

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-23481 of 2016 (O&M)

Decided on:-July 21, 2017.

Raj Kumar Saini.

.....Petitioner.

Versus

The State of Haryana and another

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. J.S. Bedi, Senior Advocate with
 Mr. Sunil Sihag, Advocate
 for the petitioner.

 Mr. Manish Bansal, DAG, Haryana.

 Mr. K.D.S. Hooda, Advocate and
 Mr. R.K. Hooda, Advocate
 for respondent No.2.

HARI PAL VERMA, J.

CRM-22578-2017

Prayer in this application filed under Section 482 of the Code of Criminal Procedure is for placing on record the relevant extract of Prakash Singh Committee Report, as Annexure A-1 and further exemption from filing certified copy of the same.

The document (Annexure A-1) is taken on record subject to all just exceptions and the applicant is exempted from filing certified copy of the same.

CRM stands disposed of.

CRM-M-23481-2016

By way of present petition filed under Section 482 of the Code of Criminal Procedure, petitioner Raj Kumar Saini has approached this Court seeking quashing of criminal complaint No.COMI-230/2015 dated 27.05.2015 (Annexure P-1) filed by respondent No.2-complainant, namely, Dr. Santosh Dahiya, as well as order dated 01.04.2016 (Annexure P-2) passed by learned Chief Judicial Magistrate, Kurukshetra, whereby the petitioner has been summoned to face trial under Sections 153-A and 153-B of the Indian Penal Code.

Briefly stated, respondent No.2-complainant has filed a criminal complaint under Section 153-A and 153-B IPC against the petitioner with an averment that while making certain remarks/statements, which have been quoted in media including certain newspapers, the petitioner has promoted disharmony, enmity, hatred and ill-will between the Jat community and persons of backward class community, which amounts to commission of offence under the aforementioned sections. This act on the part of petitioner is prejudicial to the maintenance of harmony between the aforesaid two communities and has disturbed the public tranquillity.

As per the complaint, petitioner-accused belongs to Saini community, which has been declared backward class by Mandal Commission on 07.08.1991. Thereafter, on 04.03.2014, the Other Backward Classes Commission of India included Jat community in OBC and has extended them the benefit of reservation. The petitioner was elected as Member of Parliament from Kurukshetra Parliamentary Constituency in April, 2014 on the ticket of Bhartiya Janta Party and was, accordingly, administered oath as

per the Constitution of India. But still in violation of the oath dated 04.05.2014, the petitioner made a statement in 'Punjab Kesri' newspaper that Jats are consuming the share of poor people like a lion of forest. Similarly, on 29.03.2015, the petitioner has made another statement which was published in the 'Sunday Tribune' and has raised objections against Jat reservation. The petitioner has also made a statement in 'Amar Ujala' newspaper. Thus, the act and conduct of the petitioner, which has appeared in various newspapers has promoted disharmony, enmity, hatred and ill-will between the Jat community and the persons of backward class community and is prejudicial to the maintenance of harmony between the aforesaid communities as it has disturbed the public tranquillity. The petitioner is also disobeying the policy of his own party. By way of speeches and press conferences, as have been reported in various newspapers, and the petitioner being a member of the backward community, the imputations and assertions have shown his disrespect to the Constitution of India. Thus, the petitioner has acted against the sovereignty and integrity of India by opposing the reservation given to the other backward classes including the Jat community.

On the basis of averments made in the complaint and examination of the witnesses produced in support of the complaint, learned Chief Judicial Magistrate vide order dated 01.04.2016 had come to the conclusion that there were sufficient allegations for the commission of offence under Sections 153-A and 153-B IPC and accordingly had summoned the petitioner as an accused to face trial in the complaint.

Aggrieved against the impugned summoning order, the petitioner has filed the present petition seeking quashing of the complaint as well as

summoning order dated 01.04.2016 passed by Chief Judicial Magistrate, Kurukshetra.

Mr. J.S. Bedi, learned senior counsel for the petitioner has argued that for the offence under Sections 153-A and 153-B IPC, no prosecution could have been initiated against the petitioner without there being a prior sanction, as envisaged under Section 196 Cr.P.C. Therefore, the present complaint as well as the summoning order dated 01.04.2016 are not sustainable before the scrutiny of law. The very summoning order is, therefore, liable to be set aside. The case of the respondent-complainant is totally based on newspapers' reports, though two witnesses have been examined from The Tribune and Amar Ujala newspapers, but none of the author of the news reports has been examined as witness in the complaint. The reporter who filed the report was necessarily to be examined before the issuance of process of summoning. Moreover, the petitioner has not issued a press note. Therefore, the newspaper reports are nothing but a hearsay evidence and none of the witnesses of the complaint were present at the time when the alleged statements were made.

He has further argued that even if the allegations, as made in the complaint are taken to be true, no offence whatsoever under Sections 153-A and 153-B IPC is made out and such statements are merely an expression of opinion which a citizen of India can express in view of the fundamental rights enshrined in the Constitution of India. In fact, the complainant herself has stated in her complaint that the petitioner is opposing reservation. Even on merit, the report of the National Commission for backward classes dated 26.02.2014 has categorically found that the particular caste in question is not

backward in the State of Haryana. The said report finds support in the judgment rendered by Hon'ble Supreme Court in ***Ram Singh Versus Union of India (2015) 4 SCC 697***. Even this Court, vide order dated 26.05.2016 passed in ***CWP No.9931 of 2016*** titled as ***Murari Lal Gupta Versus State of Haryana and others*** has stayed the Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Act, 2016, as passed by the State legislature, as the enactment of the same was contrary to the judgment passed by Hon'ble Supreme Court in ***Ram Singh's case (supra)***. In the said order, while issuing notice of motion, this Court has ordered that in the meantime, no appointments in service and no admissions in educational institutions shall be made on the basis of the impugned provisions of the Castes mentioned in Schedule-III (with reference to Sections 3 and 4) under the heading "Backward Class Block 'C' of the Act.

Learned senior counsel for the petitioner has relied upon ***Rakesh Kumar Mishra Versus State of Bihar and others 2006(1) RCR (Criminal) 456*** and ***K. Kalimuthu Versus State by D.S.P. 2005(2) RCR (Criminal) 463*** to contend that when an offence is committed by a public servant in discharge of official duty, no Court can entertain the complaint or take notice of complaint except with previous sanction of the competent authority. Since the present complaint has been filed without obtaining sanction, the very cognizance is barred and the complaint cannot be entertained and deserve to be dismissed. He has relied upon para No.9 of the judgment in ***K. Kalimuthu's case (supra)***, which reads as under:

“9. The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is if the

conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance no prosecution can be initiated in a Court of Sessions under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his knowledge that such offence has been committed. So far public servants are concerned the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint, cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means 'taking notice of'. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty.”

Reliance has also been placed upon ***Manoj Rai and others Versus State of M.P. 1999 A.I.R. (SC) 300*** to state that in an offence under Section 295-A IPC, when no sanction for prosecution has been obtained, as required under Section 196 Cr.PC in the absence of such sanction, the proceedings are liable to be quashed. He has also relied upon ***Swaraj Thackeray alias Raj Thackeray Versus State of Jharkhand and others 2008 Criminal Law Journal 3780 (Jharkhand)***, ***Laxmi Raj Shetty and another Versus State of Tamil Nadu 1988 A.I.R. (SC) 1274*** and ***Dr. (Mrs.) Vimal Versus Bhaguji and others 1995 A.I.R. (SC) 1836***.

In the reply filed by way of affidavit of the District Magistrate, Kurukshetra on behalf of respondent No.1-State, filing of the complaint by the respondent No.2-complainant against the petitioner is not disputed. However, it has been pleaded that as per the provisions of Section 196 Cr.P.C., no prosecution can be initiated against a person for the offence punishable under Chapter VI or under Sections 153-A, 295-A or sub-section 1 of Section 505 of the Indian Penal Code except with the previous sanction of the Central Government or the State Government. In the case in hand, the petitioner is a sitting Member of Parliament and by filing the complaint, no such previous sanction has either been granted by the State Government nor obtained by the complainant for prosecution of the petitioner. The respondent No.2-complainant has not served any notice upon the State Government/ District Magistrate before filing the complaint.

Learned State counsel has argued as per the stand taken in the affidavit of respondent No.1 i.e. District Magistrate, Kurukshetra. He has fairly admitted that while filing a complaint under Sections 153-A and 153-B

IPC, no prior sanction has ever been granted by the State Government nor the same has been obtained by the complainant for prosecution of the petitioner before filing the complaint in hand.

Though respondent No.2-complainant has not filed any reply, but by way of CRM No.22578 of 2017, learned counsel has placed on record the extract of Prakash Singh Committee report.

On the basis of said report, learned counsel for the respondent No.2-complainant has argued that the report of the Committee shows that the petitioner has spread hatred in the society and, therefore, there is nothing illegal in the impugned summoning order dated 01.04.2016 passed by learned Magistrate.

He has further contended that the averments made in the complaint fulfil the very contents of the offence under Sections 153-A and 153-B IPC. The Prakash Singh Committee Report, as appointed by the State Government, is sufficient to establish the role attributed to the petitioner. The Committee has submitted a detailed report and Chapter 4 has been accorded with the heading “Adding Fuel to the Fire” holding different persons responsible for the violence. The Committee has held the petitioner responsible for adding fuel to the fire. Thus, the summoning of the petitioner issued by learned Magistrate is in accordance with law.

I have heard learned counsel for the parties.

In the present case, the petitioner, who is a sitting Member of the Parliament, has called in question legality of the summoning order dated 01.04.2016 passed by learned Magistrate. The provision under Section 196 Cr.PC has been made to protect a person against the institution of possibly

vexatious criminal proceedings for offences alleged to have been committed by him. The provision of Section 196 Cr.P.C. reads as under:

“196. 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 153-A, [Section 295-A 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 108-A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

(1-A) No Court shall take cognizance of-

(a) any offence punishable under Section 153-B 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 or any criminal conspiracy punishable under Section 120-B 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.

(3) The Central Government or the State Government may, before according sanction under Sub-section (1) or Sub-section (1-A) and the District Magistrate may, before according sanction under Sub-section (1-A) 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.”

Similarly, Sections 153-A and 153-B of the Indian Penal Code are reproduced as under:

“153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—

(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, 2[or] 2[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use

or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.—(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.”

“153B. Imputations, assertions prejudicial to national-integration.—

(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or region-

al group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.”

Hon'ble Supreme Court in ***Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998) 5 Supreme Court Cases 749*** has held as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

The policy of legislature is to afford adequate protection to a person so as to ensure that he is not prosecuted for anything done by him. In the case of ***State of Karnataka and another Versus K. Rajashekara and another 2010(1) Karnataka Law Journal 47***, while dealing with more or less similar controversy, it has been held as follows:

“In the instant case however, the offences alleged are under Sections 153-A, 295 and 295-A of the Indian Penal Code – relating to promoting enmity between different groups of people and involving deliberate acts outraging the religious feelings of any class. And as pointed out by the learned Advocate General, Section 196(1) provides that no Court shall take cognizance of any offences under Section 153-A or Section 295-A of the IPC without the previous sanction of the Central Government or the State Government.

11. The object of Section 196(1) of the Code of Criminal Procedure is to prevent unauthorized persons from intruding in matters of State by instituting prosecution and to secure that such prosecutions, for reasons of policy, shall only be instituted under the authority of Government. Further, the offences are of a serious and exceptional nature and deal with matters relating to public peace and tranquillity with which the State Government is concerned. Therefore, provision has been made for obtaining prior sanction of the Government before cognizance is taken of any such offence. It is possible that in a given case the very filing of a prosecution, after tempers have cooled down, may generate fresh heat which could well be avoided by the Government by refusing to accord sanction. There is hence an underlying policy which is evident on a reading of the offences enumerated in Section 196(1) in respect of which prior sanction is a must before cognizance of such offence can be taken. Further, under sub-section (3) of Section 196, it is laid down that before

sanction is accorded, the State Government may order a preliminary investigation by a police officer. This is apparently to decide on the course to be adopted by the State Government in respect of any particular incident and is therefore a crucial step, which cannot be by-passed.

Therefore, in my view having regard to the nature of offences alleged, prior sanction of the State Government was a must before the Magistrate could even direct an investigation by the jurisdictional police. It is this feature which would distinguish the present case as an exception to the general rule.

Hence, the writ petition is allowed. The proceedings before the Court of the VI Additional Chief Metropolitan Magistrate, Bangalore in PCR 18433 of 2007 are hereby quashed.”

Similarly, in the case of ***Aveek Sarkar Versus State of West Bengal 2015(3) RCR (Criminal) 639***, Hon’ble Calcutta High Court has held that the language of Section 196 Cr.P.C. is specific and couched in mandatory terms. Under the provisions of Section 196 Cr.P.C, no Court has been empowered to take cognizance except with the previous sanction of the State Government. The expressions “shall” and “previous” make the intention of the legislature very clear. The previous sanction for prosecution is a ‘condition precedent’ and, therefore, “sanction” is mandatory for launching prosecution for the offence under Sections 153-A and 153-B I.P.C.

In ***Swaraj Thackeray alias Raj Thackeray’s case (supra)***, it has been held by Hon’ble Jharkhand High Court that the cognizance of the offence punishable under Sections 153-A, 153-B, 295-A or sub-section(1), (2) and (3) of Section 505 IPC is barred in the absence of sanction for prosecution. It has also been held that prior sanction under Section 196

Cr.P.C. was must before taking cognizance of offence under Sections 153-A and 153-B IPC. Thus, in the absence of previous sanction and with the use of expression “shall”, no Court has been given authority to take cognizance for offence under Sections 153-A and 153-B IPC.

Moreover, from the bare perusal of Section 196(1)(a)(1-A)(a) Cr.P.C., as reproduced hereinabove, it is absolutely clear that there is complete bar for taking cognizance for offence under Sections 153-A and 153-B I.P.C.

It is clearly established that in the present case, the cognizance of offence under Sections 153-A and 153-B IPC has been taken by learned Magistrate. But there is no dispute that before taking cognizance in the case i.e. complaint filed under Sections 153-A and 153-B IPC, no prior sanction of the State Government/District Magistrate, which is a condition precedent, was taken.

The fact that sanction as provided under Section 196 Cr.P.C. has not been granted by the State Government is also established from the reply filed by way of affidavit of District Magistrate, Kurukshetra. Therefore, this Court finds that in the absence of sanction under Section 196 Cr.P.C., the very complaint and the summoning order are not legally sustainable. The Magistrate has no jurisdiction to take cognizance of the offence enumerated in the complaint against the petitioner in the absence of any sanction as envisaged under Section 196 Cr.P.C.

Consequently, the impugned summoning order dated 01.04.2016 passed by learned Chief Judicial Magistrate, Kurukshetra (Annexure P-2), vide which the petitioner has been summoned to face trial under Sections

153-A and 153-B IPC, cannot be allowed to sustain and is hereby set aside. Similarly, the criminal complaint No.COMI-230/2015 dated 27.05.2015 (Annexure P-1), which has been entertained by learned Magistrate without there being any sanction as provided under Section 196 Cr.P.C., is also quashed with all consequential proceedings arising therefrom.

The petition stands allowed in the above terms.

July 21, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	√ Yes/No
Whether Reportable:	√ Yes/No