

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL**

ON THE 3rd OF JULY, 2023

MISC. CRIMINAL CASE No. 5161 of 2022

BETWEEN:-

1. MAHENDRA VISHKARMA S/O BABULAL, AGED ABOUT 35 YEARS, OCCUPATION: PRIVATE WORK NEAR RAMBAGH RAJNAGAR (MADHYA PRADESH)
2. SANJAY VISHKARMA S/O BABULAL OCCUPATION: PRIVATE WORK BOTH NEAR RAMBAGH RAJNAGAR DISTT; CHATTATPUR (M.P.) (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI GAURAV SHARMA - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THROUGH P.S. RAJNAGAR CHHATARPUR (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI DINESH PRASAD PATEL - DY. GOVERNMENT ADVOCATE)

This application coming on for admission this day, the court passed the following:

ORDER

This petition under Section 482 of Cr.P.C. has been filed seeking quashment of FIR No.217/2021 registered at Police Station Rajnagar, District Chhatarpur for commission of offence under Section 295-A of IPC.

2. Learned counsel for the petitioners has submitted that Police in the course of investigation has not collected any evidence to prove that Shiva Temple which is alleged to have been demolished by the petitioners through

JCB was situated on any public land. Therefore, no offence is made out. Hence, he has prayed for quashment of FIR.

3. It is further submitted that as per the allegations, petitioner No.2 Sanjay Vishwakarma was only standing near the place where JCB was being used for demolition of the Temple. There is no evidence against him that he in any way was involved in demolition of the Temple or he did any act deliberately and maliciously with an intention to outrage the religious feelings of any class. Therefore, registration of the case and filing of charge-sheet against him is against law. Therefore, it is prayed that FIR and subsequent proceedings against them be quashed.

4. On the other hand, learned counsel for the State has opposed the prayer made by learned counsel for the petitioners and has submitted that complainant Mangaldeen in his FIR has clearly stated that Shiva Temple was an old public Temple and it was built on a public road. He and another devotees were regular in puja and offering water to the deity.

5. It is further submitted that on 01.08.2021, at around 12:15 am, petitioner Mahendra Vishwakarma along with his brother Sanjay through JCB without any legal order by a competent authority or any Court has deliberately demolished the old Shiva Temple and as such they have intentionally hurt their religious feeling. After investigation, charge-sheet has been filed.

6. I have heard the learned counsel for the parties and perused material on record and in the case diary.

7. On perusal of the FIR, it is apparent that a named FIR has been lodged against petitioners about demolishing old Shiva Temple situated on a public land without any permission from any competent authority. In the course of investigation, number of witnesses in their statements have clearly stated that

petitioners by demolishing old Shiva Temple have maliciously and intentionally hurt their religious feelings. There is ample material on record.

8. As for the argument that Temple was not situated on any public land and mere demolition of the Temple cannot be considered as hurting of the religious feelings of class of persons is concerned, same are the jumbled questions of the fact which can be decided only after recording the evidence of the witnesses before the trial Court. In a case where named FIR has been lodged and number of devotees have given their statements that the act of petitioners had hurt their religious feelings is a question of fact which can be decided only after recording of the evidence of the witnesses only. In a petition under Section 482 of Cr.P.C. such jumbled questions cannot be decided.

9. Therefore, this petition under Section 482 of Cr.P.C. filed by the petitioners being devoid of merit is **dismissed**.

AT

(DINESH KUMAR PALIWAL)
JUDGE