

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MAY, 2021

BEFORE

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

WRIT PETITION NO.852/2021 (GM-RES)

BETWEEN:

1. PRECILLA D'SOUZA,
AGED ABOUT 55 YEARS,
D.NO.13/174, KATAPUNI HOUSE,
KODANGE, B.C.ROAD, B.MOODA,
BANTWAL, JODUMARGA,
MANGALURU - 574219,
DAKSHINA KARNATAKA.
2. SAMSON JOHN,
AGED ABOUT 50 YEARS,
D.NO.2-229/5,
KADESH HOUSE, SONALIKE,
NEAR NAGABANA JALLIGUDDE BAJAL,
MANGALURU-575 007.
DAKSHINA KARNATAKA. ... PETITIONERS

(BY SRI MOHAN RAJ DORAISWAMY A., ADVOCATE)

AND:

1. STATE OF KARNATAKA,
THROUGH BANTWAL TOWN PS,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU - 560001.
2. MADHURA A,
AGED ABOUT 35 YEARS,
MATRUCHAYA HOUSE,

BEYOND B.C. ROAD BUS STAND,
B. MOODA GREAMA, JODUMARGA POST,
MANGALURU-574219,
DAKSHINA KARNATAKA.

... RESPONDENTS

(BY SRI H.R. SHWORI, HCGP FOR R-1;
R-2 – SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482 OF CR.P.C PRAYING TO QUASH THE IMPUGNED ORDER DATED 08.06.2020 TAKING COGNIZANCE VIDE ANNEXURE-A PASSED BY THE LD.ACJ AND JMFC, BANTWAL, DK, IN CC No.813/2020 AND SET ASIDE THE ENTIRE PROCEEDINGS IN C.C.NO.813/2020 AGAINST THE PETITIONERS WHO ARE ACCUSED No.1 AND ACCUSED No.2 IN FIR No.209/2016 FOR THE ALLEGED OFFENCES PUNISHABLE UNDER SECTIONS 298 R/W SECTION 34 OF THE IPC PENDING ON THE FILE OF THE LD.ACJ AND JMFC BANTWAL, D.K. AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 15.04.2021, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This petition is filed under Articles 226 and 227 of the Constitution of India read with Section 482 of Cr.P.C, praying this Court to quash the impugned order dated 08.06.2020 taking cognizance vide Annexure-A passed by the learned ACJ and JMFC, Bantwal, D.K. in C.C.No.813/2020 and set aside the entire proceedings in C.C.No.813/2020 against the petitioners, who are accused Nos.1 and 2 in FIR No.209/2016 for the offences punishable under Section 298 read with Section 34 of IPC and

consequently to quash the FIR and grant such other relief as deemed fit in the circumstances of the case.

2. The factual matrix of the case is that the police have registered the case against the petitioners based on the complaint of one Smt. Madhura vide Annexure-B wherein allegations are made against the petitioners that they came to her residence and told that they came to give information about the website. In the beginning they told that they came to educate the children through videos and there were messages of Bible. They told that the Society is not in order and they have to do something for the future and gave the pamphlet. In the said pamphlet there was some information with regard to the website. The complainant enquired that there is no information about Quran and Bhagavadgita and they told that only Bible can tell the future and no other religious scriptures give any information and tsunami is coming in the future. The Government can give only information and Yesu Christa can give protection if he is believed and if they believe they get all type of peace of mind and no other religion can provide the same. Hence, the complainant questioned them whether they have come for propagating the religious belief and whether they came for

conversion and immediately they left the place. Based on the complaint, the police have registered the case against the petitioners for the offences punishable under Section 295A read with Section 34 of IPC in Crime No.209/2016. Thereafter, the police have investigated the matter and filed the charge-sheet and while filing the charge-sheet they invoked the offence under Section 298 read with Section 34 of IPC. The learned Magistrate after filing of the charge-sheet, vide his order dated 08.06.2020 took the cognizance. Hence, the present petition is filed before this Court.

3. The learned counsel for the petitioners would vehemently contend that the allegations made in the charge-sheet does not attract the ingredients of the offence punishable under Section 298 of IPC. The learned counsel would submit that the cognizance was taken after 3½ years and there was an inordinate delay in filing the charge-sheet. The learned Magistrate has not applied his mind while taking the cognizance and it is a clear case of non-application of mind. The filing of the case against the petitioners herein is violative of Articles 14, 21 and 25 of the Constitution of India.

4. The learned counsel for the petitioners in support of his arguments relied upon the judgment of the Gauhati High Court in the case of **K. VIKHEHO SEMA v. STATE OF NAGALAND** reported in **2007 Cri.L.J. 4266**, wherein it is held that under Section 468(2)(c) of Cr.P.C., the Court can take cognizance of an offence punishable with imprisonment for a term not exceeding three years, if the criminal action is set in motion within a period of three years. The learned counsel brought to the notice of this Court paragraph Nos.12 and 13 of the judgment. In paragraph No.12 it is held that the object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the Court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India.

5. The learned counsel also relied upon the unreported decision of this Court passed in W.P.No.102268/2015 dated 10.08.2015, wherein this Court in paragraph No.21 of the

judgment discussed that if somebody wants to practice/propagate a particular religion, he cannot be attacked by persons belonging to any other denomination or religion of faith. He is entitled to every possible protection at the hands of the police. The police cannot abdicate their responsibility of protecting the individuals, who are exercising the rights guaranteed under Article 25 of the Constitution of India. Further, the protection guaranteed under Article 25 is not confined to matters of doctrine, but extends to acts done in exercise of the right to profess, practice and propagate religion freely.

6. The learned counsel also relied upon the judgment of the Delhi High Court in the case of **VINOD KUMAR JAM v. REGISTRAR OF COMPANIES** reported in **1985 RLR 603**, wherein in paragraph No.6 discussed with regard to Section 468, 469 and 473 of Cr.P.C. In paragraph No.15 it is held that the Magistrate must apply his judicial mind to the question of condoning the delay before taking cognizance of the offence and he cannot, after taking the cognizance, rectify the illegality by passing an order under Section 473 of Cr.P.C. so as to operate retrospectively.

7. The learned counsel also relied upon the Bombay High Court judgment in the case of **KHALID AKHTAR ABDUL LATIF AHEMI v. THE STATE OF MAHARASHTRA** passed in Criminal Application No.1665/2009 dated 30.06.2010 wherein exercising the power under Section 482 of Cr.P.C., the Bombay High Court discussed Sections 468, 469, 470 and 473 of Cr.P.C. and held that the Court is duty bound on the presentation of the charge-sheet to consider the question of limitation and to see as to whether it is competent to take cognizance and whether the limitation has expired or not.

8. The learned counsel also relied upon the Delhi High Court judgment in the case of **SAREGAMA INDIA LTD. v. STATE NCT OF DELHI** passed in CrI.M.C.No.149/2007 delivered on 27.01.2014, wherein the Delhi High Court discussed Section 468 of Cr.P.C. regarding taking of cognizance after lapse of period of limitation and also discussed Section 473 of Cr.P.C. which extends the period of limitation.

9. The learned counsel also relied upon the Apex Court judgment in the case of **STATE OF HIMACHAL PRADESH v. TARA DUTT AND ANOTHER** passed in Appeal (Crl.) No.1224/1999 delivered on 19.11.1999 wherein the Apex Court

discussed Sections 468 and 473 of Cr.P.C. and observed that the discretion conferred on the Court has to be exercised judicially and on well recognized principles. While exercising the discretion, the same must be by a speaking order, indicating the satisfaction of the Court that the delay was satisfactorily explained and condonation of the same was in the interest of justice.

10. The learned counsel also relied upon the Allahabad High Court judgment in the case of **KAMLA KANT SINGH v. CHAIRMAN/MANAGING DIRECTOR, BENNETTA COLMAN AND COMPANY LTD. AND OTHERS** passed in Criminal Rev.No.667/1985 dated 27.07.1987, wherein it is discussed with regard to Section 298 of IPC. Under Section 298 of IPC what has been made punishable, is uttering words etc. with deliberate intention to wound religious feelings. What is to be marked is that even to wound the religious feelings is not punishable unless it is with deliberate intention. Deliberate intention means premeditated intention with sole object to wound the religious feelings. It is better to have the object in enacting Section 298 of IPC. The authors or the framers of the Code say that a warm expression dropped in the heat of controversy, or an argument

urged by any person, not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own, will not fall under the definition contained in this clause.

11. The learned counsel also relied upon the judgment of the Apex Court in the case of **KRISHNA LAL CHAWLA AND OTHERS v. STATE OF U.P. AND ANOTHER** passed in Criminal Appeal No.283/2021 delivered on 08.03.2021, wherein the Apex Court referring to paragraph No.28 of the judgment in the case of Pepsi Foods Ltd. v. Special Judicial Magistrate held that the power to issue a summoning order is a matter of grave importance, and that the Magistrate must only allow criminal law to take its course after satisfying himself that there is a real case to be made. The learned counsel also brought to the notice of this Court paragraph No.18 of the judgment wherein the Apex Court has observed that the Trial Courts have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases. This would not only save judicial time that comes at the cost of public money, but would also protect the

right to liberty that every person is entitled to under Article 21 of the Constitution.

12. The learned counsel referring the above judgments would submit that the proceedings initiated against the petitioners is liable to be quashed on the ground of limitation and also on merits. The learned Magistrate has not applied his judicious mind while taking the cognizance.

13. Per contra, the learned High Court Government Pleader appearing for respondent No.1 – State would contend that the Court has to take note of the date of the complaint and not filing of the charge-sheet. The incident was taken place on 06.12.2016 and the charge-sheet was filed on 08.06.2020. The learned counsel would contend that no application is filed under Section 473 of Cr.P.C. to condone the delay. The learned counsel would contend that the Constitutional Bench judgment of the Apex Court in the case of **SARAH MATHEW AND OTHERS v. INSTITUTE OF CARDIO VASCULAR DISEASES AND OTHERS** reported in **AIR 2014 SC 448** has held that when on a petition or complaint being filed before Magistrate, then a Magistrate applies his mind for proceeding under the various

provisions of Chapter XIV of Cr.P.C. then it must be held to have taken cognizance of the offences mentioned in the complaint. The Apex Court also discussed Sections 468 and 473 of Cr.P.C. and held that the Magistrate has the power to take cognizance of an offence only if complaint in respect of, it is filed within prescribed limitation period. The Magistrate would however be entitled to exclude such time as is legally excludable. Section 473 of Cr.P.C. has a non-obstante clause which means that it has an overriding effect on Section 468 of Cr.P.C. 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 complaint or the date of institution of process and not the date on which the Magistrate takes cognizance.

14. The learned counsel referring this judgment would contend that this judgment is on the point and hence the judgments referred by the learned counsel for the petitioners are not applicable to the case on hand when the Constitutional Bench has delivered the judgment holding 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. The learned counsel would also contend that the FIR discloses

that the cognizable offence was taken place and there was no delay in lodging the complaint and the FIR constitutes the offence i.e., degrading the other religions. No fundamental right is conferred on any religion to degrade the other religion. The same is a mixed question of fact and law and hence there cannot be any quashing of the proceedings against the petitioners.

15. In reply to the arguments of the learned High Court Government Pleader, the learned counsel for the petitioners would contend that the offences which have been invoked against the petitioners are barred by limitation and hence there cannot be any criminal prosecution against the petitioners.

16. Having heard the respective contention of both the counsel, this Court has to analyze the material available on record with the principles laid down by the judgments referred supra. It is settled law that the initiation of the criminal prosecution is a serious matter and the Apex Court in the recent judgment in the case of **Krishna Lal Chawla** (supra) held that the learned Magistrate has to take note of the materials placed before the Court and in paragraph No.18 it is held that it is the duty of the Magistrate to nip frivolous litigations in the bud even

before they reach the stage of trial by discharging the accused in fit cases.

17. The learned counsel for the petitioners would contend that the charge-sheet is filed after 3½ years. It is also not in dispute that the incident was taken on 06.12.2016 and the charge-sheet was filed on 08.06.2020. It is an admitted fact that no application is filed under Section 473 of Cr.P.C. The Apex Court in the judgment in the case of **Sarah Mathew** (supra) discussed the scope of Sections 468 and 473 of Cr.P.C. The Apex Court categorically held 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 complaint or the date of institution of process and not the date on which the Magistrate takes cognizance. In the case on hand, no doubt the cognizance is taken after filing of delayed charge-sheet, but the fact is that the complaint was given on 06.12.2016. When the Apex Court held 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 complaint and in the case on hand, there was no delay in lodging the complaint and the complaint was filed on the very same day.

18. It is important to note that an allegation is made in the complaint that the accused persons have degraded the other religions stating that neither Bhagavadgita nor Quran will provide any peace of mind or comes to any rescue of any person except Yesu Christa. It is rightly pointed out by the learned counsel for the respondent/complainant that no fundamental right is given to any religion to degrade other religions. In the case on hand, specific allegation against the petitioners is that they have degraded the other religion. When such being the case, the very contention of the learned counsel for the petitioners that the charge-sheet is filed after delayed period cannot be accepted when the Constitutional Bench says 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 complaint. I have already pointed out that there is no delay in lodging the complaint. The Apex Court in the case of **Sarah Mathew** (supra) discussed in detail regarding applicability of the period of limitation and computation of limitation in paragraph No.21 of the judgment after discussing Sections 467 to 473 of Cr.P.C. and so also discussed with regard to the words 'taking cognizance' has not been defined in the Code. Hence, the first contention

that the proceedings initiated against the petitioners is barred by limitation cannot be accepted.

19. The second contention on merits is concerned is that the Magistrate has not applied his mind while taking the cognizance. On perusal of the impugned order at Annexure-A, the learned Magistrate after receiving the charge-sheet and the relevant documents, perused the same and found prima facie materials available on record to proceed against accused Nos.1 and 2. The learned Magistrate invoking Section 190(1)(b) of Cr.P.C. took the cognizance for the offence punishable under Section 298 read with Section 34 of IPC. It is settled law that while taking the cognizance, the learned Magistrate need not pass any elaborate order and it requires application of mind whether charge-sheet material and its enclosures constitute a prima facie material to proceed against the accused. When the learned Magistrate has applied his judicious mind while taking the cognizance, the very contention that the learned Magistrate has not applied his judicious mind cannot be accepted.

20. The other contention of the learned counsel for the petitioners that taking of cognizance violates Articles 14, 21 and

25 of the Constitution of India cannot be accepted for the reason that I have already pointed out that while professing any religion, the religious heads or professing by any person should not degrade other religion. Having perused the complaint averments and also the statements of the witnesses, it is specific that while propagating they specifically mentioned that other religious scripts does not say anything about anticipation of tsunami and only Yesu Christa can protect them. When such allegations are made in the complaint, the very contention of the learned counsel for the petitioners that the offences invoked against the petitioners does not attract the ingredients of Section 298 of IPC cannot be accepted. No doubt, while setting the law in motion invoked Section 295(A) of IPC regarding deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs and after the investigation, the Investigating Officer invoked Section 298 of IPC uttering, words, etc. with deliberate intention to wound the religious feelings of any person. Having taken note of the complaint averments and also the statement of witnesses, with deliberate intention to wound the religious feelings of other religion words are uttered while propogating. When such being

the facts of the case, it attracts Section 298 of IPC. Hence, the contentions of the learned counsel for the petitioners that the charges levelled against the petitioners does not attract Section 298 of IPC and issue of process against the petitioners would vitiate Articles 14, 21 and 25 of the Constitution of India, cannot be accepted.

21. In view of the discussions made above, I pass the following:

ORDER

The petition is rejected.

In view of rejection of the main petition, I.As, if any, does not survive for consideration and the same stands disposed of.

**Sd/-
JUDGE**

MD