



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 19700 OF 2024 (GM-RES)

BETWEEN:

1. SRI. SHIVAPRASAD,
S/O LATE SHIVAPPA GOWDA,
AGED 29 YEARS,
RESIDING AT NO. 1-110,
SHIVARU HOUSE, ALANTHAYA VILLAGE,
KADABA TALUK - 574 221,
DAKSHINA KANNADA DISTRICT.
2. SRI. BALAKRISHNA A.,
S/O DHARNAPPA GOWDA,
AGED 46 YEARS,
RESIDING AT NO. 2-19,
ALEKKIT HOUSE,
GOALITHOTTU VILLAGE,
KADABA TALUK - 574 221,
DAKSHINA KANNADA DISTRICT.

...PETITIONERS

(BY SRI. VINOD KUMAR M, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY UPPINANGADI POLICE STATION,
KADABA,
DAKSHINA KANNADA DISTRICT - 574 241,
REPRESENTED BY ITS





STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU - 560 001.

2. SRI. SANDESH K.N.,
AGED 36 YEARS,
FLYING SQUAD 5, NO. 207,
SULLIA ASSEMBLY CONSTITUENCY SULLIA,
DAKSHINA KANNADA DISTRICT - 574 239.

...RESPONDENTS

(BY SMT. RASHMI PATIL, HCGP FOR R1)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SEC. 528 OF BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 PRAYING TO QUASHING THE ENTIRE CRIMINAL PROCEEDINGS IN CC NO. 238/24, PENDING IN THE FILE OF THE ADDL CIVIL JUDGE AND JMFC PUTTER, DK DISTRICT, ARISING OUT OF THE FIR IN CRIME NO. 47/2024 OF UPPINANGADI POLICE STATION, FOR THE OFFENCE PUNISHABLE UNDER SECTION 127 A OF THE REPRESENTATION OF PEOPLE ACT, PRODUCED AT ANNEXURE-A AND D, IN SO FAR AS THE PETITIONERS ARE CONCERNED, HOLDING THAT IS AN ABUSE OF PROCESS OF LAW AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



CORAM: **HON'BLE MR JUSTICE M.NAGAPRASANNA**

ORAL ORDER

Petitioners/accused Nos.1 and 2 are knocking at the doors of this Court in the subject petition, calling in question proceedings in C.C.No.238 of 2024 registered for offence punishable under Section 127A of the Representation of People Act, 1951 and 1988 ('Act' for short) r/w Section 34 of the IPC.

2. Heard Sri Vinod Kumar, learned counsel appearing for petitioner and Smt Rashmi Patil, learned High Court Government Pleader appearing for respondent No.1.

3. Facts in brief germane are as follows:

The 2nd respondent, a flying squad during the elections to the Indian Parliament registers a complaint against the petitioners that the petitioners have indulged in influencing the voters during the election through a wedding invitation card. The wedding invitation card, had in it written, "voting Narendra Modi is the gift for my wedding". The wedding invitation is printed on 01-03-2024. The elections were notified by the Election Commission by notifying calendar of events on 16-03-



2024. For an invitation card that is printed on 01-03-2024, the 2nd respondent registers a complaint on 19-04-2024. The complaint becomes a crime in Crime No.47 of 2024 for offences punishable under Section 127 of the Act. The police, after investigation, file a charge sheet on 03.06.2024 and the concerned Court takes cognizance of the offence under Section 127A and registers the impugned the C.C. in C.C.No.238 of 2024. Taking of cognizance of the offence, registering the C.C. and issuance of summons are what has driven the petitioners to this Court in the subject petition.

4. Learned counsel Sri Vinod Kumar appearing for petitioners would vehemently contend that the invitation card is printed on 01-03-2024. The elections were not even notified on the said date. The invitation card did contain that voting Narendra Modi again to become the Prime Minister would be the biggest gift that the attendees to the wedding would give. The learned counsel would submit that this cannot become an offence under Section 127A of the Act.



5. Per-contra, the learned High Court Government Pleader would contend that the police after investigation have filed a charge sheet. The Court has taken cognizance of the offence. This Court should not entertain the petition and obliterate the proceedings against the petitioners, as admittedly they have influenced the voters to vote to a particular party. She would seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. The 1st petitioner who was getting married frames his wedding invitation to have a *post script*. The *post script* read as follows, “ಈ ಬಾರಿಯೂ ನರೇಂದ್ರ ಮೋದಿಯನ್ನು ಪ್ರಧಾನಿ ಮಾಡುವುದೇ ವದೂ-ವರರಿಗೆ ನೀಡುವ ಉಡುಗೊರೆ ಯಾಕೆಂದರೆ ನಮ್ಮ ಭವಿಷ್ಯದ ಭಾರತ ಸುಭದ್ರವಾಗಿರಬೇಕು ಇಂತೀ ನಿಮ್ಮವ ಶಿವಪ್ರಸಾದ್(ರವಿ).” As a post script, the 1st petitioner who was getting married seeks a gift from the attendees to vote Narendra Modi to become the Prime Minister yet again, the reason is found in



the post script. The issue now would be, whether this would become an offence under Section 127A of the Act.

8. It is not in dispute that the invitation was printed on 01-03-2024. On the said date, the elections to the Indian Parliament/Lok Sabha elections were not yet notified. The Election Commission of India notifies the calendar of events for the conduct of Lok Sabha elections on 16-03-2024. The nomination to the constituency, in which the said wedding was to take place, happens from 27-03-2024. On 19-04-2024 the complaint springs. The police, after investigation filed a charge sheet. The summary of the charge sheet as obtaining in column No.17 reads as follows:

“17. ಕೆಲಸಿನ ಸಂಕ್ಷಿಪ್ತ ವಿವರ:

ಈ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯ ಅಂಕಣ ನಂಬ್ರ 12 ರಲ್ಲಿ ಹೆಸರು ವಿಳಾಸ ನಮೂದಿಸಿದ 1 ಮತ್ತು 2ನೇ ಅಪಾದಿತರುಗಳು 2024ನೇ ಲೋಕಸಭಾ ಚುನಾವಣೆಯ ನೀತಿ ಸಂಹಿತೆ ಜಾರಿಯಲ್ಲಿದ್ದರೂ ಚುನಾವಣಾ ನೀತಿ ಸಂಹಿತೆ ಉಲ್ಲಂಘನೆಯಾಗುವ ರೀತಿಯಲ್ಲಿ 1ನೇ ಅಪಾದಿತ ಅವರ ವಿವಾಹದ ಆಮಂತ್ರಣ ಪತ್ರಿಕೆಯಲ್ಲಿ "ಈ ಬಾರಿಯೂ ನರೇಂದ್ರ ಮೋದಿಯನ್ನು ಪ್ರಧಾನಿ ಮಾಡುವುದೇ ವಧೂವರರಿಗೆ ನೀಡುವ ಉಡುಗೊರೆ ಯಾಕೆಂದರೆ ನಮ್ಮ ಭವಿಷ್ಯದ ಭಾರತ ಸುಭದ್ರವಾಗಿರಬೇಕು" ಇಂತಿ ನಿಮ್ಮ ಶಿವಪ್ರಸಾದ್(ರವಿ) ಎಂಬ ಮದುವೆ ಆಮಂತ್ರಣ ಪತ್ರಿಕೆಯನ್ನು 2ನೇ ಅಪಾದಿತನಲ್ಲಿ ಮುದ್ರಿಸುವಂತೆ ತಿಳಿಸಿದ್ದು 2ನೇ ಅಪಾದಿತ ಚುನಾವಣಾ ನೀತಿ ಸಂಹಿತೆ ಜಾರಿಯಲ್ಲಿರುವ ವಿಚಾರ ತಿಳಿದು ಕೂಡಾ ಚುನಾವಣಾ ನೀತಿ ಸಂಹಿತೆಗೆ ವಿರೋಧವಾಗಿ ಮದುವೆಯ ಆಮಂತ್ರಣ ಪತ್ರಿಕೆಯನ್ನು ಮುದ್ರಿಸಿರುತ್ತಾರೆ.



ಆದುದರಿಂದ 1 ಮತ್ತು 2ನೇ ಆಪಾದಿತರುಗಳು ಕಾನೂನು ಕಲಂ: 127(A)
REPRESENTATION OF PEOPLE ACT 1951 & 1988 R/w 34 IPC
ಅನ್ವಯ ಶಿಕ್ಷಾರ್ಹ ಅಪರಾಧವೆಸಗಿರುತ್ತಾರೆ ಎಂಬುದಾಗಿ ಸಲ್ಲಿಸಿದ ದೋಷಾರೋಪಣಾ ಪತ್ರ.”

The offence alleged against the petitioners is the one punishable under Section 127A of the Act. It reads as follows:

“127A. Restrictions on the printing of pamphlets, posters, etc.--(1) No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof.

(2) No person shall print or cause to be printed any election pamphlet or poster--

(a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate; and

(b) unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document,--

(i) where it is printed in the capital of the State, to the Chief Electoral Officer; and

(ii) in any other case, to the district magistrate of the district in which it is printed.

(3) For the purposes of this section,--

(a) any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing and the expression "printer" shall be construed accordingly; and



(b) "election pamphlet or poster" means any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any handbill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.

(4) Any person who contravenes any of the provisions of sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both."

(Emphasis supplied)

Section 127A deals with restrictions on printing of pamphlets, posters *inter alia*. It directs that no person shall print or publish any election pamphlet or poster which does not bear on its face, the names and addresses of the printer and publisher thereof. Therefore, the soul of the provision is printing and publishing any election pamphlet or a poster, which obviously is during an election. Section 127(3)(b) defines what is an election pamphlet or a poster, which means, a handbill or a document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates. What is a pamphlet and a poster has not borne judicial consideration. In such circumstance, the dictionary meaning of



the words 'pamphlet and poster' are to be drawn in. The word pamphlet is defined to be a very thin book, with paper cover containing information about a particular subject. The word poster is defined as a large notice, often with a picture on it pasted in a public place for the purpose of advertisement. The aforesaid are, the dictionary meaning of the two words found in Section 127A(3)(b) of the Act. If the provision afore-quoted and the interpretation afore-rendered are taken note of, the offence emerges only during an election *qua* a pamphlet or a poster used during such elections.

9. The issue in the case at hand is, printing an invitation card. It does bear the name of the printer, the accused No.2. How a wedding invitation card is projected to become an election pamphlet by the complainant or even the police who conducted investigation to file a charge sheet is ununderstandable. Even otherwise, the admitted date of notification of calendar of events by the Election Commission of India is on 16-03-2024. The other admitted date is, printing of the wedding invitation which is on 01-03-2024. If the 1st petitioner who is wanting to get married describes the greatest



gift to him is voting for Narendra Modi yet again, long before the notification of calendar of events, it is *preposterous*, to say the least, as to how the crime itself could have been registered and upon that, investigation by the police and filing of the charge sheet. The crime is recklessly registered, so is the charge sheet, on a reckless investigation.

10. The 2nd respondent is the flying squad of Sullia Assembly constituency. It is trite that such flying squads come into existence once the calendar of events are notified and for the purpose of observation during the elections. If an event has already happened long before the notification of the calendar of events, the flying squad finding an invitation later could not have resorted to registration of a crime. In the aforesaid circumstance, reference being made to the judgment of the Apex Court in the case of **STATE OF HARYANA V. BHAJAN LAL**¹ would become apposite. The Apex Court holds as follows:

"102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law*

¹ **1992 Supp. 1 SCC 335**



enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.***
- (2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as*



contemplated under Section 155(2) of the Code.

- (5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) ***Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”***

(Emphasis supplied)

The first postulate laid down by the Apex Court is, even if the content of the complaint is taken as true, it would not amount to an offence under the provisions that have been made penal under any enactment. In such cases, the crime should be nipped in the bud.

11. Though in the case at hand, charge sheet is filed as observed hereinabove, it is recklessly filed. Permitting further



proceedings against the petitioners, would on the face of it, become an abuse of the process of the law and result in patent injustice.

12. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) Impugned proceedings in C.C.No.238 of 2024 pending on the file of Additional Civil Judge and JMFC, Puttur, D.K. stands quashed *qua* the petitioners.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
List No.: 1 Sl No.: 67
CT: BHK