



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 1ST DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 101193 OF 2023 (482)

BETWEEN:

1. MUZAMMIL S/O NAZER,
AGE. 23 YEARS, R/O. 11TH WARD,
CHITWADGI HOSAPETE,
VIJAYANAGARA, KARNATAKA.
2. MOHAMMAD JAMAUL S/O KHAJA HUSSEN,
AGE. 25 YEARS, R/O. 12TH WARD,
BANAGAR ONI, CHITWADGI, HOSAPETE,
VIJAYANAGARA, KARNATAKA.

... PETITIONERS

(BY SRI. MOHAMMED AZURUDDIN M, ADV.)

AND:

1. STATE OF KARNATAKA,
BY HOSAPETE TOWN P.S., VIJAYNAGARA,
R/BY ITS STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA AT DHARWAD-580011.
2. KUMARA SWAMY H.L. S/O LINGAIAH
AGE.46 YEARS, R/O. GOVT GIRLS HIGH SCHOOL,
NEAR CMC HOSAPETE, VIJAYANAGARA DIST.

... RESPONDENTS

(BY SRI. V S KALASURMATH, HCGP)

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C SEEKING TO QUASH ALL THE CONSEQUENTIAL PROCEEDINGS INITIATED AGAINST THE PETITIONERS/ACCUSED NO.1 TO 2 IN CC NO.1580/2022, CRIME NO.37/2022 REGISTERED BY HOSAPETE TOWN POLICE STATION U/S 3 OF KARNATAKA OPEN PLACES DISFIGUREMENT (PREVENTION) ACT 1981. PENDING ON THE FILE OF PRL CIVIL JUDGE AND JMFC HOSAPETE.





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

ORDER

The petitioners are before this Court calling in question proceedings in C.C. No.1580/2022 registered for the offence punishable under Section 3 of the Karnataka Open Places (Prevention of Disfigurement) Act, 1981 (hereinafter referred to as "Act" for short).

2. Facts in brief, germane, are as follows:

A complaint comes to be registered by the Headmaster of the Government Girls High School, Near CMC Hosapete, Vijayanagara, narrating the fact that at about 05:45 p.m. when all the students had left the school and the school had been closed for the day, the walls were clean, but when he entered the school premises at 09:00 a.m. on the next day i.e., on 16.03.2022 the walls were painted "*Hijab is our dignity*" with black paint. Therefore, he seeks to register a complaint which becomes Crime No.37/2022 for the afore quoted offence. The Police after investigation has filed a charge sheet against the petitioners and therefore the concerned Court has registered C.C. No.1580/2022. The registration of the C.C. is what drives the petitioner to this Court in the subject petition.



3. The learned counsel for the petitioner would submit that the offence under the Act could not have been laid against the petitioner as it is not one of those districts which have been notified to be coming under the Act, as is required in law. He would seek quashment of the proceedings.

4. The learned HCGP though would seek to refute the submissions, but would admit the fact that no notification is issued, as is necessary under the Act, to bring in Hosapete Town under the ambit of the Act.

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

6. The afore narrated facts are not in dispute. They lie in a narrow compass. What is alleged is offence punishable under Section 3 of the Act. Section 3 of the Act reads as follows:

"3. Penalty for unauthorised disfigurement by advertisement.- Whoever by himself or through another person affixes to, or erects, inscribes or exhibits on, any place open to public view any advertisement without the written permission of the



local authority having jurisdiction over such area, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both:

Provided that nothing in this section shall apply to any advertisement which,-

(i) is exhibited within the window of any building if the advertisement relates to the trade, profession or business carried on in that building; or

(ii) relates to the trade, profession or business carried on within the land or building upon or over which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein or to any sale, entertainment or meeting to be held on or upon or in the same; or

(iii) relates to the name of the land or building, upon or over which the advertisement is exhibited, or to name of the owner or occupier of such land or building ; or

(iv) relates to the business of a railway administration and is exhibited within any railway station or upon any wall or other property of a railway administration.



(v) *is affixed to or exhibited on any ancient and historical monument declared to be of national importance under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (Central Act XXIV of 1958)."*

7. For an incident to become an offence under Section 3 of the Act, the rigor of Section 1 of the Act will have to be noticed. Section 1 of the Act directs that to bring a place / local area within the ambit of the Act, a notification from the hands of the State Government is imperative. It is an admitted fact that Hosapete Town is not the one that is notified to be coming within the Act, for the respondents to allege that the petitioners have incurred themselves the wrath of Section 3 of the Act. In the light of the fact that there is no notification issued by the State bringing in Hosapete Town under the Act, further proceedings if permitted to continue would become an abuse of the process of the law and result in miscarriage of justice.

8. For the aforesaid reasons and on the aforesaid ground, the petition deserves to succeed. Accordingly the following:



ORDER

The petition is allowed.

The proceedings initiated against the petitioners / accused Nos.1 and 2 in C.C. No.1580/2022 in Crime No.37/2022 registered by Hosapete Town Police Station under Section 3 of the Act, pending on the file of the Prl. Civil Judge and JMFC, Hosapete is quashed.

Sd/-
JUDGE

Rsh/Ct:Bck
List No.: 1 Sl No.: 20