

IN THE COURT OF 2nd ADDITIONAL SESSIONS JUDGE, RAIPUR (C.G.)**(Presiding Judge : PANKAJ SHARMA)****Sessions Trial No. 204/2018****Date of Institution 30-10-2018****Date of Order 26-11-2018**

State of Chhattisgarh
Through- Police Station Khamtarai
Distt.-Raipur (C.G.)

-----Prosecution**Versus**

Rakesh Yadav S/o Late B. R. Yadav
Aged-43 yrs,r/o Geetanjali City,
Phase-II, Police Station- Sarkanda
District Bilaspur (C.G.)

-----Accused

For State - Ld. A.G.P. Smt. Vishwadini Pandey
For Accused- Ld. Advocate Shri C. S. Agrawal

ORDER**(Passed Today on 26-11-2018)**

1. This order shall govern the disposal of application filed on behalf of accused under Sec. 227 Cr.P.C. This order deals with the question as to whether the accused is liable to be charged in respect of offences under Sec. 124-A IPC & Sec. 3, 4 of The Police (Incitement to Disaffection) Act, 1922 (hereinafter referred to as 'The Act') as charge sheeted.

2. Bereft of inessential prolixity, the genesis of the prosecution lies in the alleged activities of the accused through social media in the form of publication of Facebook posts whereby

and wherein the accused has allegedly been found involved in the activities of sedition as also of enticing the police personnel and their family members to join in the revolt against the Government. Apparently, one policeman by the name of Ramesh chand Yadav has happened to chance upon these Facebook posts (though source and genesis thereof are totally undisclosed and untraceable) and laid an FIR against the accused. After registration of FIR against the accused the supposed investigation has been carried on and the photo copies of the Facebook posts have been seized from the informant policeman. The whole prosecution case rests on these photo copies of the Alleged Facebook posts of the accused. After completing the customary investigation the charge sheet has come to be filed against the accused under sections as aforementioned in para 1.

3. So, the whole prosecution case, as stated above, hinges on the unsavoury and allegedly inflammatory posts of accused which have been labelled seditious and of the nature of rebellious against the establishment. Besides these photocopies of Facebook posts, allegedly attributable to the accused, there is no other piece of material (let alone legally admissible evidence) worth its salt which could be termed incriminatory in respect of commission of alleged offence by the accused.

4. Challenging the whole prosecution case as concocted and tyrannical, the learned counsel for accused has, by way of present application under Sec. 227 Cr.P.C., forcefully argued that the comments attributable to the accused in the form of Facebook

posts do not, in the least, fall in the category of alleged offences as they do not have any tendency of jeopardising public order nor do they have any seditious characteristics. The accused has only been making demands for the betterment of service conditions of the police constabulary and has even moved Hon'ble Chhattisgarh High Court in this regard. In spite of specific directions of Hon'ble High Court no action has been taken as yet by the concerned authorities. It has further been argued that the material as placed in the form of charge sheet, even if taken on its face value, does not at all make out any case for framing of charge against the accused. Hence, accused's discharge has been prayed relying on the judgements in Kedar nath Vs state of Bihar AIR 1962 SC 955; Balwant Singh Vs State of Punjab (1995) 3 SCC 2014.

5. Per contra, learned A.G.P. has tried to justify the slapping of the penal sections on the accused as per the charge sheet and prayed for framing of charge on the basis of charge sheet.

6. The arguments of learned counsel for the accused as well as learned A.G.P. on behalf of Prosecution State have been heard in extenso.

7. The record of the case has been perused minutely. Utmost consideration has been given to the contentions of the respective parties.

8. Before delving into the merits of the rival contentions, it would be necessary to appreciate the legal position as regards sec.

227 Cr.P.C. which provides as follows:-

Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

9. The legal position is fairly settled that at the stage of framing of charge the court is not required to delve deep into the merits of the evidence so as to ascertain whether the accused deserves acquittal or conviction. Rather, the court is only required to ensure as to whether there is prima facie material to call for the conduction of trial in order to ascertain the guilt of the accused. At this stage a very limited appraisal of evidence is required for the purpose of ascertainment of prima facie case in order to frame charge against the accused. Elaborating on the scope of Exercise of jurisdiction under Sections 227 and 228 CrPC, Hon'ble Supreme Court in the matter of **Sajjan Kumar v. CBI, (2010) 9 SCC 368** has laid down as follows:-

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited

purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it

cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

10. In view of above stated legal position it is amply clear that at the stage of framing of charge the court is not supposed to act as a mere post office by plainly approbating the prosecution stance and by framing a charge in consonance with the charges as levelled in the charge sheet. On the contrary, the court is legally ordained to apply its judicial mind to the material placed on record and in order to frame charge, it must be satisfied that the commission of offence by the accused was possible and material as placed by the prosecution, if taken at their face value, disclose the existence of all the ingredients constituting the alleged offence.

11. Having thus adumbrated the legal position, now it is to be seen as to whether the prosecution has been able to bring forth prima facie evidentiary material so as to necessitate and justify the framing of charge and conduction of trial against the accused under the Sections as depicted in the Charge sheet.

12. As stated hereinbefore, in order to push forth its case the prosecution has manifestly relied only on the 13 pages

(photocopies) of alleged Facebook posts of the accused. As mentioned earlier, the source or genesis of these posts has not been made clear at all besides allegedly seizing them from the informant. A very minute and purposive perusal of all these posts, unfortunately, does not at all, bring forth any circumstance which could establish any element of alleged offence of sedition under Sec. 124-A IPC nor does it seem to bring out any semblance of an offence under Sec. 3 & 4 of The Act.

13. This court shall, firstly, deal with the alleged offence under sec. 124-A IPC. The Hon'ble Supreme Court in the celebrated case of **in Kedar Nath Singh v. State of Bihar AIR 1962 SC 955** has considered the constitutionality of the provisions of Sec. 124-A IPC and dealt with various facets of the offence under sec. 124-A IPC. A clear distinction has been made at the one hand, between the efforts in resorting to use of violence or incitement to violence attracting penal liability under the Section and on the other hand, mere disapprobation of the measures of Government with a view to their improvement or alteration by lawful means, which have been deemed to be not falling within the mischief of the Section 124-A IPC. The relevant observations of Hon'ble Supreme Court are reproduced as under:-

"24.....With reference to the constitutionality of Section 124-A or Section 505 of the Indian Penal Code, as to how far they are consistent with the requirements of clause (2) of Article 19 with particular reference to security of the State and public order, the section, it must be noted, penalises any spoken or written words or signs or visible

representations, etc. which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law. Now, the expression "the Government established by law" has to be distinguished from the persons for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence, the continued existence of the Government established by law is an essential condition of the stability of the State. That is why "sedition", as the offence in Section 124-A has been characterised, comes, under Chapter VI relating to offences against the State. Hence, any acts within the meaning of Section 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc. which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term "revolution", have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those

feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.

25. It has not been contended before us that if a speech or a writing excites people to violence or have the tendency to create public disorder, it would not come within the definition of "sedition". What has been contended is that a person who makes a very strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of Government or acts of public officials, might also come within the ambit of the penal section. But in our opinion, such words written or spoken would be outside the scope of the section. In this connection, it is pertinent to observe that the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with a view to punishing offences against the State, is undertaken. Such a legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine qua non of a democratic form of Government that our Constitution has established. This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law

which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.....

26.....The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order."

(emphasis at the relevant places supplied by me)

14. Very recently, Hon'ble Supreme court in the matter of **Common Cause v. Union of India, (2016) 15 SCC 269** has again emphasized about the need of observance by the concerned

authorities of the postulation of law as laid down in *Kedar Nath Singh v. State of Bihar* case (supra) while dealing with a case under Sec. 124-A IPC. Hon'ble Supreme Court has pointedly adverted to this need in the following words:-

“3. Having heard Mr Prashant Bhushan, learned counsel for the petitioners, we are of the considered opinion that the authorities while dealing with the offences under Section 124-A of the Penal Code, 1860 shall be guided by the principles laid down by the Constitution Bench in *Kedar Nath Singh v. State of Bihar* AIR 1962 SC 955.”

15. So, the attraction of Sec. 124-A IPC does, indeed, demand the prima facie establishment of the idea and intention on the part of alleged perpetrator of crime of use of actual violence or incitement to violence for subversion of Government. Any comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. mere slogan shouting against the State or the Government established by law which is not intended to have the “effect of subverting the Government” by violent means; and which is not intended to, nor has the tendency, to create disorder or disturbance of public peace/ law and order by resort to violence; and which does not incite violence cannot be deemed tantamount to the crime of sedition under section 124-A.

16. In the back drop of above referred legal position and requirement, when a glance is had on the alleged Facebook posts attributed to the accused it can by no stretch of imagination be said that through those posts the accused has tried to resort to any violent means in order to subvert Government or tried to incite violence in order to create disorder or disturbance of law and order. Though, the charge sheet is woefully short, rather completely devoid, of any material connecting accused with the alleged Facebook posts e.g. whether those posts were, in fact, posted by the accused, whether the Facebook account was, in fact, operated by the accused and whether the photocopies were, in fact, obtained from such an account complying with the legal requirements pertaining to the digital evidence etc. but even by overlooking all these fundamental and gigantic flaws in the prosecution case, if all these posts are, in fact, taken to be published by the accused, still, on legal scrutiny, the contents therein do not bring out the essential and prerequisite elements of the offences as alleged against the accused.

17. The first post serially numbered as post no. 1 as per the seizure memo is the Facebook account profile of the accused. 2nd post details various demands pertaining to change/improvement in the police system and none of these demands can be categorized as being seditious or rebellious or bordering on absurdity or contempt. 3rd post pertains to the exhortation for Gherao of Chief minister's House on 25-06-2018 and also depicts certain paper cuttings. 4th & 6th posts contain some innocuous comments about

activities on social media. 7th, 8th & 11th to 13th posts are simply newspaper clippings and news channel screenshots pertaining to woeful conditions and demands of police personnel and seeking of permission for holding of DHARNA on 25-06-2018. Though the 5th post mentions about word BAGHAWAT but same appears to have been used rather metaphorically and rhetorically than literally. 9th post mentions about beginning of agitation on ground and it also talks about writing of letter to collector for permission to hold DHARNA with loud speaker. 10th post contains the clippings of the letter written to collector in regard therewith.

18. Hence, through all these posts the accused, apparently, appears to have been demanding various measures regarding betterment of service conditions of lower rung of police machinery. The accused appears to have been exhorting all the concerned people to join in in his endeavours to see through that his demands are met. For the said purpose he also appears to have called for a Gherao on 25-06-2018. It appears that the exhortation on the part of accused about joining in this prospective Gherao has not gone down well with the authorities and the sudden crackdown on the accused in the form of slapping of FIR is a clear culmination of efforts of the authorities to quell the efforts and demands of the accused.

19. It would not be out of place to talk about another FIR lodged against the accused in respect of almost similar set of facts. A copy of previously lodged FIR against the accused has been filed on behalf of accused. A perusal of the FIR dt. 19-06-2018 lodged in

the police station Sarkanda at Bilaspur would show that almost on similar facts an offence under Sec. 3 of The Act along with Sec. 67 of the I. T. Act has been got registered against the accused. Interestingly enough, the subsequent FIR (FIR in the present case) has also come to be registered under Sec. 3 of The Act within a span of 4 days and almost on identical facts, albeit, with the addition of Sec. 124-A IPC.

20. The demands as made by accused are, indubitably, not of personal nature and rather pertain to the betterment and benefit of whole police constabulary which unfortunately, in spite of, apparently being the most important cog in the police machinery, has always been appearing to bear the brunt of neglect and disdain. The accused has valiantly and vociferously agitated for these demands and even gone on to move Hon'ble Chhattisgarh High Court in this regard. It would be worthwhile to mention that Hon'ble Chhattisgarh High Court vide its Order dt. 26-09-2017 in W.P.(PIL) No. 30/2015 (certified copy filed on behalf of accused) has found some substance in the assertions and demands of the accused/petitioner and given specific directions in that regard. However, the direction of Hon'ble Chhattisgarh High Court appear to have had very little impact, if any at all, on the relevant authorities as apparently no concrete action seems to have been taken in pursuance thereof, in spite of the specificity of directions and a time bound response sought thereupon. It would be quite apposite to reproduce the direction given by Hon'ble Chhattisgarh High Court, being as follows:-

“Having regard to the materials on record, including the report of the committee and the views presented by the learned Amicus Curiae through the ‘written submissions’ dated 26-07-2017, what is required now is that the State Government shall address all issues covered by the Committee’s report and recommendations dated 05-06-2017, also taking into consideration the contents of the ‘written submissions’ made by the learned Amicus Curiae on 26-07-2017. This writ petition is, therefore, ordered directing that such exercise shall be carried out at the requisite level of the Government and requisite decisions shall be issued within a period of two months from the date of receipt of a copy of this order.”

21. Apparent non-compliance with the directions of Hon’ble Chhattisgarh High Court by the concerned authorities has again prompted the accused to ask the authorities about the compliance of the directions of Hon’ble High Court (copy of letter to the Chief Secretary, Govt. of Chhattisgarh dt. 26-03-2018, filed on behalf of accused) but it is unclear as to whether any compliance therewith has been made or not. The learned Counsel for accused would argue that no such compliance has been made as yet.

22. This purposive chronology of events is quintessential to truly appreciate the intention and conduct of the accused leading up to the ventilation of his ire in the form of allegedly objectionable

Facebook posts. Legally speaking, the intention on the part of an offender for an alleged offence under Sec. 124-A IPC is of prime and foremost consideration and keeping this aspect in mind a minute and purposive reading of these posts would reveal that they are nothing but simply a manifestation of disappointments and frustrations on the part of accused in not getting his demands, let alone met, but, even getting discussed or considered upon. The exhortation to unite for Gherao on 25-06-2018 appears to be nothing but an effort to mobilize support to get the demands met. Such an exhortation, in the facts and circumstances, can hardly be deemed to tantamount to use of violence or incitement to violence for the purpose of overthrowing the Government or disturb the public peace or order.

23. It is equally important to bear in mind that the prosecution has not come with any version that the accused has tried to act covertly and mobilize support in any secretive manner. Rather contrary to that, the accused has remained quite open and vocal about his impending Gherao on dt. 25-06-2018 and in this regard he has even moved the concerned authorities for permission to organize a Gherao (10th Facebook post dt. 16-06-2018 in the charge sheet). In all his allegedly incriminatory posts the accused has not, in any manner either directly or indirectly, alluded to or implored for the use of any force or violent measure to secure his demands.

24. In such fact situation, the slapping of such a grave charge of sedition appears nothing but an attempt to dissuade and

discourage the accused from standing for his demands or how else can one countenance with the absolutely cursory and superficial manner in which the so called investigation has been carried out in the present case. So much so, that no heed appears to have been paid even to the sine qua non aspect of obtaining sanction for prosecution for an offence under Sec. 124-A IPC.

25. The code of criminal procedure under section 196 specifically prescribes a bar for the court in taking cognizance of offences under chapter 6 of the Indian Penal Code containing Sec. 124-A IPC, except with the previous sanction of the Central Government or of the State Government, as the case may be. It can be seen that in respect of an offence under Sec. 124-A IPC a clear prohibition has been created on the cognizance taking power of the courts by virtue of section 196 Cr.P.C. and cognizance can only be taken after obtaining previous sanction of competent authority for the prosecution.

26. The perusal of the record nowhere indicates as to whether any efforts, at all, have been made by the investigating officer regarding obtaining sanction of the Central Government or of the State Government as prescribed under Sec. 196 Cr.P.C. Unfortunately, the legal requirement of prior sanction in respect of an offence under Sec. 124-A IPC appears to have been overlooked from being weighed at the hands of learned committing magistrate as well. Be that as it may, it can hardly be gainsaid that in absence of prior sanction for prosecution as mandated under Sec. 196 Cr.P.C., even the taking of cognizance of offence under Sec. 124-A

IPC is prohibited, let alone framing of charge under the same. In this scenario, the framing of charge against the accused under Sec. 124-A IPC is not possible as being legally impermissible. So, on this count too, the accused is not liable to be charged under Sec. 124-A IPC.

27. Now turning attention towards the Sec. 3 & 4 of The Act as depicted in the charge sheet, in the considered opinion of this court no case is made out for framing of charge under these Sections as well (apt would be to mention here that Sec. 4 of the Act is not actually an offence and does not entail any penal consequence). The reluctance and disinclination of this court in this regard is twofold.

28. Firstly, the explanation to the Sec. 3 of The Act is self-contained and self-explanatory and in the fact situation of the present case completely trivializes the whole prosecution version. Sec. 3 of The Act runs as follows:-

3. Penalty for causing disaffection, etc.- Whoever, intentionally causes or attempts to cause, or does any act which he knows is likely to cause disaffection towards the Government establishment by law in India amongst the members of a police-force, or induces or attempts to induce or does any act which he knows is likely to induce, any member of police force to withhold his services or to commit a breach of discipline, shall be punished with imprisonment

which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Explanation- Expression of disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, or of disapprobation of the administrative or other action of the Government, do not constitute an offence under this section unless they cause or are made for the purpose of causing or are likely to cause disaffection.

29. As has been found and mentioned hereinbefore, through the alleged Facebook posts the accused has purportedly tried to highlight the pitiable service conditions of the lower rung of the police machinery and demanded the betterment of the same. The posts attributed to accused appear to be nothing more than a mere disapprobation of the Government action, or rather lack of it, which are being sought to be altered by lawful means and thus can easily be seen to be falling within four corners of the explanation as appended to Sec. 3 of The Act.

30. Secondly, on almost similar set of facts a prior FIR has already come to be registered against the accused in police station Sarkanda in District Bilaspur under this very Section i.e. Sec. 3 of the Act (copy of the same filed on behalf of accused). The FIR shows that date of commission of crime is mentioned as 14-06-2018 and information thereof is stated to have been received on 19-06-2018. The perusal of the contents of this prior FIR shows that alleged

posts of accused on social sites have been found to be objectionable. The fact of prospective assembly on 25-06-2018 is also mentioned likely to have disparaging effect on the discipline of police. The cause of mental annoyance on this premise has led the In-charge of police station Sarkanda to become an informant and lodge that FIR. However, no offence under Sec. 124-A IPC is deemed fit to be invoked in the matter (perhaps keeping it reserved for misuse in the subsequent FIR). As would be the case, in the subsequent FIR i.e. FIR in the present case, by inventing the date of commission of crime as 15-06-2018, present case has been registered on 23-06-2018 on almost similar facts. As has been discussed hereinbefore, the present FIR appears to be totally bereft of any substance. Hence, it can safely be observed that the FIR in the present case under Sec. 3 of the Act is nothing but a gross misuse of the power of police authorities in curbing the voice of the accused. Thus, in the considered opinion of this court there is no basis to frame a charge against the accused under Sec. 3 of The Act when on virtually identical facts the accused is already being prosecuted in Bilaspur for an offence under Sec. 3 of The Act.

31. An upshot of above discussion leads to the only irresistible and inescapable conclusion that there is no prima facie material on the basis of which a charge could be laid against the accused and he could be directed to face a trial in respect thereof. Hence, the application filed on behalf of accused under Sec. 227 Cr.P.C. totally deserves to be allowed and consequently allowed. The accused stands discharged from the offences of Sec. 124-A IPC &

Sec. 3 & 4 of The Police (Incitement to Disaffection) Act, 1922.

32. The bail bonds of the accused, in view of section 437 - A Cr.P.C., shall remain effective for a further period of 6 months. The accused is set at liberty.

33. Before parting with the case, it would be nigh impossible to not bring forth the remarkably pathetic and pitiable manner of conduction of investigation in the matter and audacious high handedness of police authorities in the whole affair, right from the institution of the FIR and through the whole investigative process.

34. The investigation in the matter, if it may be called so, is rather blissfully confined to the mere recovery of 13 photocopies of Facebook posts allegedly authored by the accused and that has been the end of it all. There is no inkling about how and from which device these copies have been taken and how they are going to withstand the test of admissibility of evidence. The vagueness and farcicality of the FIR seem to have permeated through the whole so called investigation. In FIR there is an assertion that on 15-06-2018 the accused came to Raipur and met with his acquaintances and asked them to get others joined in his efforts of removal of tyrannical Government. But all the witnesses, whose statements under Sec. 161 Cr.P.C. are recorded and attached with the Charge sheet, are blissfully silent as to who were those persons with whom the accused met and tried to incite or provoke. Clearly, these witnesses do not claim to have either met the accused or having been incited or influenced by him.

35. Hence, there is complete failure on the part of investigation agency to even single out a solitary poor soul who could claim to have been incited, influenced or provoked by the accused. There is no murmur about the so called accomplices of the accused. The charge sheet also does not reflect as to whether any other person has been found to be involved in the alleged offence or the police intend to investigate the role of other persons separately. The inadequacy and incompetence of the investigating officer is so to the fore and palpable that he/she could well be forgiven for not having given thought to the aspect of obtaining prior sanction for prosecution for an offence under Sec. 124-A IPC as there appears to be a real possibility that he/she might not have even been aware of such legal necessity.

36. In view of such humongously and monumentally abject and wretched nature of investigation and whole prosecution effort in the case on hand, it would be extremely necessary and beneficial to harp on the concern shown and corrective measures suggested by the Hon'ble Supreme Court in the matter of **State of Gujarat Vs. Kishanbhai Etc. CRIMINAL APPEAL NO. 1485 OF 2008** .

Coming down heavily on the lackadaisical and wilfully defective investigation and inept prosecution, Hon'ble Supreme Court has stressed on the need of identification of such errant officials and fixing of their responsibility. Requisite mechanisms as well as various guidelines have also been outlined to be put in place to ensure that investigation and prosecution are purposeful and decisive. Unfortunately, in spite of such broad and elaborate

directives of Hon'ble Supreme Court very little seems to have changed on the ground. The courts, as a matter of course, continue to get inundated and are constantly being made to put up with shoddy and absurd pieces of investigation, a prime example of which is the case on hand.

37. Hence it would be in the fitness of things that a copy of this order be sent to the Director General of Police, State of Chhattisgarh to not only take stock of the dire situation as prevalent currently and as highlighted by this court hereinbefore and to ensure strict compliance of directions of Hon'ble Supreme Court in the matter of **Kishanbhai (supra)** as also to ensure that the directions issued by **Hon'ble Chhattisgarh High Court** vide **Order dt. 26-09-2017 in W.P.(PIL) No. 30/2015** are duly complied with, if not complied as yet.

38. A copy of this order be also sent to the Director, Directorate of Prosecution, State of Chhattisgarh to issue necessary directions to all concerned in order to ensure potent and decisive prosecution.

Raipur (C.G.)

Dated: 26-11-2018

(Pankaj Sharma)
2nd Additional Sessions Judge
Raipur (C.G.)