

RESERVED

A.F.R.

Court No. - 33

Case :- APPLICATION U/S 482 No. - 8808 of 2023

Applicant :- Raghvendra Kumar Yadav

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ravindra Prakash Srivastava

Counsel for Opposite Party :- G.A., Jagdev Singh

Hon'ble J.J. Munir, J.

This application under Section 482 of the Code of Criminal Procedure, 1973 (*for short, 'the Code'*) seeks to quash the proceedings of Case No. 3558 of 2018, State v. Raghvendra Kumar Yadav (arising out of Case Crime No. 2264 of 2016), under Section 3/7 of the State Emblem of India (Prohibition of Improper Use) Act, 2005, Police Station – Khalilabad, District – Sant Kabir Nagar pending on the file of the Chief Judicial Magistrate, Sant Kabir Nagar.

2. Heard Mr. Ravindra Prakash Srivastava, learned Counsel for the applicant, Mr. Jagdev Singh, learned Counsel appearing on behalf of opposite party no. 2 and Mr. D.K. Srivastava, learned Additional Government Advocate appearing on behalf of the State.

3. A First Information Report was lodged on 12.11.2016 by one J.N. Tripathi, Sub-Inspector of Police at Police Station – Khalilabad, District – Sant Kabir Nagar, alleging in his recovery memo of a bullet motorcycle that on 12.11.2016, the informant along with Constable, Umesh Mishra, was on security duty at the Punjab National Bank, Main Branch - Khalilabad and had just reached there when he noticed a man move close to the Bank on his motorcycle, which he parked there.

4. A look at the rear side of the motorcycle showed that it bore no registration number. Instead, the number plate had the national emblem of *Ashok Stambh* on it. Upon inquiring about the rider's name and

address, he revealed it as Raghvendra Kumar Yadav, son of Ram Achal Yadav, a resident of Kuikol colony, Police Station – Kotwali, Khalilabad, District – Sant Kabir Nagar. Upon the rider being asked why he had placed the national emblem on the number plate, he allegedly said that it was affixed there for status. He produced his Driving License that was valid up to 07.07.2023.

5. The First Information Report goes on to allege that Raghvendra Kumar Yadav aforesaid was found misusing the *Ashok Stambh*, the national emblem by affixing it to the number plate of his motorcycle, which constitutes an offence under Section 3/9 of the State Emblem of India (Prohibition of Improper use) Act, 2005. He did not produce any papers relating to the motorcycle which is an offence under the Motor Vehicles Act. The applicant was, accordingly, informed of the offence committed by him and at 4.00 O' Clock in the evening, the motorcycle was taken into custody by the Police. A number of persons were moving on the spot where the applicant was apprehended but despite request, none of those asked to witness the recovery agreed, citing their business with the Bank as pre-occupying.

6. The First Information Report further shows that a report under the Motor Vehicles Act is being separately presented. The recovery memo had been drawn up on the spot, read over and explained. A copy of the recovery memo was handed over to Raghvendra Kumar Yadav, the applicant. The case was investigated by the Police where statements of the first informant and Constable, Umesh Mishra were taken down. After investigation, the Police submitted the impugned charge-sheet on 10.02.2018 whereon the learned Magistrate took cognizance on 17.09.2018.

7. Learned Counsel for the petitioner, Mr. Ravindra Prakash Srivastava points out that the Registration Certificate of the motorcycle is on record as Annexure No. 3.

8. This Court may say straightaway that we do not wish to comment about those matters because there is nothing related to the prosecution

under the Motor Vehicles Act impugned here. The Registration Certificate, of whatever worth it is, might be of relevance in the other case said to have been instituted against the applicant by the Police on account of riding the motorcycle, without the necessary documents or the number plate bearing the registration number, but not here.

9. This prosecution is limited to the offence under Section 3/7 of the Emblems and Names (Prevention of Improper use) Act, 1950. About this issue also, it may be remarked at the outset, that the First Information Report was registered by the Police for an offence under Section 3/9 of the State Emblem of India (Prohibition of Improper Use) Act, 2005 (*for short, 'the Act of 2005'*). The offence under the Act of 2005 would be one under Section 3/7 and not under 3/9 of the Act, aforesaid.

10. During investigation, the Police have submitted a charge-sheet under Section 3/7 of the Emblems and Names (Prevention of Improper Use) Act, 1950 (*for short, 'the Act of 1950'*). Here the Section appears to be correctly described but the statute mentioned in error. The Act of 1950 was enacted in that year by the Parliament in exercise of its legislative power traceable to Entry 49 List 1. The power was held traceable to Entry 97 of the said list, as well in **Sable Waghire and Co. & others v. Union of India & others, (1975) 1 SCC 763** but that is not the point here. On the same subject, the Act of 2005 is a subsequent legislation enacted by the Parliament.

11. It is no doubt true that the Act of 2005 does not repeal the Act of 1950, but *vide* Section 10 it gives overriding effect to itself or any Rule made thereunder *vis-a-vis* any other Act to the extent that it is inconsistent with the Act of 2005.

12. Be it as it may, the question in this application does not squarely arise as to which of the two enactments would apply, and if the Act of 1950 has indeed been repealed. Learned Counsel for the parties, have not shed much light on the issue, perhaps since it did not arise as the point for consideration in this application.

13. Nevertheless, it appears that looking to the First Information Report, the case has been registered under the Act of 2005, correctly mentioning the provisions as Section 3/7 but in the check First Information Report, the statute has been incorrectly mentioned as the Act of 1950, a mistake that has been mechanically carried forward to the impugned charge-sheet.

14. This Court, therefore, proceeds to decide this application as one seeking to quash the prosecution under Section 3/7 of the Act of 2005.

15. It is on the merits of the matter submitted by the learned Counsel for the applicant that the Investigating Officer has without perusing the material in the case diary and collecting credible evidence, charge-sheeted the applicant under Section 3/7 of the Act of 2005.

16. It is urged that the charge-sheet has been filed in a routine and mechanical manner, without application of mind. It is also urged that under Section 8 of the Act of 2005, the institution of a prosecution is prohibited without the previous sanction of the Central Government or any Officer authorised in this behalf by a general or special order of the said Government.

17. The learned Counsel for the applicant has drawn the Court's attention to the averments in paragraph no. 8 of the affidavit to say that the Police in this case, without obtaining sanction of the competent Authority, have unlawfully submitted a charge-sheet against the applicant, whereof cognizance has been taken by the learned Magistrate, not noticing the absence of sanction.

18. According to the learned Counsel for the applicant, this renders the prosecution not maintainable. He has placed reliance upon the decision of the Karnataka High Court in **Criminal Petition No. 4270 of 2016, G.B. Athri v. Smt. Mangla Gauri, decided on 15.02.2017**, where the order of cognizance passed by the learned Magistrate was quashed for want of sanction under the statute.

19. It is also urged by the learned Counsel for the applicant, inviting the Court's attention to paragraph no. 10 of the affidavit filed in support

of the application, that the prosecution is *mala fide* because it all happened in the manner that the applicant had gone to the Punjab National Bank, Main Branch, where the informant-Sub-Inspector illegally demanded money of the applicant which he refused. This annoyed the informant so much that he lodged a First Information Report to harass the applicant with no truth whatsoever to the allegations carried therein.

20. It is urged on the strength of the averments in paragraph no. 11 of the affidavit that the applicant never had the *Ashok Stambh* on the number plate of his motorcycle. He was falsely implicated on account of malice.

21. This Court does not propose to go into the question of malice and, therefore, *vide* order dated 16.03.2023, while notice was issued to the complainant-opposite party, the order discloses in ample measure that the Court took note of the submission alone that the prosecution was not maintainable *prima facie* in view of the bar to its institution without the sanction of the Central Government though, it must be said that the reference in that order is made to the Act of 1950 and the bar to a prosecution that is mentioned there is one under Section 6 of the aforementioned statute. But, this does not make any material difference because under both the statutes the provisions about necessity of a prior sanction by the Central Government are *pari materia*. Section 6 of the Act of 1950 is *pari materia* to Section 8 of the Act of 2005.

22. This Court, while passing an interim order dated 16.08.2023, did call for an affidavit in answer from the Superintendent of Police, Sant Kabir Nagar showing cause how the Supervising Officers of the Police permitted a charge-sheet to be filed without the necessary sanction under Section 6 the Act of 1950.

23. A report was also called from the Judicial Magistrate, asking him to indicate the circumstances under which the absence of the mandatory sanction was not taken note of by him, while passing the order taking cognizance and summoning the applicant to stand his trial.

24. A personal affidavit was filed on behalf of the Superintendent of Police, Sant Kabir Nagar, who seems to have acknowledged the mistake at the level of the Supervisory Officers of the Police, and said in his affidavit that a preliminary inquiry has been ordered in the matter.

25. The counter affidavit filed on behalf of the State by Pawan Kumar, Sub-Inspector of Police, Police Station – Kotwali, Khalilabad, District - Sant Kabir Nagar asserts in paragraph no. 7 that sanction against the applicant was granted and the Investigating Officer, after collecting credible evidence, filed the impugned charge-sheet. However, all that the papers annexed to the counter affidavit show is the correspondence between the District Magistrate and the Secretary (Home), Government of U.P. or the Deputy Secretary to the Government and the Superintendent of Police, Sant Kabir Nagar regarding grant of sanction to prosecute or papers being called from the Police to consider it.

26. It does not appear from any document annexed to the counter affidavit dated 29.03.2023 that sanction was granted to this prosecution, even by the State Government. The question whether the State Government were the competent Government to grant a sanction envisaged by the Act of 2005 is quite another matter. The fact that it was not granted until time the charge-sheet was filed is evident from C.D. No. 4 dated 10.12.2016 annexed as C.A. 5 to the charge-sheet. Towards the tail end of this *parcha*, it is recorded as follows by the Investigating Officer:

“अतः अब तक की तमामी तफ्तीश, वयान वादी, वयान गवाह, निरीक्षण घटना स्थल से अभियुक्त राघवेन्द्र कुमार यादव एस/ओ० श्री रामअचल यादव आर/ओ० कुईकोल पीएस० को० खलीलावाद, जनपद-संतकबीरनगर के विरुद्ध जुर्म धारा-3/7 द स्टेट इम्बलेम आफ इण्डिया (प्रोहिबिशन आफ इमप्रापर यूज) एक्ट-2005 का अपराध वाखूवी सावित है। आरोप-पत्र प्रेषित करने हेतु अभियोजन स्वीकृति आवश्यक है। अभियोजन स्वीकृति प्रदान करने हेतु अलग से रिपोर्ट दी जा रही है।”

27. To the counter affidavit and the supplementary counter affidavit, the applicant has filed a rejoinder affidavit dated 23.04.2023. Along with this rejoinder affidavit, a Registration Certificate relating to the motorcycle has been filed. A supplementary counter affidavit dated

26.04.2023 was later on filed wherein a copy of a Government Order dated 09.06.2017 has been annexed purporting to be the sanction for the applicant's prosecution that is impugned here. The order is one made on behalf of the Governor duly signed by a Secretary to the Government, granting a sanction under Section 196 of the Code, permitting the applicant's prosecution in the present crime for the offence punishable under Section 3/7 of the Act of 2005.

28. Mr. D.K. Srivastava, learned Additional Government Advocate and Mr. Jagdev Singh, learned Counsel appearing on behalf of the informant/opposite party no. 2 have submitted that now that a sanction has been granted, there is absolutely no impediment to the taking of cognizance by the Magistrate on 17.09.2018.

29. It is emphasized that the order of sanction is one dated 09.06.2017 whereas the order of cognizance has been passed on 17.09.2018. The mere fact that there is no reference to the order of sanction in the order of cognizance, or even in the formal part of the charge-sheet, would at best be a curable regularity. It does not oust the jurisdiction of the Court to take cognizance and try the applicant in accordance with law.

30. This Court has carefully considered the submissions advanced on behalf of both sides and perused the record. In order to clarify matters further, which have already been mentioned hereinabove, we must say that this prosecution is indeed one under Section 3/7 the Act of 2005 and the mention Act of 1950, is no more than a clerical error. It is, particularly, clear from the formal part of the charge-sheet where the applicant has been *challaned* under Section 3/7 of the Act of 2005 and the fact that the order of sanction upon which reliance is placed by the respondents is an order passed by the State Government on 09.06.2017, sanctioning prosecution under Section 3/7 of the Act of 2005; not the Act of 1950.

31. Provisions of Section 3 and 7 of the Act of 2005 read:

"3. Notwithstanding anything contained in any other law for the time being in force, no person

shall use the emblem or any colourable imitation thereof in any manner which tends to create an impression that it relates to the Government or that it is an official document of the Central Government, or as the case may be, the State Government, without the previous permission of the Central Government or of such officer of that Government as may be authorised by it in this behalf.

Explanation.— For the purposes of this section, "person" includes a former functionary of the Central Government or the State Governments.

7(1) Any person who contravenes the provisions of section 3 shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both or, if having been previously convicted of an offence under this section, is again convicted of any such offence, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than six months, which may extend to two years and with fine which may extend to five thousand rupees.

(2) Any person who contravenes the provisions of section 4 for any wrongful gain shall be punishable for such offence with imprisonment for a term which shall not be less than six months, which may extend to two years and with fine which may extend to five thousand rupees."

32. Section 8 of the aforesaid statute provides:

"8. No prosecution for any offence punishable under this Act shall be instituted, except with the previous sanction of the Central Government or of any officer authorized in this behalf by general or special order of the Central Government."

33. A plain reading of the provisions of Section 3/7 together with Section 8 of the Act of 2005 leads one to the irresistible conclusion that a prosecution under the said Act cannot be instituted except with the previous sanction of the Central Government or an Officer authorized in this behalf by a general or special order of the said Government.

34. The prohibition carried in Section 8 of the Act of 2005 envisages a bar to the institution of a prosecution under the Act, without the previous sanction of the Central Government, or an Officer authorized in this

behalf by a general or special order. The bar envisaged under Section 8 is not about the Court's jurisdiction to take cognizance without an order of the Central Government granting previous sanction; it forbids the institution of proceedings without a previous sanction. If one were to compare the language employed by the legislature in Section 8 of the Act of 2005 with that in Section 197 of the Code, there is an essential difference.

35. Section 197 of the Code in the material part reads:

"Prosecution of Judges and public servants.-

(1) When any person who is or was a judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union; of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted;

Explanation.-For the removal of doubts it is hereby declared that no sanction shall be required in case of public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any

member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government"

36. While under Section 197, the bar is against the Court taking cognizance without the previous sanction of the appropriate Government, the bar in Section 10 the Act of 2005 forbids the institution of a prosecution without the previous sanction of the Central Government. This is a cardinal distinction between the nature of the bar created under the statute here, and the chief provisions of the Code carrying a similar provision about sanction in certain class of cases. There is no further need to delve into the consequence of the difference here because the point does not arise.

37. What is of relevance here is the fact that the charge-sheet has been presented against the applicant, alleging commission of an offence under Section 3/7 the Act of 2005 and the Magistrate has proceeded to take cognizance *vide* order dated 17.09.2018, without adverting to the order of sanction, or the terms thereof, or the authority by which it was issued.

38. This Court is inclined to think that the order of sanction that has been placed on record before this Court, as part of Annexure No. S.C.A. 1 annexed to the supplementary counter affidavit dated 26.04.2023, was not at all brought to the Magistrate's notice. May be, it was never included in the charge-sheet. This is what the order of cognizance suggests. The order of cognizance passed by the magistrate on 17.09.2018 reads:

“17-9-18

आज यह आरोप पत्र मय दीगर पुलिस प्रपत्रों के प्राप्त होकर पेश हुआ। अवलोकन किया गया। अभि० के विरुद्ध प्रथम दृष्टया सा० आधार पर धारा 3/7 समप्रतिक एवम अनुचित प्रयोग नि० अधि० 1950 में प्रसजान लिया जाता है। अपराधिक वाद दर्ज रजिस्टर हो। दि० 5-11-18 के लिए अभि० समन द्वारा तलब हो।

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39. The moot question that arises for consideration in this case is, if the order of sanction that has been passed by the State Government on

09.06.2017, qualifies for a valid sanction under Section 8 of the Act of 2005 so as to entitle the Police to institute the impugned proceedings?

40. To the face of the order of sanction passed by the State Government, it is an order purporting to be made in exercise of powers by his Excellency, the Governor under Section 196 of the Code.

41. Now, Section 196 of the Code relates to something that is quite foreign to and different from the offence punishable under Section 3/7 of the Act of 2005. Section 196 of the Code relates to sanction of prosecution as regards certain offences mentioned therein, all of which are punishable under the Indian Penal Code. The various Authorities competent to grant sanction for the specified offences have been enumerated in Section 196.

42. The provisions of Section 196 of the Code read:

"Prosecution for offences against the State and for criminal conspiracy to commit such offence-

(1) No Court shall take cognizance of-

(a) any offence punishable under Chapter VI or under section 153A, section 295A or sub-section (1) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860),

except with the previous sanction of the Central Government or of the State Government.

(1A) No Court shall take cognizance of-

(a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence,

except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary

(3) The Central Government or the State Government may, before according sanction under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A) and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155."

43. There is nothing discernible across the length and breadth of Section 196 of the Code that may give rise to an inference that the Central Government or the State Government, or in certain matters the District Magistrate, empowered to grant sanction in respect of particular offences mentioned therein and punishable under the Indian Penal Code, have anything to do with the power to grant a sanction to prosecute for an offence punishable under the Act of 2005. The said power is exclusively conferred upon the Central Government by Section 8 of the Act of 2005 or upon such other Officer as the Central Government may specify by a general or special order. It is not the case of the State that any Officer of the State Government has been authorized by the Central Government, in accordance with the provisions of Section 8 of the Act of 2005, to grant sanction for a prosecution under the Act.

44. Apparently, the State Government have no authority to grant sanction envisaged under Section 8 of the Act of 2005. It is exclusively

the Central Government or any Officer authorized by them in this behalf, who can grant sanction for a prosecution regarding an offence punishable under the Act of 2005.

45. A perusal of the order dated 09.06.2017, passed by the State Government granting sanction under Section 196 of the Code, shows that the order has been passed mechanically without application of mind about the Government's jurisdiction or their Authority under the law in the exercise of which sanction was required in the present case. If the matter had been considered by the State Government, this Court has no reason to believe that they would ever invoke a non existent power under Section 196 of the Code to grant sanction for a prosecution under the Act of 2005.

46. It needs be pointed out that the order of sanction in this case passed by the State Government in exercise of power under Section 196 of the Code is not merely one that mentions a wrong provision of the law. It is an order of sanction passed without jurisdiction for reasons already indicated hereinabove. Interpreting the *para materia* provisions of Section 6 of the Act of 1950 in a slightly different context on facts, the exclusivity of power to grant sanction inhering in the Central Government or the Officer authorized by them, was emphasized by the Madras High Court in **Dr. R.K. Balasubramaniam v. Inspector of Police, 2013 (3) MWN (Cr.) 96**. In **Dr. R.K. Balasubramaniam (supra)** it was observed:

“4. In the Petition, it was stated that no sanction was obtained for the prosecution as contemplated under the Emblem Act and therefore, he must be discharged. The Petition was dismissed on the ground that the direction issued by the Senior Economic Adviser for Government of India to the Chief Secretary of Government of Tamil Nadu to investigate the matter and to take action, would amount to sanction. This Order is under challenge in this Revision Petition.

5. Under Section 6 of the Emblems and Names (Prevention of Improper Use) Act, 1950, no prosecution for any offence punishable under this Act shall be instituted, except with the previous sanction of the Central Government or of any Officer authorized in this behalf by General or Special Order of the Central Government. Therefore, in order to maintain prosecution, it

must be shown that sanction to prosecute was obtained from the Central Government or from any Officer authorized by the Central Government.

5.1. It is the contention of the Accused that it is only the Secretary, Department of Consumer Affairs, New Delhi, is the Competent Authority to grant sanction and not the Senior Economic Adviser, Ministry of Consumer Affairs. Even assuming that the Senior Economic Adviser is the Sanctioning Authority, the Order issued directing the Government of Tamil Nadu to take action would not amount to sanction to prosecute is the second contention.

5.2. The records produced on the side of the Accused, procured using the provisions of Right to Information Act, go to show positively that it is only the Secretary, Department of Consumer Affairs, New Delhi, who has been designated to issue sanction for prosecution and that the Senior Economic Adviser, Ministry of Consumer Affairs, is not the Sanctioning Authority. Therefore, it is clear that sanction for prosecution has not been given by the Competent Authority.

6. The next question is whether the alleged communication issued by Senior Economic Adviser to Government of India would amount to sanction. The communication issued by the Senior Economic Adviser is only a direction to take action and not a sanction to prosecute. Therefore, the contention that this communication itself would amount to grant of sanction is not correct. When the Senior Economic Adviser is not competent to issue sanction, the proceedings issued by him is not valid."

47. In Abdul Faqir v. State of Rajasthan and another, S.B. Criminal Misc. (Pet.) No. 2755 of 2015, decided on 14.09.2017, it was held by Rajasthan High Court:

"10. It is clear that as per the Section 8 of the Act of 2005, no prosecution for any offence punishable under this Act shall be instituted without sanction of the Central Government or any authorized officer and it is an admitted case that no such sanction is there. In light of the clear legislative intention, without prosecution under the Section 8 of the Act of 2005, the offence under Section 3, 4 & 5 cannot be carried on."

48. In G.B. Athri v. Smt. Mangala Gowri, Criminal Misc. Petition No. 4270 of 2016, decided on 15.02.2017, it was held by the Karnataka High Court:

"In the instant case, the accusations pertain to the improper use of emblem in contravention of the provisions of Section 3 of The Emblems and Names (Prevention of Improper Use) Act, 1950. It has

nothing to do with the performance of the official acts. The offences under this Act are not restricted to public servants. The Act is applicable to all and sundry and as applicable to the whole of India. Section 8 of the Act, 2005 specifically provides that "no prosecution for any offence punishable under this Act shall be instituted, except with the previous sanction of the Central Government or of any officer authorized in this behalf by general or special order of the Central Government." Section 10 of the Act, 2005 has over-riding effect over all other provisions of law. Section 10 reads as under:-

"The provisions of this Act or any Rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or instrument having effect by virtue of such enactment."

8. In view of the above provisions the prior sanction of the Central Government is a sine qua non for institution of prosecution of the petitioner for the alleged offence under section 7 of the Act. As the prosecution has been initiated without compliance of the said mandatory requirement, the cognizance taken by the learned Magistrate and the consequent proceedings therefore cannot be sustained in the eye of law and as a result, the petition deserves to be allowed."

49. The conclusion in this case, on the facts noticed and the provisions of the law applicable is, therefore, inescapable and, that is, that the order of cognizance dated 17.09.2018 and the impugned proceedings pending on the file of the Chief Judicial Magistrate, Sant Kabir Nagar cannot be permitted to continue and have to be quashed.

50. It is, however, clarified that what this Court proposes to quash are the order of cognizance and the proceedings before the learned Magistrate. We do not propose to quash the charge-sheet. It will be open to the State to proceed against the applicant in accordance with law, should they so elect.

51. Before parting with the matter, this Court wishes to place on record our concern about the fact that neither the learned Chief Judicial Magistrate concerned, who took cognizance, nor the Superintendent of Police or other Supervisory Officer, who approved the charge-sheet, took note of the provisions regarding sanction carried in the Act of 2005. What is all the more concerning is that the State Government granted

sanction *vide* order dated 09.06.2017, blissfully ignorant of the fact that the power to grant sanction for an offence punishable under the Act of 2005 is vested in the Central Government; not the state government. This is not expected to happen where there is a department of law to assist the Government.

52. In the circumstances, this application **succeeds** and is **allowed**. The impugned proceedings of Criminal Case No. 3558 of 2018, State v. Raghvendra Kumar Yadav (arising out of Case Crime No. 2264 of 2016) under Section 3/7 of the State Emblem of India (Prohibition of Improper Use) Act, 2005, Police Station – Khalilabad, District – Sant Kabir Nagar pending before the Chief Judicial Magistrate, Sant Kabir Nagar, including the order of summoning dated 17.09.2018, are hereby **quashed**.

53. It is made clear that the charge-sheet has not been quashed and it will be open to the respondents to proceed afresh, in accordance with law, after complying with the provisions of Section 8 of the Act of 2005.

Order Date :- October 19, 2023
Prashant D.

(J.J. Munir, J.)