

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**



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DATED THIS THE 26TH DAY OF NOVEMBER 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION No.200377/2019

BETWEEN:

1. HANMAGOUDA
S/O GANGAPPA MANKANI
AGE: 31 YEARS, OCC: COOLIE
R/O BANGARGOND VILLAGE
TQ. MUDDEBIHAL, DIST. VIJAYAPURA
2. HAMJISAB
S/O MALIKSAB SOMALAPUR
AGE: 36 YEARS, OCC: DRIVER
R/O MAROL, TQ. HUNGUND
NOW R/AT MUDDEBIHAL
TQ. MUDDEBIHAL, DIST. VIJAYAPUR
3. GANGADHAR S/O MALKAJAPPA HADPAD
AGE: 34 YEARS, OCC: DRIVER
R/O YARAZERI, TQ. MUDDEBIHAL
DIST. VIJAYAPUR

... PETITIONERS

(BY SRI RAJESH G. DODDAMANI, ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH MUDDEBIHAL POLICE STATION
NOW REPRESENTED BY THE ADDL. SPP
HIGH COURT OF KARNATAKA
KALABURAGI BENCH-585105

... RESPONDENT

(BY SRI GURURAJ V. HASILKAR, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CRIMINAL PROCEDURE CODE, PRAYING TO QUASH THE ORDER OF THE CIVIL JUDGE AND JMFC, MUDDEBIHAL DATED 13.07.2018 PASSED IN C.C.NO.167/2018 (CRIME NO.107/2018 MUDDEBIHAL POLICE STATION) TAKING COGNIZANCE AGAINST THE PETITIONERS FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 171H OF IPC AND SECTION 3 OF THE KARNATAKA OPEN PLACES (PREVENTION OF DISFIGUREMENT) ACT, 1981.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.11.2021, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard the learned counsel appearing for the petitioners and the learned High Court Government Pleader appearing for the respondent-State.

2. This petition is filed under Section 482 of Cr.P.C., praying this Court to quash the order of the Civil Judge and JMFC, Muddebihal, dated 13.07.2018 passed in C.C.No.167/2018 (Crime No.107/2018 of Muddebihal Police Station) taking cognizance against the petitioners

for the offences punishable under Section 171H of IPC and Section 3 of the Karnataka Open Places (Prevention of Disfigurement) Act, 1981 (for short 'the Act').

3. Factual matrix of the case is that the complaint is lodged by one Basavaraj stating that he was deputed for election duty on the eve of assembly elections during the year 2018. He was performing flying squad duty in Muddebihal Assembly constituency along with other officials by forming six teams on 20.04.2018. It is also alleged that a candidate belonging to Indian National Congress had come to Tahsildar office, Muddebihal, for filing nomination papers and some vehicles had accompanied him to Tahsildar's office displaying stickers containing symbol and flag of Indian National Congress. It is further alleged that he along with his team members inspected the said vehicles and noticed that stickers displaying palm symbol of Indian National Congress was displayed on the

motorcycle and flags of Indian National Congress were tied to Bolero vehicle and Tata Ace vehicle. It is also alleged that the same was done without any permission and they have violated the Election Code of Conduct. Hence, the case has been registered, the police have investigated the matter and filed charge sheet.

4. The learned counsel appearing for the petitioners would vehemently contend that first of all, Act invoked i.e., the Karnataka Open Places (Prevention of Disfigurement) Act, 1981 is not applicable to Muddebihal and the said Act is applicable only in respect of particular places. Unless the same is notified in respect of particular place of Muddebihal, the police ought not to have initiated proceedings against the petitioners under Section 3 of the Act. The learned counsel also submits that the respondents have also invoked Section 171H of IPC. The complaint is not filed under Section 195 of Cr.P.C., but the case has been

registered against the petitioners and based on the police report, cognizance was also taken. The learned counsel also would submit that when non-cognizable offence is invoked, it requires permission from the learned Magistrate under Section 155(2) of Cr.P.C., and hence, it requires interference of this Court.

5. Per contra, the learned High Court Government Pleader appearing for the respondent-State would submit that the election was declared in respect of Muddebihal assembly constituency in 2018. When the election notification was issued by the State, the order was passed by the District Election Officer and District Magistrate, Vijayapura dated 31.03.2018 appointing flying squads and the same includes Muddebihal Constituency. The learned counsel also relied upon the order of the State Government dated 10.04.2018 and so also the revised order dated 31.03.2018 appointing officers consisting of flying squads. The learned counsel

also relied upon the Notification of Election Commission of India dated 02.05.2018 wherein it is clarified that as per Section 126(1)(b) of the Representative of People Act, 1951, there shall not be displaying of any stickers and flags of any particularly party and the said act is in violation of the same and there is no specific notification for applying the above Act but election notification is issued. It is not in dispute that the petitioners herein came to the Tahsildar's office in vehicles displaying stickers and flags of a particular party. Hence, the proceedings initiated against the petitioners cannot be quashed.

6. Having heard the learned counsel appearing for the petitioners and the learned High Court Government Pleader appearing for the respondent-State and on perusal of the records, it is evident that a case was registered against the petitioners under Section 171H of IPC and Section 3 of the Act. The learned

counsel also relied upon several judgments and those judgments are in respect of Section 171H of IPC and no doubt for the said offence a private complaint has to be filed under Section 195 of Cr.P.C. But, in the case on hand, Section 3 of the Act is also invoked. Having considered the said Act particularly, according to Section 8 of the Act, any offence punishable under the Act shall be deemed to be a cognizable offence within the meaning of the code. Having considered the same, no doubt offence invoked against the petitioners is cognizable offence. But the question is whether the above Act is applicable to Muddebihal or not. Section 1 of the Act reads as under:

"1. *Short title and commencement.*—

(1) This Act may be called the *Karnataka Open Places (Prevention of Disfigurement) Act, 1991.*

(2) It shall.—

(i) be deemed to have come into force in the cities of Bangalore, Mysore, Hubli-Dharwar, Mangalore and Belgaum constituted or continued under the Karnataka Municipal Corporation Act, 1976 or under any other law, on the fifth day of May, 1981; and

(ii) come into force in the municipalities, notified areas, sanitary boards, constituted or continued under the Karnataka Municipalities Act, 1964 or under any other law, or in any other local area, on such date, as the State Government may by notification appoint and different dates may be appointed in respect of different areas."

Reading of Section 1(2)(i) of the Act makes it clear that the Act is applicable for the cities viz., Bangalore, Mysore, Hubli-Dharwar, Mangalore and Belgaum constituted or continued under the Karnataka Municipal Corporation Act, 1976 or under any other law, on the fifth day of May, 1981 and Section (1)(2)(ii) of the Act

says that the same come into force in the municipalities, notified areas, sanitary boards, constituted or continued under the Karnataka Municipalities Act, 1964 or under any other law, or in any other local area, on such date, as the State Government may by notification appoint and different dates may be appointed in respect of different areas.

7. But, no such Notification was issued in respect of Muddebihal. The Notification was issued on 09.07.1991 vide Karnataka Gazette dated 08.08.1991 including Gulbarga, apart from the above cities. But, no other notifications are issued. When such being the facts and circumstances of the case, unless the Act is applicable to particular city and municipal area, the initiation of proceedings under the said Act is unsustainable under law. This Court in an unreported order passed in Criminal Petition No.505/2017 along with connected matters dated 20.06.2018 also

considered similar issue and observed that no notification was issued particularly in respect of respective municipal area and quashed the initiation of proceedings invoking the provisions of the Karnataka Open Places (Prevention of Disfigurement) Act, 1981.

8. With regard to the other offence under Section 171H of IPC is concerned, this Court would like to extract very provision of Section 171H of IPC, which reads as under:

"171H. *Illegal payments in connection with an election.*— Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate."

9. Section 171H of IPC deals with illegal payments in connection with an election. But, in the case on hand, the allegation against the petitioners is that they came in vehicles with flag of political party and no allegations with regard to illegal payments in connection with election are found in the complaint. Under the circumstances, very initiation of proceedings against the petitioners is nothing but an abuse of process of law. Hence, it is appropriate to exercise power under Section 482 of Cr.P.C., or otherwise it leads to miscarriage of justice.

10. On perusal of the contents of the column No.17 of the charge sheet, it is clear that allegation made against the petitioners is that without permission while filing the nomination, they came with flag, stickers and photos displaying symbol of particular political party. No allegation of illegal payments in connection with election is made. Having considered the allegation made in the complaint as well as in the charge sheet, it does not attract offence under Section 171H of IPC and so also Section 3 of the Act as there is no notification. First of all, complaint averments and charge sheet averments do not attract the offences invoked and apart from that, the above Act is not applicable to Muddebihal and without any notification for application of the Act, proceedings has been initiated. The contention of the State that the election was declared in terms of the notification of Election Commission of India is not in dispute and election squad appointed is also not in dispute. The documents placed by the State substantiate

the same. But the fact is that very initiation of proceedings against the petitioners is not sustainable in the eye of law, as there was no notification for applicability of the above Act to Muddebihal and also no ingredients of offence under Section 171H of IPC.

11. In view of the observations made above, I pass the following:

ORDER

The petition is allowed.

The proceedings initiated against the petitioners herein for the offences punishable under Sections 171H of IPC and Section 3 of the Karnataka Open Places (Prevention of Disfigurement) Act 1981 and taking of cognizance by the learned Magistrate vide order dated 13.07.2018 in C.C.No.167/2018 is hereby quashed.

**Sd/-
JUDGE**

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