

(2023) 04 JH CK 0025

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1971 Of 2013

Father Ignace Topno

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 108A, 153A, 153B, 155(3), 195, 295A, 505, 505(1), 505(2), 505(3), 506
Code Of Criminal Procedure, 1973 — Section 196, 202

Citation : (2023) 04 JH CK 0025

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Sumeet Gadodia, Ankit Kumar, Aditya Kumar, Ravi Prakash, Vishal Kumar Tiwary

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Sumeet Gadodia, learned counsel for the petitioner, Mr. Ravi Prakash, learned counsel for the State and Mr. Vishal Kumar Tiwary, learned counsel for opposite party no.2.

2. This petition has been filed for quashing the entire criminal proceedings being Complaint Case No.1514 of 2009 including the order taking cognizance dated 11.06.2010 passed by the learned Judicial Magistrate, Ranchi, whereby, he has been pleased to take cognizance for the alleged offence under Section 153A, 295A, 505 and 506 of the Indian Penal Code, pending in the court of the learned Judicial Magistrate, Ranchi.

3. The complaint case was filed by the opposite party no.2-Society through its President, namely Shri Ajay Tirkey alleging therein that opposite party no.2 is a Society duly registered under the Societies Act, 1860 and it is an association of members of the Scheduled Tribes who are followers of the Sarna Religion. During

recent past meetings held at Orissa by the followers of the Christian community under the banner of All Churches Committee and in terms of their resolution, Nemha Bible was published and circulated almost in all areas of Jharkhand which includes area in Ranchi. Nemha Bible was published in Kurukh language. It was alleged that the terminology Sarna Mann was used in the context of command of Gods to destroy those who worship under the green tree. It was further alleged that Nemha Bible was published with an intention to insult the religion of followers of Sarna Religion by insulting the religious people. It was also alleged that it was published with an intention to cause harm/outrage to the religious feelings of the Sarna people as it is allegedly published in the Nemha Bible that the religious podium of the Sarna followers be destroyed, Sarna sthals need to be broken into pieces and statue of their Gods be burnt and their place of worship be destroyed. The President of the association met with the accused and asked to tender unconditional apology, instead the accused lowered the image of the President i.e. Shri Ajay Tirkey. It was also alleged that due to the publication of the Nemha Bible under the authorities, the accused persons have voluntarily disturbed the peace and committed an act which is prejudicial to the maintenance of harmony.

4. Mr. Sumeet Gadodia, learned counsel for the petitioner submits that the complainant through its President examined himself on solemn affirmation and deposition of three enquiry witnesses under Section 202 Cr.P.C. was also taken and thereafter the learned court has taken cognizance vide order dated 11.06.2010 for the offence under Section 153A, 295A, 505 and 506 of the Indian Penal Code against the petitioner. He further submits that the petitioner is absolutely innocent and he has no role in the publication of Nemha Bible nor the said Nemha Bible was published under his authority and he has been falsely implicated in the present case. He further elaborates his arguments by way of submitting that the learned court has taken cognizance under Section 153A and 295A as well as Section 505 of the Indian Penal Code without looking into the provisions made under Section 196 of Cr.P.C. He took the Court to the said Section and submits that Section 196 clearly provides that the cognizance can be taken only after sanction is provided except with the previous sanction of the State Government or of the Central Government or of the District Magistrate. He submits that admittedly in the present case, no sanction was obtained before taking cognizance of the offence under Sections 153A and 295A of the Indian Penal Code and the learned court has taken cognizance. He further draws attention of the Court to the judgment delivered by a coordinate Bench of this Court in Cr.M.P. No.683 of 2012, which was decided vide judgment dated 09.04.2013 and submits that so far as the petitioner of that case is concerned, the case has been quashed for the Sections 153A, 295A and 506 of the Indian Penal Code and only Section 505 of the Indian Penal Code, the proceeding was not quashed. He submits that in view of Section 196 of Cr.P.C., the proceeding under Section 505 of the Indian Penal Code will also not proceed in absence of any sanction as there is amendment in the Cr.P.C. in the year 1980 and the

entire Sections have been brought within the purview of Section 196 of Cr.P.C. On these grounds, he submits that the entire criminal proceeding is bad in law. He also submits that even the proceeding cannot proceed under Section 505 of the Indian Penal Code in absence of any sanction.

5. Mr. Ravi Prakash, learned counsel for the State submits that it appears that sanction is not there. He further submits that in view of the order dated 05.08.2019 passed by a coordinate Bench of this Court, a supplementary counter affidavit has been filed in which it has been disclosed that there is no document with regard to sanction. He seeks further one week's time to take instruction.

6. This Court finds that this matter is of the year 2013 and opportunity was already provided earlier to the State by a coordinate Bench of this Court vide order dated 05.08.2019 and pursuant to that supplementary counter affidavit has been filed in which it has been disclosed that there is no sanction order. Thus, this Court finds that opportunity was already provided to the State and pursuant to that supplementary counter affidavit has been filed and it will be futile exercise to further adjourn the matter.

7. Mr. Vishal Kumar Tiwary, learned counsel for opposite party no.2 submits that the case is made out against the petitioner and that is why the learned court has taken cognizance. He further submits that there is no need of taking sanction. The sanction can be taken at any stage of trial. He also submits that the judgment passed by a coordinate Bench is already there and in view of the judgment passed by the coordinate Bench, at least trial should go under Section 505 of the Indian Penal Code.

8. In view of the above submissions of the learned counsel appearing for the parties, the Court has gone through the materials on the record including the complaint petition as well as the order taking cognizance. Admittedly, the learned court has taken cognizance under Section 153A, 295A, 505 and 506 of the Indian Penal Code. Further the allegation made in the complaint that one of the passage has been there in Nemha Bible, a translated version of Holy Bible, which says about the destruction of the religious place including green trees, which according to the complainant, happen to be a religious place of the persons having faith in Sarna religion and it was further alleged that it will bring disharmony among the followers of two sections of religion and thus it has been alleged that the petitioner by his act, has committed offences under Sections 153A and 295A as well as under Section 505 and 506 of the Indian Penal Code. For correct appreciation, Section 196 Cr.P.C. is quoted herein below:

"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 subsection (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 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:

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 subsection (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."

9. Looking into the provisions made in Section 196 of Cr.P.C., it is crystal clear that sanction either by the State Government or by the Central Government is a condition precedent for taking cognizance of the offence under Sections 153A and 295A of Indian Penal Code including Section 505(1) of the Indian Penal Code.

10. By the amendment in the year 1980, the entire Section 505 of the Indian Penal Code has been brought within the purview of Section 196 of Cr.P.C. Thus, it is crystal clear that for proceeding under Section 153A, 295A as well as Section 505 of the Indian Penal Code, sanction is condition precedent for taking cognizance, which is lacking in the case in hand.

11. The Court has perused the supplementary counter affidavit filed by the State pursuant to the order passed by a coordinate Bench of this Court dated 05.08.2019 and finds that it has been stated in paragraph 7 that from perusal of the records, it is found that no document regarding grant of sanction order was available in the prosecution cell of the office of the answering respondent. Thus, this fact is admitted. It is well settled that when the statute provides to proceed in a particular way the things are required to move in terms of that statute,

which is lacking in the case in hand.

12. It appears that the coordinate Bench of this Court has not considered the amendment of 1980 while deciding the said case and that is why Section 505 was allowed to be continued. Section 196 of Cr.P.C. is very clear that entire Section 505 is within the purview of Section 196 of Cr.P.C., which suggests that before taking cognizance, sanction is necessary. The cognizance taken under Section 506 of the Indian Penal Code has already been quashed by the coordinate Bench of this Court in the aforesaid judgment.

13. In view of the above facts, reasons and analysis, the Court comes to the conclusion that it is a fit case to exercise power under Section 482 of Cr.P.C. Accordingly, the entire criminal proceedings being Complaint Case No.1514 of 2009 including the order taking cognizance dated 11.06.2010, pending in the court of the learned Judicial Magistrate, Ranchi, so far as this petitioner is concerned, is quashed.

14. It is made clear that this Court has interfered only so far as this petitioner is concerned and the entire case as well as the order taking cognizance is kept intact, so far as other accused are concerned.

15. Accordingly, this petition is allowed in above terms and disposed of.

16. Pending I.As., if any, are disposed of.