
(2005) 02 KAR CK 0059
In the Karnataka High Court
Case No : Criminal Petition No. 437 of 2005

Pastor P. Raju

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 23-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 196, 436, 482
Penal Code, 1860 (IPC) — Section 108 A, 120 B, 153 B (1), 505 (1), 505 (3)

Citation : (2005) 2 KarLJ 380

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : Rego, for the Appellant; B.A. Belliappa, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Ramanna, J.—The petitioner Mr. Pastor P. Raju, filed this petition u/s 482 of the Cr. P.C. to call for the records and quash the proceedings initiated against him in Crime No. 8 of 2005 pending on the file of the Civil Judge (Junior Division) and Judicial Magistrate First Class, Chennapatna.

2. The brief facts leading to this case are that the second respondent-police arrested the petitioner on 15-1-2005 at 6.30 p.m. on the allegations that the petitioner herein has committed an offence punishable u/s 153-B(1) of the Indian Penal Code, 1860 and produced before the Court below at about 7.30 p.m. After completion of the routine enquiry, in the absence of any bail application filed by the petitioner, the Court below remanded him to the judicial custody till further orders and still he is in judicial custody but subsequently he filed the bail application u/s 436 of the Cr. P.C. came to be rejected by the Court below. Hence, he preferred this petition to quash the entire proceedings.

3. Heard the argument of the learned Counsel for the petitioner and the learned High Court Government Pleader for respondents 1 and 2.

4. The learned Counsel for the petitioner submitted that initiation of criminal proceedings u/s 153-B(1) of the IPC is without prior sanction of Central Government or State Government or the District Magistrate which is illegal and incorrect. It is further submitted that the petitioner is a law abiding citizen and is a permanent resident of Kuvempunagar, Chennapatna. Respondent 2-Police have not placed any materials to show that the petitioner herein was trying to compel the people of Kuvempunagar, Chennapatna to convert themselves from Hinduism to Christianity by giving false promises that by doing so they will get all the facilities and benefits. Further, he has contended that before initiating any criminal proceedings u/s 153-B(1) of the IPC, the police have to obtain necessary prior sanction from the Central Government or State Government or the District Magistrate. Therefore, there is gross breach of constitutional rights guaranteed under the Articles 14 and 21 of the Constitution of India. In support of his contention the learned Counsel for the petitioner has relied on several reported judgments of this Court as well the Apex Court.

5. Per contra, the learned High Court Government Pleader submitted that, the case came to be registered on the basis of the complaint filed by one R.N. Lokesha, son of R.S. Narayanappa, a resident of Rampura, Chennapatna, on the allegations that on 14-1-2005 at around 7.30 p.m. when himself, R.B. Swamy, Sampathkumar, Sridhar and some other persons were performing Sankranthi festival by putting fire by the side of the road, the petitioner, who is a resident of Chennapatna and a member of the Christian Community, went there and asked them to get converted into Christianity from Hinduism so that they could get more benefits and facilities. Exit the people gathered there have opposed the canvassing of conversion made by the petitioner and the complainant filed a complaint in this regard. On the basis of that complaint a case came to be registered in Crime No. 8 of 2005 for the offence punishable u/s 153-B(1) of the IPC. It is further contended by the learned High Court Government Pleader that when there is sufficient material placed on record by the respondent 2, it cannot be said that prior sanction is required to register a case against the petitioner. It is further submitted that sanction could be obtained at the time of filing the charge-sheet and no prior sanction is required. Therefore, he prays for dismissal of the petition.

6. Having heard the arguments of the learned Counsel appearing for the petitioner and the learned H.C.G.P. for the respondent-State, the point that arises for my consideration and decision is whether initiation of criminal proceedings against the petitioner is bad in law and whether prior sanction to prosecute a person who tries to instigate Hindus to convert into Christianity requires any prior sanction to register a case and arrest the accused u/s 153-B(1) of the IPC?

7. It is an undisputed fact that the petitioner is a resident of Kuvempunagar, Chennapatna and is a member of Christian Community and a case in Crime No. 8 of 2005 came to be registered for the aforesaid alleged offence and the police

arrested him and produced before the jurisdictional Magistrate and since then he is in judicial custody. It is also an undisputed fact that his bail application filed u/s 436 of the Cr. P.C. came to be rejected. A plain reading of the complaint discloses that on 14-1-2005 when the Hindus of Rampura Village, Chennapatna, performing Sankranti festival the petitioner herein is said to have approached them and told them to get converted into Christianity to get fulfilled their desires and benefits. But the respondents 1 and 2 have not produced any other connected materials to show that the petitioner tried to distribute any pamphlets in this regard. In order to appreciate the contentions of both parties it is just and proper to cull out Section 196 of the Cr. P.C., which reads thus:

"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 u/s 153-A, Section 295-A or Sub-section (1) of Section 505 of the Indian Penal Code, 1860 (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.

Corresponding Law: Section 196 of Act V of 1898.

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

(a) any offence punishable u/s 153-B or Sub-section (2) or Sub-section (3) of Section 505 of the Indian Penal Code, 1860 (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 u/s 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.

Corresponding Law: Section 196-A of Act V of 1898.

(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.

Corresponding Law: Section 196-B of Act V of 1898".

Of course the offence alleged u/s 153-B(1) of the IPC is non-bailable and punishable with imprisonment for a period of five years or fine or both. It is also an undisputed fact that the allegations made in the complaint that when the complainant and other Hindus celebrating Sankranti festival on a public road the complaint does not disclose that the petitioner herein criticised the customs and principles of Hinduism and it was not a place of worship. The only allegation is that he went there when the Hindus were celebrating their festival and repeatedly told them to convert into Christianity so that they will get the benefits. Except these allegations the respondents 1 and 2 have not produced any other materials to invoke Section 153-B(1) of the IPC.

8. Section 196(1-A) of the Cr. P.C. clearly mandates that any offence punishable u/s 153-B, previous sanction of the Central Government or of the State Government or of the District Magistrate has to be obtained, after obtaining such sanction only the Magistrate can take cognizance of the offence and issue process. In the instant case no such sanction or permission is obtained by the investigating agency before initiation of criminal proceedings against the petitioner which is bad in law. Accordingly the impugned order calls for interference by this Court.

9. Therefore, considering the facts and circumstances and the allegations made in the complaint it could be said that the initiation of criminal proceedings is abuse of process of Court and miscarriage of justice. Hence this petition is liable to be allowed.

10. Accordingly this petition is allowed. Initiation of criminal proceedings against the petitioner herein by the respondents 1 and 2 in Crime No. 8 of 2005 on the file of Judicial Magistrate First Class, Chennapatna, for the offence punishable u/s 153-B(1) of the IPC is hereby quashed.