

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 381 of 2017**

Ikhlaque Raza @ Akhlaque Raza, S/o Mohd. Alam Khan, aged about 45 years, r/o. Near Mahila Thana, inside street, Masanganj, P.S. Civil Line Bilaspur, Tehsil Bilaspur, District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. Mohd. Asif Bhabha S/o Abdul Jabbar, Bhabha aged about 35 years, R/o. Madhyanagari Chowk, P.S. City Kotwali, Tehsil Bilaspur, District Bilaspur, Chhattisgarh.
2. State Of Chhattisgarh, Through Station House Odfficer, City Kotwali, police station Bilspur, District Bilaspur, Chhattisgarh.

---- Respondents

For the Petitioner : Shri Surfaraj Khan, Advocate.
 For the Respondent/ State : Shri Ashish Shukla, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment****07.07.2017**

1. This petition has brought under Section 482 of the Code of Criminal Procedure with a prayer for quashing of the entire criminal proceedings against the petitioner based on Complaint Case No. 1820 of 2015 in the Court of Learned Judicial Magistrate First Class, Bilaspur.
2. Respondent No.1 – Mohd. Asif Bhabha has filed a complaint against the petitioner and four others alleging that the petitioner and other proposed accused persons were circulating a pamphlet in front of Madina Masjid, Gol Bazaar, Bilaspur which was titled as “Wahabiyo Ka Akida Hai”. On going through the pamphlet, respondent No.1/ complainant found that the pamphlet was full of lies and concocted statements which has outraged the religious feelings of the Muslim community. Further, this pamphlet also

defames the respectable *moulanas*. The trial court took cognizance by order dated 3.3.2015 against the petitioner and co-accused persons for trial of offence under Sections 120B, 295A, 153B (1 & 2) of the Indian Penal Code and ordered for appearance of the petitioner and co-accused persons. This order was challenged before the Sessions Court, Bilaspur in Criminal Revision Nos. 78 of 2015 and 91 of 2015 and the third Additional Sessions Judge, Bilaspur by order dated 28.1.2017 decided and dismissed both the revision petitions. Hence, this petition.

3. The grounds in this petition are that respondent No.1 – Mohd. Asif Bhabha filed a written complaint dated 6.9.2013 in police station City Kotwali, Bilaspur which was investigated and Closure Report No. 54 of 2013 was filed. The pamphlet (Annexure -P/2) does not specify the name of a person who has distributed the same. Thereafter, the complaint was filed against the petitioner and others with statement of allegations against them on which the cognizance has been taken. There is no legal evidence against the petitioner and others. Respondent No.1 – Mohd. Asif Bhabha has filed a complaint to wreakout the strength against the petitioner. For these reasons, the prayer has been made to invoke the powers under Section 482 of the Cr.P.C.

4. Perused and considered the material on record.

5. Respondent No.1 – Mohd. Asif Bhabha has filed a written complaint dated 6.9.2013. On the basis of which, First Information Report No. 283 of 2013 was registered for offence under Section 295A of the IPC. This FIR was investigated and closure report has been filed. This fact is not disputed.

While passing the order dated 3.3.2000 by the trial court, the fact of closure report by the police station, City Kotwali, Bilaspur has not been considered.

6. Reliance has been placed on the judgment of Punjab and Haryana High Court passed in **Vipin Aggarwal and Others vs. State of Haryana and Others** reported in **2015 1 RCR (Cri) 173**.

7. On going through the whole material placed on record, it appears that no sanction has been granted by the State Government for prosecution of the offence under Sections 295A and 153B of the Indian Penal Code. Section 196 of the Cr.P.C. provides that no court shall take cognizance of any offence punishable under Section 295A and 153B of the IPC, apart from other offences mentioned in the provision, without previous sanction of the Central Government or of the State Government or of the District Magistrate as the case may be. Hence, the impugned order passed by the learned court below suffers from this legal infirmity and for this reason this petition deserves to be allowed. Hence, exercising the powers under Section 482 of the Cr.P.C. this petition is allowed. In the result, the impugned order passed by the court below is hereby set aside. This order shall effect the criminal proceedings against the petitioner as well as the co-accused persons who have not filed any petition before this court. Hence, the criminal proceedings against the petitioner as well as of the co-accused persons are quashed herewith. This petition stands disposed of at the motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge