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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13.03.2023

+ **CRL.M.C. 2144/2013 & CRL.M.A. Nos. 8337/2013, 33690/2018**

SWARARAJ @ RAJ SHRIKANT THACKERAY Petitioner

Through: Mr Arunabh Chowdhary, Sr. Adv.
with Mr Ashutosh Dubey, Mr Sayaji
Nangre, Mr Abhishek Chauhan, Mr
Vaibhav Tomar, Mr Amit P Shahi and
Mr Karma Dorjee, Advs.

versus

STATE & ORS.

..... Respondents

Through: Ms Rupali Bandhopadhya, ASC for State
with Mr Akshay Kumar and Mr Abhijeet
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. The present petition has been filed by the petitioner seeking the quashing of summoning order dated 11.7.2008 passed by the Ld. Judicial Magistrate-1st class Bokaro, in C.P. No.82 of 2008 (now numbered as C.C.No.76/1/2011. In addition the petitioner also seeks quashing of the Complaint Case No.76/1/2011(C.P.No.82 of 2008) under Sections 153A/153B IPC pending before the Court of the Ld. ACMM-1,(Central), Tis Hazari Courts, Delhi and all consequential proceedings arising therefrom;

2. Though the complaint in the present case was filed in Bokaro, the
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Hon'ble Supreme Court vide order dated 30.09.2011 transferred the proceedings to the appropriate criminal court, Tis Hazari Courts, Delhi.

3. Since the complainant/respondent No.2 neither appeared before the trial Court nor has he appeared in the present proceedings, vide order dated 22.09.2022 the complainant/respondent No.2 was proceeded ex-parte by this court.

4. The facts of the case are that petitioner had made some comments on a religious festival of a particular State. (I have intentionally refrained from naming the festival and the State). It is stated in the complaint that because of the comments made by the petitioner the religious sentiments of the complainant and the people of respective State have been hurt. It is further stated that the alleged speech was shown across news channels. It is alleged stated the speech was provocative in nature and caused hurt to religious feelings. It is also stated in the complaint case that the speech of the petitioner was against the basic structure of the constitution and it has affected the unity and integrity of India.

5. At the outset, learned senior counsel for the petitioner on instructions and for and on behalf of the petitioner has stated that the petitioner has not made any inflammatory provocative speech as alleged in the complaint. It is further stated that the alleged speech seems to have been distorted. Assuming without admitting that the speech was made and if the speech has caused any inadvertent and unintentional hurt to any religious sentiments of any person or community, the petitioner tenders his unconditional apology and expresses regret and sadness for the same. The statement of the counsel for the petitioner made for and on behalf of the petitioner is taken on record.

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6. Without prejudice to the above, Mr. Chowdhary, Id senior counsel has challenged the summoning order for the non-compliance of Section 196 of the Cr.P.C. as there is no previous sanction of the State Government/Central Government as contemplated under Section 196 Cr.P.C.

7. 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 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.”

8. In the present case, since prior sanction was required of the Centre or the State Government for initiating action under Section 153-A/153-B IPC and admittedly no such sanction has been taken, the summoning order according to me is liable to be quashed. Reliance has been placed on the judgment passed by a Coordinate Bench of this Court in *RAGHURAJ SINGH & ORS.v. STATE OF NCT OF DELHI & ANR.*, CRL. M.C. Nos. 4623 and CRL M.C.4859-71 of 2005, decided on 05.02.2008 and more particularly to para 10 which reads as under:

“10. Having considered the materials on record and the submissions of learned counsel for the parties, this Court finds that the complaint and the impugned summoning order call for

interference only with regard to the offence under Section 153A IPC. There can be no manner of doubt that Section 196 (1)(a) CrPC mandates the prior sanction of the Central Government for proceeding to prosecute the accused for that offence. In this case admittedly such sanction was not obtained. Therefore there is no difficulty in quashing the summoning order as regards the offence under Section 153A IPC is concerned.”

9. Similar view has been taken in the case of *Swaraj v. State*, 2015 SCC OnLine Del 11986 decided on 10.09.2015, a Coordinate Bench of this Court. Hence, the summoning order summoning the petitioner under Sections 153-A/153-B IPC cannot be sustained. In view of my findings hereinabove, the impugned summoning order against the petitioner is quashed.

10. As regards the prayer for quashing of the complaint is concerned, the law has been settled by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and

sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

11. Hence, as far as the quashing of the complaint is concerned, I am of the view that the same is not covered under any of the parameters enumerated by Bhajan Lal (supra). The reliance of the Ld. Counsel on the judgment titled *Salman Khurshid vs State of UP and Anr., 2023 SCC OnLine All 52* is misconceived. The petitioner in that case had made certain remarks against an individual whereas in the present case the remarks have been made against a certain community as well as a State. In addition, the

alleged impugned statements of the petitioner are also not before this court. Hence the prayer for quashing of the criminal complaint is rejected.

12. Having observed the above, I am of the view that India is a country which is unique due to various religions, faiths and languages which coexist side by side. Its unity lies in this “coexistence.” Religious feelings and religious sentiments cannot be so fragile as to be hurt or provoked by a speech of an individual. Religion and faith are not as fragile as human beings. They have survived for centuries and will survive for many more. Faith and religion are more resilient and cannot be hurt or provoked by views of / instigation by, an individual.

13. In this view of the matter, the petition is partly allowed with regards to the quashing of the summoning order dated 11.07.2008 passed by learned Judicial Magistrate-1st Class, Bokaro in C.P. No. 82 of 2008 (now numbered as C.C.No.76/1/2011) summoning the petitioner under Sections 153-A/153-B IPC. The prayer for quashing of the criminal complaint is rejected.

14. The petition, along with applications, if any, is disposed of.

JASMEET SINGH, J

MARCH 13, 2023

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[Click here to check corrigendum, if any](#)