

IN THE COURT OF XLII ADDL. CHIEF METROPOLITAN
MAGISTRATE, BENGALURU.

Dated this the 1st day of June, 2022.

:Present:

Smt. PREETH. J., B.A.L., LLB.,
XLII Addl.CMM Judge,
(Spl. Court for trial of cases filed against sitting as
well as former MPs/MLAs,
triable by Magistrate in the State of Karnataka)

CC.No.9573/2022.

(Old.CC.No.399/2019)

Complainant: State by Ron Police Station,
Ron Circle, Gadag.

(By Lrd. Sr.A.P.P.,)

Vs.

- Accused: 1. B.R.Yavagal,
Ex-MLA, 70 Years,
R/o.Naragund, Ron Taluk,
Gadag District.
2. Basavantappa Shivappa
Shirola, 70 Years, R/o.Mallapur,
Ron Taluk, Gadag District.
3. Vijaykumar Mudakappa Totara,
58 Years, R/o. Y.S.Hadagali,
Ron Taluk, Gadag District.

(By Sri.V.Y., Advocate)

1. Date of commission of offence : 05.04.2018.
2. Date of report of offence : 05.04.2018.

3. Arrest of accused : Not applicable.
a) Date of arrest of accused : Not applicable.
b) Date of release on bail : 28.04.2022.
c) The period undergone in custody : Not applicable.
4. The name of the complainant : Jagadish.
5. The date of recording of evidence : 30.08.2019.
6. The date of closing of evidence : 06.05.2022.
7. Offences complained of : U/s.188 of IPC.
8. Opinion of the Judge : Accused found not Guilty.

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J U D G M E N T

1. That the Police Sub-Inspector of Ron Police Station, Ron Circle, Gadag District has filed charge sheet against the accused No.1 to 3 for the offence punishable under section 188 of IPC.

2. **The case of the prosecution in brief is as follows:**

On 05-04-2018 at 05.00 p.m., the accused No.1 to 3 held a public meeting in the building premises of Women's SHG building bearing No.940, in connection with the Election, though there was strict directions from the concerned authority restricting the political parties from using any Government buildings or premises for any purpose. Thus, the accused No.1 to 3 have violated the Election Model Code of Conduct and thereby committed the offences punishable under section 188 of IPC.

3. On the basis of the complaint of CW-1, case has been registered under Cr.No.77/2018 against the accused No.1 to 3 for the offence punishable under section 188 of IPC. Thereafter, on completion of the investigation charge sheet has been filed against the accused. On receipt of charge sheet, the court took cognizance of the said offence.

4. On appearance of the accused, they were enlarged on bail. The copies of the prosecution papers were furnished to the accused persons as contemplated under section 207 of Cr.P.C. Thereafter, the substance of accusation was read over and explained in the language known to them for the offence punishable under section 188 of IPC. They have not pleaded guilty and claimed to be tried. Hence, the matter was posted for evidence.

5. In order to bring home the guilt of the accused persons, the prosecution has examined all the Fifteen witnesses as PW-01 to 15 and got marked 15 documents as Ex.P.01 to Ex.P.15. After closure of the prosecution evidence, the accused No.1 to 3 were examined under section 313 of Cr.P.C., so as to enable them

to answer the incriminating circumstances appearing in the evidence of the prosecution witnesses. The accused No.1 to 3 have denied their involvement in the crime and did not choose to lead any defence evidence on their behalf.

6. I have heard the arguments addressed by the learned Sr. Assistant Public Prosecutor and the learned counsel for the accused.

7. The following points arise for my consideration:-

1. Whether the prosecution proves beyond all reasonable doubt that on 05-04-2018 at 05.00 p.m., the accused No.1 to 3 held a public meeting in the building premises of Women's SHG building bearing No.940, in connection with the Election, though there was strict directions from the concerned authority restricting the political parties from using any Government buildings or premises for any purpose and violated the Election Model Code of Conduct and thereby the accused have committed an offence punishable under section 188 of IPC.

2. What Order?

8. The findings of this court on the above points are:

Point No.1 : In the Negative,

Point No.2 : As per final order for the following:

REASONS

9. **Point No.1**: The prosecution has alleged that the accused No.1 to 3 have violated the Election Code of Conduct by conducting a public meeting in the Government building i.e., Women's SHG building, though there was direction from the concerned authority restricting the political parties from holding public meetings in connection with the election, in the premises owned by the Government. When this being the allegation against the accused persons, the prosecution is expected to prove that the accused have conducted the public meeting and if so, then the alleged building is belonging to the Government and there was restraint direction from the concerned authority.

10. In order to bring home the guilt of the accused persons, the prosecution has examined the complainant as PW-3. He has deposed that on 05-04-2018 at 5.00 p.m., when he was on Election Duty as a Flying Squad at Yavagal Village, he got a phone call stating that the Election Code of Conduct is violated at Mallapura Village. He has deposed that when he went to the spot, he found that the public meeting was conducted at Women's SHG building which is owned by the Government. He has deposed that

people were gathered in the said building premises and were pleaded to cast their votes in the election. He has deposed that accused No.1 had campaigned seeking votes and accused No.2 and 3 were along with him. He has deposed that on the very same day, he came to Ron Police Station at 08.00 p.m., and lodged the complaint. On the next day, the police came to the spot and conducted the mahazar. The complaint, mahazar and the appointment order of PW-3 are marked as Ex.P.01 to 03.

11. In the cross-examination, he has deposed that he got the phone call from their ARO. He has also deposed that some other people also informed him that the accused are violating the Election Code of Conduct. He has deposed that he did not ask them as to which party they belong to. But, the accused are belonging to Congress Party. He has further deposed that when he had been to the spot, the Women's SHG building premises was closed and locked. The said building is under the supervision of one Eramma, but she did not come to the spot when he called her. He has deposed that he reached the spot at 06.00 p.m. He has clearly deposed that when he had been to the spot, he did not find any traces about the alleged election campaign held in the said

building premises. He has further deposed that when he went to the spot, except the informant Neela Gowda Danappa Gowdru and 3 others, no one else were at the spot.

The relevant portions are as follows:

“ಎಸ್.ಹೆಚ್.ಜಿ ಕಟ್ಟಡದಲ್ಲಿ ಸಭೆ ನಡೆಸಿದ್ದಾರೆ ಎನ್ನುವ ಬಗ್ಗೆ ಯಾವುದೇ ಕುರುಹುಗಳು ನನಗೆ ಲಭ್ಯವಾಗಿರುವುದಿಲ್ಲ ಮತ್ತು ನನ್ನ ಗಮನಕ್ಕೆ ಬಂದಿರುವುದಿಲ್ಲ. ನಾನು ಹೋದಾಗ ಯಾವುದೇ ಸಭೆ - ಸಮಾರಂಭಗಳು ಸದರಿ ಕಟ್ಟಡದಲ್ಲಿ ಕಂಡುಬಂದಿರುವುದಿಲ್ಲ ಮತ್ತು ಬೀಗ ಹಾಕಲಾಗಿತ್ತು ಎಂದರೆ ಸರಿ”

“ನಾನು ಘಟನಾ ಸ್ಥಳಕ್ಕೆ ತಲುಪಿದಾಗ ಸದರಿ ಕಟ್ಟಡ ಮುಚ್ಚಿದ್ದು, ಅದರ ಬಾಗಿಲಿಗೆ ಬೀಗ ಹಾಕಲಾಗಿತ್ತು ಮತ್ತು ಅಲ್ಲಿ ಕೇವಲ ನನಗೆ ಬಾತ್ಮಿ ಕೊಟ್ಟ ನೀಲಪ್ಪಗೌಡ ದಾನಪ್ಪ ಗೌಡ್ರು ಮತ್ತು 2-3 ಜನರು ಮಾತ್ರ ಇದ್ದರು”.

12. Now, on analyzing the oral evidence of PW-3 who is the complainant in the case, it goes to show that he has not seen the accused No.1 to 3 campaigning in a public meeting seeking votes from the voters in the building premises of Women's SHG building. His evidence goes to show that the person who informed him about the alleged campaign was present at the spot, when he went there. He has also mentioned their names. But, on perusal of the charge sheet, they are not cited as witnesses to the alleged incident. PW-3 has gone to the extent of deposing that he did not

even find any traces of the alleged public meeting. If really, any such meeting was conducted then definitely there would have been some traces at the spot, as the public meetings in connection with the election will always be crowded. As such, the evidence of PW-3 does not inspire the confidence of this court with regard to the commission of the alleged offence by the accused persons.

13. The spot mahazar witnesses are examined as PW-1 and 2. They have deposed that the police have not taken them to any place nor they have drawn any mahazar in their presence. They have identified their signatures in the spot mahazar. At the request of learned Sr. Assistant Public Prosecutor, both the witnesses are treated as hostile and permission was accorded to cross-examine them, but nothing worthy has been elicited from their mouth to prove the case of the prosecution in respect of the alleged mahazar said to be drawn at the scene of occurrence. Both of them have denied all the suggestions put to them by Lrd. Sr. APP.

14. The then PSI of Ron Police Station who is said to have visited the spot where the alleged public meeting was held, on the information given to him by CW-1, is examined as PW-4. He has

deposed that CW-1 informed him about the information received by him. And accordingly, when he visited the spot, CW1 had already come to the spot and the Women's SHG building was locked when they reached the spot. He has deposed that when they enquired with the people found at the spot, they told him that the accused No.1 had come to the above premises and he campaigned seeking votes with the people and accused No.2 and 3 were also along with him.

15. In the cross-examination, he has admitted that there was no traces of any campaign being conducted at the premises. He has voluntarily deposed that some chairs were there. He has admitted that as the building is belonging to Women's Milk Federation, chairs are commonly found in such buildings.

16. On analysis of the evidence of PW-4, it goes to show that he has improvised the case of the prosecution by deposing that he saw empty chairs in the premises of the said government building, while the said premises was locked when they went to the spot, according to PW-1. Even this witness once deposed that the premises was locked when they went to the spot. But, in the

cross-examination, he has deposed that he saw some empty chairs. Admittedly, the Women's SHG is functioning in the said building premises. As such, one cannot come to the conclusion that some election campaign was held in the said premises since few chairs were kept in the premises. As such, the evidence of this witness with regard to the alleged election campaign conducted by the accused persons is not satisfactory so as to convict the accused persons.

17. The prosecution has examined CW-5 to CW-13 who are said to have attended the Election Campaign Program on the alleged date time and place and who are said to have seen the alleged election campaign done by the accused No.1 to 3, and has also examined CW-14 who was said to be in possession of the key of Women's SHG building. They are examined as PW-5 to PW-14. The alleged eye-witnesses to the incident who are examined as PW-05 to 12 and PW-14 have deposed that they have not participated in any meeting. They have deposed that it has also not come to their knowledge that the accused have conducted the election campaign in the said premises. They have deposed that they do not know anything about this case nor they have given any

statement before the police. PW-13 has deposed that Women's SHG building in their Village is in the possession of the Grama Panchayath. She has deposed that the said building is given to run Mahila Sanjeevini Sangha and the key of the same is kept in the temple of their village. She has deposed that she was never in possession of the key of the said premises nor she has handed over the key to any one. She has deposed that she was on leave on 05-04-2018 and it has not come to her knowledge that the election campaign took place on the alleged date time and place. She has deposed that she has not given any statement before the police.

18. At the request of learned Sr. Assistant Public Prosecutor, PW-5 to PW-14 were treated as hostile and permission was accorded to cross-examine them, but nothing worthy has been elicited from their mouth to prove the case of the prosecution in respect of the alleged election campaign conducted by the accused persons. All of them have denied all the suggestions put to them by Lrd. Sr. APP. Their statements are marked as Ex.P.04 to 13.

19. The Police Officer who registered the case on receipt of the complaint from CW-1 and investigated the crime and filed charge sheet is examined as PW-15. He has deposed accordingly. The FIR is marked as Ex.P.14.

20. Now, on analyzing the overall evidence of the prosecution, it is clear that there is no direct eye-witness to the alleged incident or to the alleged election campaign. Except, the hearsay evidence of PW-3 and 4 and the Police Officers evidence i.e., PW-15, there is no independent eye-witness to the alleged incident. Further, the evidence of PW-3 and 4 is also not corroborating with each other. One says, there was no traces in the scene of occurrence and the premises was under lock and key when they reached the spot, the other says though there were no traces, he found some empty chairs. When the premises was under lock and key how PW-4 found the chairs remained unexplained. Even, if it is taken into consideration that some chairs were there in the said premises, only by that one cannot come to the conclusion that the accused No.1 to 3 have campaigned as alleged by the prosecution. As such, without any further discussion, it can be safely said that the prosecution has

failed to prove the case as projected.

21. Now, the legal aspects of the case is concerned, the accused persons are charge sheeted for the offence under section 188 of IPC. No doubt, this is an cognizable offence. The complaint in so far as an offence under section 188 of IPC, is required to be made keeping in mind the requirement of section 195 of Cr.P.C. From the records, it would reveal that taking note of the written information provided by the officer, the investigating authority has proceeded on the basis of such information given and has filed charge sheet. Clearly, what is to be noted is that the information that is given should be to the Magistrate by way of a complaint under section 2(d) of Cr.P.C. It is clear that what is envisaged by the bar under section 195 of Cr.P.C., is that no court could take cognizance with respect to the offence under section 188 of IPC, except, on a complaint in writing of the Public Servant concerned. The word 'complaint' is to be read in terms of section 2(d) of Cr.P.C which indicates that a Private Complaint should be made to the Magistrate. But here in the case on hand, the same is not done. As such, on this ground also, the prosecution has failed. Accordingly, based on the discussion made above, Point

No.1 is answered in the NEGATIVE.

22. **Point No.2**:- In view of my findings on the above Point No.1, the accused No.1 to 3 are entitled to be acquitted by giving benefit of doubt and also for procedural lapses. Hence, I proceed to pass the following:

ORDER

Acting under section 255(1) of Cr.P.C., the accused No.1 to 3 are acquitted of the offence punishable under section 188 of IPC.

The bail bond and surety bond of the accused No.1 to 3 shall stand cancelled.

(Typed by me directly on the computer, corrected and then pronounced by me in open court on this the 1st day June - 2022).

(Preeth. J)
XLII Addl. CMM

(Special Court for trial of cases against sitting as well as former MPs/MLAs, triable by Magistrate in the State of Karnataka)

ANNEXURES

Witnesses examined for the Prosecution:

- PW.01 : Neharu,
- PW.02 : Mahantesha,
- PW.03 : Jagadish,
- PW.04 : M.G.Nayak,
- PW.05 : Bapugowda,
- PW.06 : Shivanappa,
- PW.07 : Neelappa,
- PW.08 : Sanganabasappa,
- PW.09 : Yamanursaba,
- PW.10 : Sharanappa,
- PW.11 : Prakash,
- PW.12 : Sharanappa,
- PW.13 : Smt.Veeramma,
- PW.14 : Raju,
- PW.15 : L.K.Joolakatti.

Documents exhibited for the Prosecution:

- Ex.P.01 : Spot Mahazar,
- Ex.P.01(a) : Sig. of PW.01,
- Ex.P.01(b) : Sig. of PW.02,
- Ex.P.02 : Complaint,
- Ex.P.02(a) : Sig. of PW.03,
- Ex.P.02(a) : Sig. of PW.15,
- Ex.P.03 : Copy of Order,
- Ex.P.03(a) : Relevant Portion,
- Ex.P.04 : Statement of PW.05,
- Ex.P.05 : Statement of PW.06,
- Ex.P.06 : Statement of PW.07,
- Ex.P.07 : Statement of PW.08,
- Ex.P.08 : Statement of PW.09,
- Ex.P.09 : Statement of PW.10,
- Ex.P.10 : Statement of PW.11,
- Ex.P.11 : Statement of PW.12,
- Ex.P.12 : Statement of PW.13,

Ex.P.13 : Statement of PW.14,
Ex.P.14 : FIR,
Ex.P.14(a) : Sig. of PW.15,
Ex.P.15 : D.R. Extract of Spot,
Ex.P.15(a) : Sig. of PW.15.

Material object exhibited for the Prosecution: -

- NIL -

Witnesses examined for the defence Accused:

- NIL -

Documents exhibited for the defence Accused:-

- NIL -

(Preeth. J)
XLII Addl. CMM

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