

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF FEBRUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

WRIT PETITION NO.18737 OF 2021

BETWEEN

1 . SRI K J KUNJUMON

I

2 . SRI SAINU P J

3 . SMT LENI KUNJUMON

4 . SMT MARY K JOHN

... PETITIONERS

(BY SRI MOHAN RAJ DORAISWAMY A., ADVOCATE)

AND

- 1 . STATE OF KARNATAKA
BY DHARMASTHALA PS
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU - 560 001
- 2 . STATE OF KARNATAKA
THROUGH UNDER SECRETARY
HOME DEPARTMENT (CRIME BRANCH)
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA BENGALURU
KARNATAKA
- 3 . DIRECTOR GENERAL AND
INSPECTOR GENERAL OF POLICE
NRUPATHUNGA ROAD
BENGALURU
- 4 . INSPECTOR GENERAL OF POLICE
WEST ZONE, MANGALURU
KARNATAKA
- 5 . SUPERINTENDENT OF POLICE
DAKSHINA KANNADA DISTRICT
MANGALURU
KARNATAKA

... RESPONDENTS

(BY SRI V.S. HEGDE, SPP - II
ALONG WITH SRI B.J. ROHITH, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA READ WITH SECTION 482 OF THE CODE OF CR.P.C., PRAYING TO QUASH THE IMPUGNED SANCTION ORDER DATED 22.03.2017 VIDE ANNEX-H PASSED BY THE UNDER SECRETARY, HOME DEPARTMENT (CRIME BRANCH), GOVERNMENT OF KARNATAKA, BENGALURU AND CONSEQUENTIAL PROCEEDINGS PURSUANT TO SECTION 196 OF THE CR.P.C. AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 07.12.2022 THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This writ petition filed by the petitioners-accused Nos.1 to 4 under Articles 226 and 227 of Constitution of India read with Section 482 of Cr.P.C. for quashing the Sanction Order No.OE 175 MOHIBA 2013, Bengaluru, dated 22.03.2017 passed by the Under Secretary, Home Department (Crime Branch), Government of Karnataka, Bengaluru and consequential proceedings pursuant to Section 196 of Cr.P.C. and to quash the FIR and criminal proceedings in C.C.No.605/2017 for the offences punishable under Sections 504, 323, 295A read with Section 34 of IPC, pending on the file of Prl. Civil Judge and JMFC, Belthangadi.

2. Heard the arguments of learned counsel for petitioners and learned SPP-II for the respondents.

3. The case of the prosecution is that the complainant-Praveena filed a first information to the Uppinangadi Police on 28.08.2011 alleging that four persons (accused Nos.1 to 4) were said to be forced the complainant to change his religion and acted as religious hate by making him to hold the Holy Bible against his chest and took photographs without his willing. It is alleged that on 28.08.2011 at 9.00 a.m., the petitioners came to the house of the complainant and enquired about the reading of the book given by them. When the complainant answered that he had gone through it and said that it is the book of Jesus Christ. In reply to that, the petitioners have stated that the Jesus Christ is prime and is the only god. The petitioners questioned the complainant saying that he will not be benefited by performing pooja to Brahma, Vishnu and Shiva and also stated that if he worship Jesus Christ, all his wishes will be fulfilled and if he

follow the Christianity, they will pay Rs.25,000/- each and pressurized the complainant to convert into Christianity. When he questioned the accused persons as to why they are doing so, they said to be assaulted the complainant and abused him in the filthy language. After receiving the complaint, the Police registered the case against the petitioners for the offences punishable under Sections 504, 323, 295A read with Section 34 of IPC. The police after completion of the investigation, filed the charge-sheet which is under challenge.

4. The learned counsel for the petitioners has mainly argued on the point of sanction granted by the State to prosecute the petitioners on various other grounds alleging that there is no essential ingredients to constitute the offences punishable under Section 295A of IPC. There is a deliberate and malicious intention for outraging the religion and religious

believes. The words spoken by the petitioners and witnesses did not constitute any offence under Section 295A of IPC and further contended that there is no essential ingredient to constitute the offence under Sections 323 and 504 of IPC as the petitioners have not caused any hurt and also not abused them in filthy language. Therefore, the criminal proceedings required to be quashed.

5. The petitioner counsel further contended that the Constitutional Bench of the Hon'ble Supreme Court has held that under Article 25 of the Constitution of India guarantees every person and not merely to the citizen of India, the right to freedom of conscience and the right to freely profess, practice and propagate religion. The petitioners were at most propagating Christianity in enforcement of their fundamental rights. There is a lack of fair objective and transparent decision in respect of the sanction order which can be

attributed to no other reasons than religious bias. The Government of India by its letter dated 08.01.2010 has admitted that it has no policy regarding grant of sanction to prosecute, therefore, it is contended that the criminal proceedings is liable to be quashed.

6. Learned counsel also contended that there is inordinate delay in filing the charge-sheet as the complaint was filed in the year 2011 and charge-sheet was filed in the year 2017. Therefore, taking cognizance is barred by law under Section 468 of Cr.P.C. Hence, prayed for quashing the criminal proceedings.

7. *Per contra*, learned SPP-II objected the petition and contended that there is some delay in granting the sanction by the State and that delay cannot be a ground for refusing to take cognizance. As per Section 473 of Cr.P.C., it is non-obstante clause

when the delay is explained and it may not affect the bar under Section 468 of Cr.P.C. The provisions of the law clearly mentioned the word "or" which is used in the interest of justice, therefore, the delay is not applicable to the present case on hand. The accused also filed a complaint against the complainant, it appears case and counter case between the two parties. Therefore, one criminal proceedings cannot be quashed and the complaint came to be filed within the limitation. Therefore, the bar under Section 468 of Cr.P.C. would not be applicable to the case on hand. The accused persons pressurized the complainant for conversion of the religion from Hinduism to Christianity. The matter was investigated by the Police in detail. Therefore, the petitioner required to face the trial. Hence, prayed for dismissing the petition. In support of his arguments, learned counsel has relied upon various judgments.

8. Having heard the arguments and on perusal of the records, which reveals, the accused persons said to be went to the house of the defacto-complainant and gave some book pertaining to the Christian religion and Jesus. Subsequently, once again they went to the house of the complainant and pressurized the complainant to convert their religion from Hindu to Christianity and they also glorified the Jesus as powerful god and said that the Jesus is alone Supreme and further blamed the Hindu gods stating that Brahma, Vishnu and Shiva are not useful for them, even if they worship them. But if they follow the Christianity, Jesus will provide all the requirements and also assured to give Rs.25,000/- each if they agree to convert as Christians. At that time, there was a scuffle and the accused were said to be assaulted the complainant and also abused and threatened to do away their lives. The neighbors also came and they

said to be attacked the petitioners, therefore, on the complaint of the accused, a FIR in Crime No.92/2011 has been registered by the same police for the offences punishable under Sections 323, 324 read with Section 34 of IPC against the complainant and others. On the complaint of the defacto-complainant, the Police registered a case in Crime No.91/2011 for the offences punishable under Sections 504, 323, 295A of IPC.

9. It is seen from the records that there is a case and counter case registered against both the group in the year 2011 and Police have filed the charge-sheet against both the groups. Now the contention of the learned counsel for the petitioners is that there is delay in filing the charge-sheet for more than six years, though the complaint was filed in the year 2011 and the sanction was granted after 5½ years i.e., in the year 2017. There is no explanation

for delay in granting sanction and the cognizance taken by the Magistrate is barred by limitation under Section 468 of Cr.P.C. and the maximum punishment prescribed for the offence punishable under Section 295A of IPC is up to three years. Therefore, cognizance taken by the Magistrate is barred by law. Hence, proceedings is liable to be quashed.

10. In this regard, the learned SPP-II has objected and contented that as per Section 473 of Cr.P.C. the delay was explained by the Police, therefore, there is no bar for taking cognizance. In this regard, admittedly, for the offence under Section 295A of IPC, the maximum punishment is three years and as per Section 468(2)(c) of Cr.P.C., there is a bar for taking cognizance, after three years, if the punishment is up to three years. Admittedly, the charge-sheet came to be filed in the year 2017 by the Police, which shows, it is beyond three years. However, the sanction

has been accorded by the State which reveals, the sanction was granted only on 22.03.2017 and within a week charge-sheet has been filed. In this regard, on perusal of the provisions of Section 470(3) and (4) of Cr.P.C. which reads as under:

"470. Exclusion of time in certain cases

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded"

(4) In computing the period of limitation, the time during which the offender-

*(a) has been absent from the India or from any territory outside India which is under the administration of the Central Government; or
(b) has avoided arrest by absconding or concealing himself, shall be excluded."*

11. In view of Section 470(3) of Cr.P.C., if any time consumed for obtaining sanction that shall be excluded from the limitation. Section 470 of Cr.P.C. is exception to the Section 468 of Cr.P.C. The Hon'ble Supreme Court also held in the case of ***Sarah Mathew vs. Institute of Cardio Vascular Diseases and other cases*** reported in ***(2014) 2 SCC 62***, at paragraph 51, the Hon'ble Supreme Court has taken the view that for the purpose of computing the period of limitation under Section 468 of Cr.P.C., the relevant date is the date of filing of the complaint or the date of the institution of prosecution and not the date on which the Magistrate takes the cognizance. Therefore, the contention of the learned counsel for the

petitioners cannot be acceptable that cognizance taken by the Magistrate is barred by law.

12. The next contention is that the sanction granted by the State is non application of mind and in this regard, the learned SPP-II brought to the notice of the Court that the State while considering the request of the Police, it has clearly stated that they have verified the documents and thereafter passed the order. Therefore, it cannot be said that there is no application of mind by the State while granting sanction under Section 196 of Cr.P.C. in respect of the offence under Section 295A of IPC. If at all, any flaw in the said sanction, the petitioner can take as defence in the cross-examination while examination of the Officer who accorded the sanction. The note sheet of the State also reveals that the file was moved from Under Secretary to the Additional Chief Secretary and finally, the matter also placed before the Cabinet and

after obtaining the cabinet approval and after the discussion, the permission has been accorded. It is also seen from the note sheet that the matter has been placed before the Hon'ble Home Minister. Therefore, it cannot be said there is any non application of mind by the State while according sanction. Therefore, the another contention raised by the learned counsel for the petitioners is not sustainable under the law.

13. In respect of the delay in filing of the charge-sheet, reveals that the Investigating Officer moved an application to the Government within two years of the complaint and thereafter, the matter was pending before the Home Department for almost three to four years and thereafter, sanction has been accorded on 22.03.2017. The charge-sheet came to be filed within a week i.e. on 30.03.2017. Therefore, it cannot be considered that there is delay in filing the

charge-sheet which affects the fundamental right of the petitioners.

14. Apart from that, there is a case and counter case registered against both the parties, such being the case, the petitioners required to face the trial and the Trial Judge has to give the findings in both the cases and punish the aggressor of the crime. Therefore, at this stage, the criminal proceedings cannot be quashed.

15. Accordingly, the petition filed by the petitioners- accused Nos.1 to 4 is hereby ***dismissed***.

**Sd/-
JUDGE**

GBB