

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9<sup>TH</sup> DAY OF SEPTEMBER 2015

BEFORE

THE HON'BLE MRS.JUSTICE RATHNAKALA

**CRIMINAL PETITION NO.7259/2014**

BETWEEN:

SRI PRATHAP SIMHA  
S/O B.E.GOPALA GOWDA  
AGED 38 YEARS  
RESIDING AT NO.744,  
3<sup>RD</sup> CROSS, 1<sup>ST</sup> PHASE,  
4<sup>TH</sup> STAGE, VIJAYANAGARA,  
MYSORE – 570 001.

...PETITIONER

(BY SRI VINOD KUMAR M., ADV.)

AND:

1. STATE OF KARNATAKA  
REP BY DEVARAJA POLICE STATION  
MYSORE  
REPRESENTED BY  
THE STATE PUBLIC PROSECUTOR,  
HIGH COURT OF KARNATAKA  
VIDHANASOUDHA  
BANALORE – 560 001.
2. SRI CHANDRASHEKHARA MURTHY  
S/O B.D.MALLAYYA  
AGED 45 YEARS  
ASSISTANT ENGINEER PWD,  
NO.2 BUILDING SUB DIVISION,

DEVARAJ MOHALLA,  
MYSORE – 570001

...RESPONDENTS

(BY SRI VIJAYAKUMAR MAJAGE, ADDL.SPP. FOR R1;  
R2 – SERVED AND UNREPRESENTED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.1254/2014 (CRIME NO.63/2014) OF DEVARAJA POLICE STATION, PENDING IN THE FILE OF THE V ADDITIONAL FIRST CLASS MUNSIF, MYSORE FOR THE OFFENCES P/U/S 125 OF THE REPRESENTATION OF PEOPLE ACT 1951.

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

**ORDER**

The petitioner herein has been charge sheeted for committing the offence punishable under Section 125 of the Representation of People Act, 1951 ('the Act' for brevity). During the relevant time, he was contesting for Mysore-Kodagu Constituency from BJP Party. The Election code of conduct was in force from 5.3.2014; in a public election campaign meeting held on 20.3.2014, the petitioner is alleged to have said that "*we need a Prime Minister who would demand for the lives of four Pakistani soldiers in*

*exchange of the lives of two of ours. The present Prime Minister is passive, he did not do so and do we need a Prime Minister of such kind?'*. It is further alleged that the petitioner said those words in emotional and high voice, which would disturb the communal disharmony, thereby violated the code of conduct of the Parliament Election of 2014.

2. Sri.Vinod Kumar.M., learned Counsel appearing for the petitioner submits that, the petitioner is a sitting M.P. The evidence collected by the Investigating Officer, even if taken on its face value, fails to make out an offence punishable under Section 125 of the Act. Public speech given by the petitioner will not in any way bring hatredness or enmity between any class of citizens of our country. As per the prosecution case, the speech could not be recorded due to technical reasons. They were only able to record the video, but the voice could not be recorded.

Relying on a judgment of the Supreme Court in the case of *Manzar Sayeed Khan -vs- State of Maharashtra and Another* reported in (2007) 5 SCC 1, which is in respect of Section 153-A

and 505(2) of the Indian Penal Code, learned Counsel further submits that the above statutory provision is in *pari materia* to Section 125 of the Act. The principle laid down in the judgment *supra* is, that before forming an opinion about commission of the offence, there should be material to assume that at least two groups or communities were involved. The intention to cause disorder or incite people to violence is the *sine qua non* of the offence under Section 153-A of IPC. But the prosecution has not collected any material about the existence of *mens rea* on the part of the petitioner inciting any fraction between the citizens of our country. In that view of the matter, continuation of the criminal proceedings is a pure abuse of process of law and it is in the interest of justice to quash the entire criminal proceedings.

3. The learned Additional State Public Prosecutor submits that, since the matter is at the stage of framing charges, petitioner without invoking Section 249 of Cr.P.C. to seek discharge from the charges has directly approached this Court, which is not permissible. He can very well present his case before the Trial

Court for redressal of his grievance. He has not made out any case to invoke the jurisdiction of this Court under Section 482 of Cr.P.C.

4. From the complaint averments and also the statement of the witnesses, the case of the prosecution is, the petitioner during his speech made a statement, which sounded that if the Pakistani soldiers beheaded our two soldiers, we require a Prime Minister, who would issue order to behead four soldiers of Pakistan, but not the Prime Minister of this kind. Neither in the complaint nor in the statement of any of the witnesses, it is stated what was the actual inciting statement the petitioner had made. Entire evidence of witnesses is opinion evidence. That apart, the entire event was videographed, but the speech/voice is not recorded. Without further analysis as to whether or not the provisions of Section 125 of the Act is attracted, at this stage, it is sufficient to hold that the allegation made in the complaint and also the statement of the witnesses recorded under Section 161 of Cr.P.C. are sketchy, uncertain and indefinite. In that view of the matter itself,

continuing the criminal proceedings on such feeble and sketchy evidence amounts to abuse of process of the court and deserves to be quashed by exercising the jurisdiction under Section 482 of Cr.P.C.

Accordingly, the petition is allowed.

The entire criminal proceedings in C.C.No.1254/2014 (Crime No.63/2014) registered by the respondent/Police pending on the file of V Additional First Class Munsiff Court, Mysore, is hereby quashed.

**Sd/-  
JUDGE**

KNM/-