

Court No. - 87

Case :- APPLICATION U/S 482 No. - 35405 of 2018

Applicant :- Mohammad Azam Khan

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Imran Ullah

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh,J.

1. The present petition under Section 482 Cr.P.C. has been filed seeking quashing of the charge sheet dated 21.6.2007 and the entire proceedings of Case No.3017 of 2010, State Vs. Mohammad Azam Khan, arising out of Case Crime No.165 of 2007, under Sections 188 and 153-A IPC, Police Station Rasoolpur, District Firozabad, pending in the court of Additional Chief Judicial Magistrate, Court No.2, Firozabad.

2. The petitioner is political activist and was elected as Member of Legislative Assembly in the years 1980, 1985, 1989, 1991, 2002, 2007, 2012 and 2017. He was leader of opposition in Legislative Assembly of the Utta Pradesh in the year 2002-2003. He was Member of Lok Sabha for two times. His wife is Member of parliament and his son is a member of Legislative Assembly. It is also said that petitioner is the founder and Chancellor of Maulana Mohammad Ali Jauhar University, Rampur.

3. In the year 2007, the petitioner was contesting the election for Member of Legislative Assembly of Uttar Pradesh from Rampur. While he was campaigning for his party candidate for Vidhan Constituency, Firozabad an FIR against the petitioner came to be registered bearing no.165 of 2007, under Sections 188 and 153-A IPC at Police Station Rasoolpur, District Firozabad. It is alleged that when the petitioner went to address the public in support of Samajwadi Party candidate, who was contesting the election from 335 Vidhan Sabha Constituency,

Firozabad, he gave provocative and communal speech and violated the order of Section 144 Cr.P.C. It was said that his address was recorded and from perusal of the contents of the address, the offence under Sections 188 and 153-A IPC are attracted.

4. Sri Imran Ullah, learned counsel for the petitioner submits the alleged CD is not part of the case diary and even the contents of the speech are not extracted in the case diary. He further submits that the entire prosecution is malicious as the petitioner was member of the Samajwadi Party while the Government in power in the Uttar Pradesh was Bahujan Samaj Party. He also submits that the petitioner has been falsely implicated and there is no evidence to support the prosecution case.

5. Second submission of learned counsel for the petitioner is that there is specific bar under Section 196(1) Cr.P.C. regarding taking cognizance for an offence under Section 153-A IPC without prior sanction of the State Government. It is the admitted case that there was no sanction before the cognizance was taken by the learned trial court vide impugned order. He, therefore, submits that the cognizance was bad in law inasmuch as it is hit by provisions of Section 196(1) Cr.P.C.

6. On the other hand, Sri J.B. Singh, learned AGA has submitted that the offence is of the year 2007. Non-bailable warrants were issued against the petitioner. He has been avoiding the process of the court. The petitioner has challenged the proceedings only in the year 2018 by filing this petition. He, therefore, submits that this petition is liable to be dismissed on the ground of delay and laches.

7. In respect of the second submission of the learned counsel for the petitioner, Sri J.B. Singh, learned AGA has submitted that

there is no bar for registration of the FIR and investigating the offence or arresting an accused. The bar is in respect of taking cognizance without prior sanction. He further submits that even if the order of taking cognizance is set aside on the ground of no sanction by the State Government under Section 196(1) Cr.P.C., the proceedings can not be quashed against the petitioner. He also submits that the prosecution would lead the evidence during the course of trial to establish the charge against the petitioner, but on the ground that the CD is not part of the case diary, the proceedings can not be quashed.

8. I have considered the submissions advanced on behalf of the learned counsel for the parties and perused the record.

9. The offence under Section 153-A IPC is a serious offence, but the statute has created bar for taking cognizance for such an offence unless there is a prior sanction of the competent authority i.e. State Government. Admittedly, there was no prior sanction before taking cognizance and, therefore, the impugned order so far taking cognizance, is bad in law and is liable to be set aside.

10. The question whether there is sufficient material to support the allegation for offence under Section 153-A IPC against the petitioner, would be examined at the relevant time, but at this stage, it can not be said that there is no material to support the allegation.

11. In view thereof, the present petition is partly allowed and the order of taking cognizance is hereby set aside. The State Government may grant sanction if it thinks proper on the material placed before it and, if the sanction is granted, the court concerned may proceed against the petitioner in accordance with law from the stage of taking cognizance.

Order Date :- 24.1.2023/Rao/-