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**(2018) 05 CHH CK 0123**

**Chhattisgarh High Court**

**Case No:** Criminal Miscellaneous Petition (CRMP) No. 951 Of 2018

Akil Memon

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

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**Date of Decision:** May 15, 2018

**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 91, 482

**Hon'ble Judges:** Goutam Bhaduri, J

**Bench:** Single Bench

**Advocate:** Sameer Singh, Anil Pillai

**Final Decision:** Dismissed

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**Judgement**

Goutam Bhaduri, J

1. Heard.

2. The present petition is to quash the proceedings of criminal case No.389/18, which arose out of the crime No.171/17, registered at Police Station,

Chhuriya, District Rajnandgaon and presently the case is pending before the JMFC, Rajnandgaon.

3. The brief facts of the case are that a complaint was made by one Rajinder Pal Singh Bhatia that the petitioner has affixed an obscene photograph

of Prime Minister by editing and was made a screen shot on his WhatsApp showing that the Prime Minister is holding the breast of a woman with a

caption that caught the black money. The said picture was circulated in a WhatsApp whereby the entire image of the Prime Minister was tarnished

and complainant after seeing it, he felt aggrieved and ashamed and it was stated that the said photograph was made deliberately to tarnish the image

of a person who is holding the constitutional post and is the Prime Minister of India. After investigation, the charge-sheet was filed, which is pending adjudication.

4. Learned counsel for the petitioner submits that the complainant do not have any locus to file the complaint. He further submits that the mobile which was alleged to be used has not been seized by the police and without the seizure of the mobile, it cannot be said that petitioner is the author to prepare such photograph by editing in the WhatsApp screen shot, therefore, the entire prosecution is on the presumption, which needs to be quashed.

5. Per contra, learned State counsel vehemently opposed the argument advanced by learned counsel for the petitioner.

6. Along with the petition one obscene photograph and the statements of one Bhojwani Sahu is also enclosed, who has affirmed to have taken out the photograph. Statements of Rajinder Singh Bhatia is perused, wherein he stated that the obscene effect of the photographs, wherein the Prime Minister

Narendra Modi was shown holding the breast of a woman and the caption was written that he has caught the black money, was circulated to different

persons as it was in the WhatsApp identity photographs of the petitioner's mobile. According to the statement, the petitioner Akil Memon placed such

photograph by editing photograph and the mobile number is 9424112349. Similar statements have been given by Hirde Nishad, Kanta Sahu, Manish

Jain etc. The record further shows that when the notice was given to the petitioner under Section 91 Cr.P.C. to produce the mobile bearing

No.9424112349, the petitioner came out with the reply that he has lost the mobile.

7. At this stage, prima facie, nothing comes on record to show that the petitioner was not the owner of the mobile which was containing the

photographs. The statements prima facie would show that initially while in exercise of power under Section 482 Cr.P.C. at the initial stage, the Court

is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the

accused has committed an offence, which if put to trial, could prove his guilt. The stage of this case is not that the final test of guilt to be applied.

Considering the statement, prima facie, I do not find any ground exist to quash the proceeding of the criminal case since the offence is to be tested by

the trial Court during the course of evidence.

8. The petition has no merit. It is accordingly dismissed.