

IN THE COURT OF SH. AJAY KUMAR KUCHAR, ADDITIONAL
SESSIONS JUDGE / SPECIAL JUDGE (PC ACT), CBI-09
(MPs/MLAs Cases), ROUSE AVENUE DISTRICT COURT, NEW
DELHI

Ct. Case No.3/2020
CNR No. DLCT11-000110-2020

Sh. Shrikant Prasad
R/o H. No.2609, 2nd Floor,
Hudson Lane, GTB Nagar,
Delhi-110007

... Complainant

versus

1. Sh. Narendra Damodar Das Modi
R/o 7 Lok Kalyan Marg,
New Delhi

2. Amit Shah
R/o 6 A Pandit Deen Dayal Upadhyaya Marg,
New ITO, Railway Colony-Minto Road,
New Delhi

... Accused

Date of Institution : 11.02.2020
Date of Arguments : 18.09.2020
Date of Order : 21.09.2020

ORDER

1. This complaint was filed by the complainant under Section 200 readwith Section 190 (a) of Code of Criminal Procedure, alleging commission of offences under Section 420 and 406 IPC and Section 13 (a) of Prevention of Corruption Act and also violation of Section 123 (b) of the Representation of Peoples Act, 1951.

2. The complainant has arrayed Sh. Narendra Damodar Das Modi (Hon'ble Prime Minister) and Sh. Amit Shah (Hon'ble Home Minister) as accused in this complaint. It is alleged that on 01.01.2014, prior to the General Elections for Lok Sabha, Sh. Modi made a false and fraudulent speech with dishonest intention stating that every citizen of India will get Rs.15 lacs in his account. Sh. Amit Shah gave an interview to ABP News and denied it saying that it was an election "jhumla".

3. It is stated in the complaint that Sh. Modi had made a promise of giving Rs.15 lacs each to the citizen of India to induce the voters to vote for him. He never had the intention nor he later on tried to bring the black money from foreign account as promised for getting votes from the citizen of India. It is submitted that such intentional fraudulent and dishonest promise amounts to a 'Corrupt Practice' under Section 123 of Representation of Peoples Act, 1951.

4. It is also stated in the complaint that Sh. Modi holding the post of the Prime Minister has criminally misappropriated government property entrusted to him by privatization of various organizations and government companies like BPCL and there are further plans to privatize Air India and other PSU. Another allegation of complainant is that Rs.3000 crores were misappropriated for making the statue of Sh. Sardar Patel in Gujarat.

5. On the basis of these allegations, he has made a prayer for initiating criminal proceedings against Sh. Modi and Sh. Amit Shah and further prayer to restrict them from selling government authorities to private individuals; direct them to notify vacancy and attach the

property of Sh. Narendra Modi to cover the unnecessary expenses incurred by him in making the statue.

6. I have heard the complainant at length and perused the complaint and the relevant provisions of law.

7. At the very outset, when an offence is alleged to be committed by a public servant while acting or purporting to act in discharge of his official duty, the court cannot take cognizance of the offence without a prior sanction under Section 197 of Criminal Procedure Code. For an offence under the Prevention of Corruption Act, particularly under Section 13, no court can take cognizance of the said offence except with the prior sanction of the competent authority under Section 19 of PC Act.

8. Cognizance of an offence is taken at the very threshold when the court would apply judicial mind to the facts in the complaint or a police report or upon information received from any other person that an offence has been committed (*State of West Bengal and Another v. Mohd. Khalid and Others* (1995) 1 SCC 684). The expression "cognizance" which appears in Section 197 Cr.PC came up for consideration in the case *State of Uttar Pradesh vs Paras Nath Singh* (2009) 6 SCC 372 wherein it was observed:-

"6 And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has

been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty."

9. With regard to the offence under PC Act, the Hon'ble Supreme Court in the case of Anil Kumar & Ors. vs M. K. Aiyappa & Anr.

(2013) 10 SCC 705 has gone to the extent of saying that sanction is mandatory requirement even when the Magistrate is invoking the power under Section 156 (3) Cr.PC and observed “requirement to obtain sanction is mandatory requirement and not directory in nature. If there is no prior sanction, the Magistrate cannot direct investigation against a public servant while invoking powers under Section 156 (3) Cr.PC.”

10. Cognizance of an offence can be taken by any Magistrate under Section 190 Cr.PC:-

- a. Upon receiving a complaint of facts which constitute such offence;
- b. Upon a police report of such facts;
- c. Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

11. The complaint herein therefore, fails on the ground that there is no prior sanction either under Section 197 Cr.PC or under Section 19 of the PC Act. For want of such a sanction, no cognizance can be taken in the present case.

12. The allegations which have been made in the complaint even otherwise, are devoid of any substance to invoke criminal jurisdiction. The averment in the complaint is that false promises were made prior to the General Elections in 2014, which amounts to a corrupt practice as per Section 123 (2) of the Representation of Peoples Act, 1951.

13. I need not go further in this issue because corrupt practice as defined in Section 123, Chapter-I, part-VII of the Representation of

Peoples Act does not call for a criminal action. The offences which are punishable under the Act are incorporated in Section 125 to 136 under the Representation Peoples Act, 1951.

14. The allegations of misappropriation by privatization of Public Sector Undertaking is without any content and substance showing any criminal intent. These are policy decisions of the government in power which cannot be interfered with by the court under Criminal Jurisdiction. The complainant during the course of his submissions had stated that he does not have any evidence with him but the court may exercise its power under Section 202 Cr.PC for making inquiry. However, I do not agree with this submission because to reach the stage of Section 202 Cr.PC, cognizance is required to be taken of the offence. But in the present case, for want of sanction, no cognizance can be taken. Further, mere averment in the complaint without a supporting evidence regarding the commission of an offence will not justify any action by this court.

15. In view of the above, finding no substance in the complaint, I decline to take cognizance of the complaint and dismiss the same.

16. File be consigned to record room.

**Announced in the open court
on 22.9.2020**

**(AJAY KUMAR KUHAR)
Additional Sessions Judge/
Special Judge (PC Act),
CBI-09 (MPs/MLAs Cases),
RADC, New Delhi : 22.9.2020 (SR)**