IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF OCTOBER 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 7314 OF 2023

BETWEEN:

1. MALTHESH RAO D. S/O DEVENDRAPPA,
AGED ABOUT 57 YEARS, OCC. POLITICIAN,
R/AT. NALBANDH ROAD, DAVANAGERE CITY,
DAVANAGERE-577004.

2. SHAMNUR SHVSHANKRAPPA
S/O SHAMNUR KALLAPPA,
AGED ABOUT 91 YEARS,
MLA, (SITTING), R/O NO.2633/1,
BAKKESH HOUSE, 7TH MAIN, 2ND CROSS,
MCC, B BLOCK, DAVANAGERE,
SOUTHERN EXTENSION,
DAVANAGERE-577004.

... PETITIONERS

(BY SMT. POOJA KATTIMANI &
SRI. DINESHKUMAR RAO K., ADVOCATES)

Digitally signed by VISHAL NINGAPPA PATTIHAL
Date: 2023.10.11 11:25:04 +0530

AND:

1. THE STATE OF KARNATAKA,
BY GANDHINAGAR POLICE STATION,
DAVNAGERE-577004,
R/BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING, BENGALURU-560001.

2. B.M. MANE S/O NOT KNOWN,
AGED ABOUT 45 YEARS,
OCC. GOVERNMENT OFFICIAL GAZETT,
ARO, R/AT. ARO 107 SOUTH,
CONSTITUENCY, DAVANGERE CITY,
DAVANGERE-577004.

... RESPONDENTS

(BY SMT. YASHODHA K.P., HCGP)

THIS CRL.P FILED U/S.482 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING TO QUASH THE ENTIRE CRIMINAL PROCEEDINGS AGAINST THE PETITIONER IN C.C.NO.2205/2023 PENDING ON THE FILE OF THE IV ADDITIONAL CIVIL JUDGE AND JMFC COURT, DAVANAGERE (CHARGE SHEETED FOR OFFENCE P/U/S.171-E OF IPC).

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioners are before this Court calling in question the proceedings in CC No.2205/2023 registered for the offence punishable under Section 171-E of the Indian Penal Code.

2. The learned counsel for the petitioners would submit that qua other accused in another complaint on the same set of facts of storing certain material at the time of election, this Court has quashed the proceedings in Criminal Petition No.3907/2023. This Court has held as follows:

> *3. Facts, in brief, germane are as follows:-*
>
> *A complaint comes to be registered on 28-03-2023 alleging that at about 7.45 p.m., the Assistant Revenue Officer of Davangere City Corporation was in receipt of a telephone call which informs the complainant that some persons are distributing cookware items to the houses at Bhagat Singh area, Davangere. The Police gather near the place and go behind the temple to find one Bolero city*

pick up vehicle and a person being stationed there was distributing cookware items in carton boxes to houses in public. He was apprehended and also vehicle comes to be seized. Since carton boxes and the gift set that was in the carton boxes did bear the name 'SS' it is alleged that carton boxes were distributed at the behest of the petitioner in violation of Code of Conduct during the time of election. It is, therefore, the crime comes to be registered against the petitioner and others for offence punishable under Section 171E of the IPC. The registration of crime is what drives the petitioners to this Court in the subject petition.

4. The learned counsel appearing for the petitioners would contend that the crime so alleged under Section 171E of the IPC is a non-cognizable offence and for a non-cognizable offence permission of the learned Magistrate is imperative. It is his contention that communication to the learned Magistrate was on 29-03-2023 before which crime had already been registered on 28-03-2023 which would mean that it was registered without the permission of the learned Magistrate.

5. The learned High Court Government Pleader on verification of records would seek to contend that permission was granted on 28-03-2023 itself before registration of the crime and, therefore, the said ground is unavailable to the petitioners.

6. The learned counsel appearing for the petitioners would then contend that the Code of Conduct during the

election was notified on 30th March 2023 and, therefore, the seizure could not have been done on 28-03-2023. This is apart from the fact that the crime has been registered without the permission of the learned Magistrate. She would seek obliteration of the crime.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. The issue lies in a narrow compass. The offence under Section 171E of the IPC is non-cognizable and permission of the learned Magistrate under Section 155(2) of the Cr.P.C is imperative. The requisition for permission is sent on 29-03-2023 and on the said requisition, the learned Magistrate endorses permission being granted. The endorsement clearly indicates that it is on 29-03-2023, by then the crime itself had been registered on 28-03-2023. Therefore, the registration of crime for a non-cognizable offence is before the permission of the learned Magistrate even. The registration would thus become unsustainable as permission has to precede registration of crime and not the other way round.

9. The other submission with regard to announcement of Code of Conduct and seizure made need not be gone into as the very registration of crime is held to be illegal.

10. For the aforesaid reasons, I pass the following:

O R D E R

(i) Criminal petition is allowed.

(ii) FIR in Crime No.72 of 2023 of KTJ Nagar Police Station and pending before the III Additional Civil Judge and JMFC, Davangere stands quashed.

4. The learned High Court Government Pleader would not dispute the position of law as is considered in the judgment rendered in Criminal Petition No.3907/2023(supra).

5. For the very reasons rendered therein, the subject petition deserves to succeed.

6. For the aforesaid reasons, the following

ORDER

i. The petition is allowed.

ii. The proceedings in CC No.2205/2023 pending on the file of the learned IV Additional Civil Judge and JMFC, Davanagere, stand quashed qua the petitioners.

I.A.1/2023 also stands disposed as a consequence.

Sd/-
JUDGE

Kmv ct:bck