

IN THE HIGH COURT OF KARNATAKA KALABURGI BENCH
(MEMORANDUM OF CRIMINAL PETITION UNDER
SECTION 482 OF CRIMINAL PROCEDURE CODE)

CRIMINAL PETITION NO. _____/2020

CRIME NO. 10/2020

(New Town Police Station, Bidar)

Between :

1. Allauddin S/o Syed Pasha Hussaini
Age : 40 years, Occ : Head of Shaheen
School, Bidar, R/o H. No. 18-3-206/A,
Haq colony, Near Sohgra Masjid, --Accused No.1/
Bidar-585401. Petitioner No. 1
2. Abdul Khaleq S/o Abdul Razak,
Age : 39 years, Occ : management
person of Shaheen School, Bidar,
R/o H. No. 4-1-93, Noorkhan Taleem, --Accused No.2/
Bidar-585401. Petitioner No. 2
3. Mohd. Bilal Inamdar S/o Gulab Nabi
Inamdar, Age : 40 years, Occ :
Management person of Shaheen
School, Bidar, R/o H. No. 2-1-103/1, --Accused No.2/
R/o Near Urdu hall, Bidar- Petitioner No. 3
4. Mohd. Mehatab S/o Mohd. Abdul
Kareem, Age : 24 years, Occ :
Management person of Shaheen
School, Bidar, R/o H. No. 5-3-163, --Petitioner No.2/
Darawaja Golkhana, Bidar- Accused No. 4

And -

1. The State of Karnataka,
Through the P.S.I., New Town
Police Station, Bidar Town,
Bidar.

Complainant/Respondent No.1.

2. Sri. Neelesh Rakshyal
Age 35 years,
Occ: Social worker,
R/o Bidar.

...Complainant/Respondent No.2

The petitioners respectfully submit as under :

1) The address of the petitioners herein for the purpose of service of summons, notices, etc., from this Hon'ble Court, is as stated above in the cause title and also that of their counsel Shri. Ameet Kumar Deshpande, S.V. Patel Circle, Station bazaar, Kalaburagi-585 102.

2) The address of the respondent herein, for the aforesaid purposes, is c/o the Additional State Public Prosecutor, High Court building, Kalaburagi.

3) Being aggrieved by the initiation of the proceedings against the accused/petitioners herein in Crime No. 10/2020 by the New Town Police Station, Bidar Town Circle, Bidar, against the accused/petitioners herein for the alleged offences punishable under section 504, 505(2), 124A, 153(A) and 34 of I.P.C., these petitioners have no alternative or efficacious remedy except to invoke the inherent jurisdiction of this Hon'ble Court under section 482 of Cr.P.C., on the following among other grounds. The certified copy of the complaint and the F.I.R., are enclosed herewith as **Annexures-A and B** respectively.

BRIEF FACTS

4) The complainant viz. Sri. Neelesh Rakshyal has lodged a complaint on 26-1-2020 before the respondent, alleging that he is a social worker and responsible citizen of the nation. He has alleged in the complaint that, the head of the Shaheen Education Society and the management board have used minor children of the school to utter words that create the feelings against the nation and abusive words against the Hon'ble Prime Minister of the country, and thereafter, have made to utter that, if the parliament enacted C.A.A., N.P.R. and N.R.C. are enforced, Muslims will have to leave the country. It is alleged that, such false statements are made to be said by the children in the form of a school play/drama exhibited in the Shaheen Society's Shaheen School, and the same is uploaded in the internet through Face-book, and thereby created fearsome atmosphere and created an atmosphere that hurts the religious sentiments. It is alleged that, the school children are used for making false statements about the law enacted by the parliament, and thereby, creating conflict on religious lines. It is also alleged that, all this is made through play/drama, and have seen that the public would have feelings against the laws enacted by the parliament and also feelings against the nation. It is alleged

that, the accused have used the minor children to speak against the Hon'ble Prime Minister in the school play, which has been uploaded in the internet, and therefore, prayed to take action.

5) Based on the above said allegations, F.I.R. is lodged, without any justification and without any offences being committed by the accused/petitioners. This is challenged herein.

6) It is submitted that, the accused Nos. 1 and 2 are not made by naming any person in the complaint or in the F.I.R. However, the respondent is making investigation and is trying to apprehend the petitioners herein on the assumption that, they are the accused Nos. 1 and 2. Therefore, the petitioners have already moved necessary application for seeking the enlargement of bail, and are filing the present petition for quashing the proceedings.

Note : No other petition is filed on the above said cause of action before any other court of law or before this Hon'ble Court praying for the relief as prayed for in this petition.

GROUNDS

7) The complaint and the proceedings initiated against these petitioners, are abuse of process of law. Therefore, the same are liable to be quashed.

8) All the allegations made in the complaint, even if taken to be true at its face without admitting it to be so, also do not constitute any offence whatsoever. Therefore, the proceedings are liable to be quashed.

9) For the purpose of attracting the provisions of section 124A of I.P.C., mere statements made as alleged in the complaint, are not sufficient. The necessary ingredients of the provisions of section 124A of I.P.C., are not available in the present case at all.

10) The accused Nos. 1 and 2 are not arrayed by the name of any individual. The naming of an institute or an unidentified person or persons, is not known to the Cr.P.C. Therefore, the very registering of the complaint, is bad in law.

11) Under section 196 of the Cr.P.C., previous sanction for prosecution by the Central Government or the State Govt. is mandatory. The offences that are invoked in the F.I.R., though are falsely and incorrectly invoked, are yet, if at all permissible, to be invoked only if the previous sanction of the Central Govt. or the State Government is obtained.

12) The complaint cannot be registered unless a preliminary investigation by a police officer not below the rank of inspector is made, and, such preliminary investigation is considered by the Central or State Government and sanction is granted

thereafter. In the present case, the mandate of law is violated. Hence, the prosecution is liable to be quashed.

13) The allegations made in the complaint do not indicate any specific overt act or specific participation of any individual related to the accused Nos. 1 and 2 herein, as shown in the complaint or against any of the petitioners herein. Mere casual references made to allegation that are shown in the complaint, does not justify the initiation of the criminal proceedings against the accused Nos. 1 and 2/petitioners herein.

14) The allegations made in the complaint clearly indicate that, a school play/drama was conducted. There is no indication in the entire school act /play, as per the complaint, that there was any incitement to bring about any faction, hatred or contempt against the Government. The play, as alleged, is not related to any of the allegations made that attract any of the offences.

15) In the complaint, it is not stated that there is anything spoken against the Government. The only allegation is that, in the school play, the statement is made referring to the Hon'ble Prime Minister. A mere reference to an individual does not mean that, there is anything spoken against the Government.

16) When the school play/drama was conducted, as alleged in the complaint, there is no intention shown in the complaint that would manifest the commission of any offence.

17) The complaint is politically ill-motivated.

18) The allegations made in the complaint do not even remotely or impliedly, indicate that there is any attempt to create hatred or excite any emotion of hatred or contempt. The innocence of the students and the parents and the staff/management, is tried to be unnecessarily misutilized.

19) Viewed from any angle, the prosecution is wholly illegal and is made with ulterior purpose by the complainant. Hence, the proceedings are liable to be quashed.

PRAYER

Therefore, it is most humbly prayed that, this Hon'ble Court may be pleased to allow this petition, and to quash all the proceedings in Crime No. 10/2020 of the New Town Police Station, Bidar Circle, Bidar, so far as the accused Nos. 1 & 2/ petitioners herein are concerned for the alleged offences punishable under section 504, 505(2), 124A, 153A and 34 of I.P.C., and to pass any other appropriate orders as may be necessary, till the final disposal of this petition, in the interest of justice.

Place : Kalaburagi
Date : -2-2020

ADVOCATE FOR PETITIONERS
(AMEET KUMAR DESHPANDE)

Bar and Bench

INDIAN LEGAL NEWS

IN THE HIGH COURT OF KARNATAKA KALABURGI BENCH

I.A. No. ____/2020

IN

CRIMINAL PETITION NO. ____/2020

CRIME NO. 10/2020

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Between :

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3. The State of Karnataka,
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Complainant/Respondent No.1.

4. Sri. Neelesh Rakshyal
Age 35 years,
Occ: Social worker,
R/o Bidar.

...Complainant/Respondent No.2

**APPLICATION FOR INTERIM STAY UNDER SECTION
482 OF Cr.P.C.**

For the reasons stated in the accompanying Affidavit, it is most humbly prayed that, this Hon'ble Court may be pleased to grant an interim order of stay of all the proceedings pursuant to the registration of the complaint in crime No. 10/2020 of the New Town Police Station, Bidar Circle, Bidar, so far as the accused Nos. 1 & 2/ petitioners herein are concerned for the alleged offences punishable under 504, 505(2), 124A, 153A and 34 of I.P.C., in the interest of justice.

Place : Kalaburagi
Date : -2-2020

ADVOCATE FOR PETITIONERS
(AMEET KUMAR DESHPANDE)

IN THE HIGH COURT OF KARNATAKA : KALABURAGI

BENCH KALABURAGI

CRIMINAL PETITION NO. _____/2020

Between –

Allauddin and others

--Accused/Petitioners

And –

The State of Karnataka

--Complainant/Respondent

AFFIDAVIT

I, Abdul Khaleq S/o Abdul Razak, Age : 39 years, Occupation : management person of Shaheen School, Bidar, r/o H. No. 4-1-93, Noorkhan Taleem, Bidar-585401, today at Kalaburagi, do hereby solemnly affirm and state on oath as under :

1) I am the petitioner No. 2 in the above petition. I am well acquainted with the facts of the case. The other petitioners herein have authorised and instructed me to swear to this Affidavit. Hence, I am swearing to this Affidavit on my behalf and also on behalf of other petitioners herein.

2) Challenging the initiation of criminal proceedings against the accused Nos. 1 and 2/petitioners herein in Crime No. 10/2020 before the New Town Police Station, Bidar Circle, Bidar, we have filed this criminal petition

3) I am advised to state that, there are very good grounds in the petition, and the chances of success are high.

4) The allegations made in the complaint do not constitute any offences whatsoever against us. We are not related or responsible for any of the allegations made in the complaint. A false complaint is lodged against us.

5) On the strength of the complaint filed against the accused Nos. 1 and 2 herein, the respondent/police and its officers are making hectic efforts to apprehend us and take further steps against us, unnecessarily without any justification. In that view of the matter, we are directly and adversely aggrieved by the initiation of the proceedings against us.

6) The police officers are unnecessarily visiting the school premises and are interfering in the day to day affairs of the management and its management. Their frequent visit to the school is disturbing the studies of the students and the normal functioning of the staff and others. That apart, the same is creating a wrong impression in the society at large against the good will of the school.

7) We are all responsible citizens having very high reputation in the society. The complaint is lodged only to malign the reputation. If an interim order of stay of further proceedings is not granted, we will be put to serious injustice. On the other hand, no prejudice would be caused to the other side if an interim order of stay is granted.

Hence, I most humbly pray to grant an interim order, in
the interest of justice.

Place : Kalaburagi

DEPONENT

Date : -2-2020

Identified by me :

Advocate

No. of corrections :