondent no. 4 for the offence U/s 4 of the Prevention of Insults to National Honour Act and U/s 121, 153, 153A, 295, 298, 504 & 505 of the I.P.C.
2. That the petitioner has not filed any writ petition before this Hon'ble Court and any other courts seeking identical relief.
3. That on 5 August 2019, the Government of India announced in the Rajya Sabha (upper house of the Indian Parliament) that the President of India had issued The Constitution (Application to Jammu and Kashmir) Order, 2019 (C.O. 272) under Article 370, superseding the Constitution (Application to Jammu and Kashmir) Order, 1954. The order stated that all the provisions of the Indian Constitution applied to Jammu and Kashmir. Whereas the

1954 order specified that only some articles of the Indian constitution to apply to the state, the new order removed all such restrictions. This in effect meant that the separate Constitution of Jammu and Kashmir stood abrogated. The order was stated to have been issued with the "concurrence of the Government of State of Jammu and Kashmir" which apparently meant the Governor appointed by the Union government.

The Presidential Order 2019 also added clause (4) with four sub-clauses to Article 367 under "interpretations". The phrase "Sadar-i-Riyasat acting on the aid and advice of the Council of Ministers" shall be construed as the "Governor of Jammu and Kashmir". The phrase "State government" shall include the Governor. In proviso to clause (3) of article 370 of the Constitution, the expression "Constituent Assembly of the State referred to in clause (2)" shall read "Legislative Assembly of the State". According to Jill Cottrell, some of the Presidential orders under Article 370 have been issued since 1954 in similar circumstances when the state was under President's rule. The Union governments interpreted the "concurrence of the state government" under these circumstances to mean the Governor.

Immediately after placing the Presidential Order 2019 before the Rajya Sabha, Home Minister moved a resolution recommending that the president issue an order under article 370(3) rendering all clauses of Article 370 inoperative. After the resolution was adopted by both houses of the parliament, the president issued Constitutional Order 273 on 6 August 2019 replacing the extant text of Article 370 with the following text:

“370. All provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in article 152 or article 308 or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgement, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article 363 or otherwise.”

4. That on 23.10.2020 attacking the Union of India over the abrogation of Article 370, the Respondent No. 4, former J&K CM Mehbooba Mufti, said that the Constitution she believed in has been desecrated.

Addressing her first press conference after being released from 14-month detention, Peoples Democratic Party chief Mufti said the “Dacoits snatched our flag”

When reporters asked her about the J&K flag placed on the desk, she called it ‘our flag’ and said, “We will take Tricolour in our hand when we get our flag back”.

The 61-year-old leader also said that she won’t take part in elections without the reinstatement of the Constitution and flag of the erstwhile state of J&K.

Parroting National Conference chief Farooq Abdullah’s views on China, Mufti said that Beijing speaks of Article 370 too, calling it disputed and asking why it was made UT?

J&K came into international view like never before after abrogation of Article 370, she added.

On China's alleged encroachment of the Indian territory, the PDP supremo said that it's a fact China captured 1000 sq km of our land and somehow India managed to get back around 40 km. True copy of the statement of Respondent No. 4 published in daily Businessworld & Times Now dated 23.10.2020 is being annexed herewith and marked as **Annexure P-1**.

5. That on 23.10.2020, i.e., on the same day having gone through the news, the petitioner herein filed a complaint with the Respondent No.1 to 3 against the respondent no.4 for the offence U/s 4 of the Prevention of Insults to National Honour Act and U/s 121, 153, 153A, 295, 298, 504 & 505 of the I.P.C. True copy of the complaint dated 23.10.2020 submitted by the petitioner against the respondent no. 4 for the offence U/s 4 of the Prevention of Insults to National Honour Act and U/s 121, 153, 153A, 295, 298, 504 & 505 of the I.P.C. is being annexed herewith and marked as **Annexure P-2.**
6. That it is respectfully submitted that the petitioners have not filed any writ petition of similar nature against the order dated 02.05.2019 passed by the respondents and no case of the similar nature is pending before this Hon'ble Court or any other courts of India.
7. That the petitioners have no other alternative and efficacious remedy for being relieved against the impugned inaction of the respondent no. 1 to 3, to invoke the jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.

GROUND

- A. Because the respondent no.1 to 3 have acted contrary to the provisions of Constitution of India as well as the settled

laws in not registering a case against the respondent no. 4 for the offence U/s 4 of the Prevention of Insults to National Honour Act and U/s 121, 153, 153A, 295, 298, 504 & 505 of the I.P.C.

- B. Because the act of the respondent no. 1 to 3 is directly in the teeth of a judgment of the Constitution Bench of the Hon'ble Supreme Court in "Lalita Kumari Vs. Govt. of U.P, W.P.(Crl) No; 68/2008", wherein it has been held that registration of First Information Report is mandatory under Section 154 of the Code of Criminal Procedure , if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
- C. Because the Hon'ble Supreme Court issued the following Guidelines regarding the registration of FIR in "Lalita Kumari Vs. Govt. of U.P, W.P.(Crl) No; 68/2008"
 - (i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
 - (ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

- (iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
- (iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
- (v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
- (vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
 - (a) Matrimonial disputes/ family disputes
 - (b) Commercial offences
 - (c) Medical negligence cases

(d) Corruption cases

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(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

- D. Because the statement made by the respondent no.4 that the 'Dacoits snatched our flag', in a way explicitly insulted India's tri-colour.
- E. Because it is respectfully submitted that the respondent no.4 also went to the extent of saying that SHE WON'T TAKE PART IN ELECTIONS WITHOUT THE REINSTATEMENT OF THE CONSTITUTION AND FLAG OF THE ERSTWHILE STATE OF J&K. She has hurt every law abiding citizen's pride by this gross affront statement. These statements by Mehbooba Mufti is instigating and provocative in nature which intends to create communal disharmony and creating hatred and enmity amongst the various religions and masses of India.
- F. Because it is respectfully submitted that the petitioner filed the complaint based on the inflammatory, derogatory and inciting statement made by the respondent no.4 pointing to the Indian Government that *"DACOITS SNATCHED OUR FLAG"*. In this statement, it is quite clear that she is using this derogatory and instigating statements against the duly elected Indian Government. It is an inciting statement which intends to create hatred and unrest among the communities and waging war against the duly elected government of this country as she is an influential and public personality.

PRAYER

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In the premises, it is most humbly and respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Issue a writ in the nature of mandamus directing the respondent no. 1 to 3 to register a case against the respondent no. 4; and
- b) Issue a writ in the nature of mandamus directing the respondent no. 1 to 3 to make investigation against the respondent no. 4 based on the complaint dated 23.10.2020 (Annexure P-2) made by the petitioner; and
- c) issue any other appropriate writ, order or direction in the facts and circumstances of the case;

FILED BY

**NEW DELHI
FILED ON : 19.11.2020**

**(RAJ KISHOR CHOUHARY)
ADVOCATE FOR THE PETITIONERS
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