



CNR: KAHC010439042024

NC: 2026:KHC:46533
CRL.P No. 7537 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 7537 OF 2024

BETWEEN:

1. SRI PATIL M R
S/O. RAYANAGOWDA,
AGED ABOUT 48 YEARS,
R/A. YARAGUPPI TALUK,
KUNDAGOL, DHARWAD,
KARNATAKA-581113

...PETITIONER

(BY MS. KRITHIKA C. JAMAKHANDI, ADVOCATE FOR
SRI. SUBBA REDDY K.N.,ADVOCATE)

Digitally
signed by
CHETAN B C

Location:
High Court
of Karnataka

AND:

1. STATE OF KARNATAKA
REPRESENTED BY
KUNDAGOL POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU - 560001
2. SANJEEVKUMAR
S/O. SHANMUKAPPA B.



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AGED ABOUT 52 YEARS,
R/A. BAIRIDEVARAKOPPA,
UPPIN LAYOUT,
HUBLI-580030

...RESPONDENTS

(BY SRI. ANOOP KUMAR, ADDL.SPP FOR R1;

R2 IS SERVED AND UNREPRESENTED)

THIS CRL.P. IS FILED U/S.482 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT TO ALLOW THIS PETITION AND QUASH THE IMPUGNED CHARGE SHEET WHICH CAME TO BE REGISTERED IN C.C.NO.30797/2023 FOR THE OFFENCE P/US/ 79 OF J.J ACT AND SEC.188 OF IPC ON THE FILE OF THE LEARNED 42nd ACJM BENGALURU BY KUNDAGOL POLICE STATION, DHARWAD IN CR.NO.51/2023 VIDE ANNEXURE A TO C.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

Heard the learned counsel, Ms. Kruthika C. Jamakhandi for Sri. K.N. Subbareddy, learned counsel appearing for the petitioner, Sri. Anoop Kumar, learned SPP appearing for respondent No.1 and have perused the material on record.



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2. The petitioner is before this Court, seeking the following prayer:

- "(i) Allow this petition and quash the impugned Charge sheet which came to be registered in C.C.No.30797/2023 for the offences punishable under section 79 of the J.J. Act and section 188 of IPC on the file of the learned 42nd ACJM, Bengaluru by Kundagol Police Station, Dharwad in Crime No.51/2023 vide Annexure A to C.
- (ii) Issue any other order and grant such other and further reliefs as this Hon'ble Court deems fit in the facts and circumstances of the case, in the interest of justice."

3. Learned counsel appearing for the petitioner submits that the issue in the *lis* stands completely answered by what this Court has rendered in CrI.P.No.2756/2024 c/w W.P.No.7458/2024 dated 07.03.2025, wherein it has held as follows:

"8. The afore-narrated facts are a matter of record. The threshold bar in the case at hand, as projected by the learned counsel for the petitioner is, maintainability of the complaint before the concerned Court by a private individual. It is only if this Court would hold that it is maintainable, it would consider merit of the matter. Therefore, I deem it appropriate to consider the contention of threshold bar at the first instance. Section 125A of the Act reads as follows:

"125-A. Penalty for filing false affidavit, etc.—A candidate who himself or through his proposer, with intent to be elected in an election,—



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- (i) fails to furnish information relating to sub-section (1) of Section 33-A; or
- (ii) gives false information which he knows or has reason to believe to be false; or
- (iii) conceals any information,

in his nomination paper delivered under sub-section (1) of Section 33 or in his affidavit which is required to be delivered under sub-section (2) of Section 33-A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both."

Section 125A comes into the statute book by Act 72 of 2002 with effect from 24-08-2002. It punishes a candidate who himself or through his proposer furnishes false information and gives such information which he knows or reasons to believe is false and conceals any information. The allegation against these petitioners is furnishing of false information while filing the affidavits as candidates in the 2023 elections to the Karnataka Legislative Assembly. The facts and allegations may be manifold. Who can register the complaint is what is necessary to be noticed.

9. The offence gets triggered in a nomination filed before the Returning Officer for the purpose of contesting the elections. Section 125 of the Act, as it stood then, had a clause of making false declaration. Section 125A comes in 2002 as observed hereinabove. Therefore, certain literature about it in the book 'How India Votes' would become germane to be noticed. It reads as follows:

"31. **Making false declaration.** – If any person makes in connection with:

- (a) The preparation, revision or correction of an electoral roll, or
- (b) The inclusion or exclusion of any entry in or from an electoral roll,

A statement or declaration in writing which is false and which he either knows or believes to be false or does



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not believe to be true, he shall be punishable with imprisonment for a term which may extend to one year or with fine, or with both.

Comments. – The offence under S.31 is non-cognisable. For detailed discussion on the provisions of this section, see 'False Declarations in Connection with Electoral Rolls' in ch.7.

32. Breach of official duty in connection with preparation, etc, of electoral rolls, - (1) If any electoral registration officer, assistant electoral registration officer or other person required by or under this Act to perform any official duty in connection with the preparation, revision or correction of electoral roll or the inclusion or exclusion of any entry in or from the roll, is without reasonable cause, guilty of any act or omission in breach of such official duty, he shall be punishable with imprisonment for a term which shall not be less than three months but may extend to two years and with fine.

(2) No suit or other legal proceeding shall lie against any such officer or other person for damages in respect of any such act or omission as aforesaid.

(3) No court shall take cognisance of any offence punishable under sub-section (1) unless there is a complaint made by order of, or under authority from, the Election Commission or the Chief Electoral Officer of the State concerned.

... ..

125A. Penalty for filing false affidavit, etc.-

A candidate who himself or through his proposer, with intent to be elected in an election –

- (i) fails to furnish information relating to sub-section (1) of Section 33A; or
- (ii) gives false information which he knows or has reason to believe to be false; or
- (iii) conceals any information.

In his nomination paper delivered under sub-section (1) of Section 33 or in his affidavit which is required to be delivered under sub-section (2) of Section 33A, as the



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case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Comments. – The Election Commission has clarified to the returning officer that the nomination paper of a candidate shall not be rejected solely on the ground that the candidate has given any wrong information or suppressed any material information in his affidavit. If any such defect or discrepancy is brought to the notice of the returning officer, he shall file a complaint before the competent magistrate under S.195 CrPC for violation of the present S.125A and S.177 IPC.”

It is elucidated in the comment section that the Election Commission has clarified to the Returning Officer that the nomination paper shall not be rejected solely on the ground that the candidate has given any wrong information or suppressed any material information in his affidavit. If any such defect or discrepancy is brought to the notice of the Returning Officer, he shall file a complaint under the provisions of law for the offence punishable under Section 125A or Section 177 of the IPC. The learned senior counsel for the respondents has relied on several judgments to contend that this Court has considered and held that Section 125A of the Act can be complained of by any private individual.

10. A coordinate Bench of this Court in the case of **RAGHUNATH VISHWANATH DESHPANDE v. STATE OF KARNATAKA**¹, has held as follows:

“Petitioner has filed this petition under Articles 226 and 227 of the Constitution of India r/w Section 482 of Cr.P.C., seeking following reliefs:—

- a. *Issue writ in the nature of Certiorari or any other appropriate writ, order or direction quashing the complaint dated 20.01.2014 in bearing PCR No. A/2014 on the file of the Hon'ble Principal Judicial Magistrate Fast Track Court, Haliyal filed by Respondent No. 2 under Section 200 of the Code of Criminal Procedure for offences punishable under Sections 171(g),*

¹ 2015 SCC OnLine Kar 9709



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177, 181, 182, 199, 420, 465, 467 and 468 of the Penal Code, 1860 (Annexure - A).

- b. Issue writ in the nature of Certiorari or any other appropriate writ, order or direction quashing of order dated 20.01.2014 passed by the Hon'ble Principal JMFC, Haliyal in PCR No. 4/2014, inter-alia directing investigation under Section 156(3) of Criminal Procedure Code, 1973 and referring the complaint for investigation and report to CPI, Haliyal (Annexure - B).*
- c. Issue writ in the nature of Certiorari or any other appropriate writ, order or direction quashing order dated 18.08.2014 passed by the Hon'ble Principle Civil Judge JMFC, Haliyal in PCR No. 4/2014 directing the 1st Respondent to investigate the matter and submit the report by 19.09.2014 (Annexure - C).*

2. The respondent No. 2-Jayanth MukundhTenaiker claiming to be the social worker, filed a complaint under Section 200 of Cr.P.C. against the petitioner in PCR No. 4/2014 on the file of Principal JMFC Haliyal on 20.01.2014 for the offences punishable under Sections 171(g), 177, 181, 182, 189, 420, 467 and 468 of IPC. The sum and substance of the allegations made in the complaint are that the petitioner made false declaration in the affidavit filed in Form No. 26 as provided under Section 33(A) of the Representation of People Act, 1951, while submitting his nomination papers to the Returning Officer, while contesting election for the Karnataka Legislative Assembly from Haliyal Assembly Constituency in Uttara Kannada District, for the elections held in the year 2004, 2008 and 2013.

3. The learned Magistrate received the complaint on 20.01.2014 presented by the complainant and passed the following order:

"Complainant present. Refer the matter to CPI, Haliyal under Section 156(3) of Criminal Procedure Code for investigation and report.

Call on 28.02.2014."



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... ..

6. The learned counsel appearing for the petitioner has vehemently submitted before me that respondent No. 2 who is claiming to be the social worker has no locus standi to file the complaint for the offences punishable under Sections 171(g), 181, 182 and 199 of IPC having regard to the nature of allegations made in the complaint. It is for the Returning Officer to file the complaint, if he satisfied that a false affidavit in Form No. 26 is filed while submitting the nomination papers. The learned counsel submitted that there is no material in the complaint to speak about the ingredients of offences under Sections 420, 465, 467 and 468 of IPC in as much as the complaint for the offences under Sections 420, 465, 467, and 468 is not maintainable for want of sanction under Section 197 of Cr.P.C. It is further submitted that the learned Magistrate Without applying the mind to the allegations made in the complaint mechanically referred the complaint under Section 156(3) of Cr.P.C. like a post office. Further, it is submitted that the complaint is not accompanied by an affidavit of the complaint which is mandatory so also the complaint is not accompanied by a sanction order under Section 197 of Cr.P.C. which is a pre-condition. Under such circumstances, the continuation of the proceedings in furtherance of the said complaint would amount to abuse of process of law and hence the learned counsel sought to quash the entire proceedings. The learned counsel placed reliance on the following decisions to buttresses his arguments:—

1. (2006) 4 SCC 584 in the matter of *Sankaran Moitra v. Sadhna Das*;
2. (2008) 5 SCC 668 in the matter of *Maksud Saiyed v. State of Gujarat*;
3. 1999 Cri LJ 3909 (1) in the matter of *GuruduthPrabhu v. Krishna Bhat*;
4. (2013) 10 SCC 705 in the matter of *Anil Kumar v. M.K. Aiyappa*.
5. (2015) 6 SCC 287 in the matter of *Priyanka Srivastava v. State of Uttar Pradesh*.



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7. On the other hand, respondent No. 2 in person has argued that in view of the notification issued by the Election Commission of India, not only the Returning Officer but even an individual person can also file a complaint, if a false information is furnished on oath by a candidate in Form No. 26 while submitting nomination papers. In support of his submission, respondent No. 2 has placed on record a letter of Election Commission bearing No. 3/ER/2004-JS-II dated 02.06.2004 addressed to the Chief Electoral Officers of all the States and Union Territories. So far as other the offences under Sections 420, 465, 467, 468 of IPC are concerned, respondent No. 2 submitted that prior sanction as required under Section 197 of Cr.P.C. is not necessary at the time of filing of the complaint. He placed reliance on decision of the Supreme Court reported in 2014 STPL (Web) 454 SC in a case of *Chandan Kumar Basu v. State of Bihar* to substantiate his submission and sought for dismissal of the writ petition as bereft of merits.

8. The sum and substance of the allegations made in the complaint is that he gave a false declaration as to his movable and immovable properties and assets to the Returning Officer in all the elections contested by him for the years 2004, 2008, 2013 and thereby he committed an offence punishable under Section 171(g), 177, 181, 182, 189, 420, 467 and 468 of IPC. The question is whether the complainant being a private person has locus standi to present a complaint. To answer the question it is necessary to go through Section 195 of Cr.P.C, which reads as under:

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence-(1) No Court shall take cognizance

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- (a) i) *of any offence punishable under sections 172 to 188 (both inclusive) of the Penal Code, 1860 (45 of 1860), or*
 - ii) *of any abetment of attempt to commit, such offence, or*



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- iii) *of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;*
- (b)
 - i) *of any offence punishable under any of the following sections of the Penal Code, 1860 (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or*
 - ii) *of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceedings in any Court, or*
 - iii) *of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), (except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf or of some other Court to which that Court is subordinate).*

9. Thus from reading Section 195 of Cr.P.C. it is abundantly clear that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of Penal Code, 1860 except on the complaint in writing to that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate. Needless to say that the provisions of Section 195 of the Code are mandatory and non compliance of it would vitiate the prosecution and all other consequential orders. In the case on hand, the complaint is not filed by the Court or Officer of the Court or by a public servant i.e., the Returning Officer. Therefore, as rightly submitted



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by the learned counsel for the petitioner that the complainant has no locus-standi to file the complaint against the petitioner for the offences punishable under Sections 172, 181, 182, 199 of IPC. The complaint if at all ought to have been filed by a Returning Officer, if he was satisfied that a false information has been furnished by the petitioner and initiate action to prosecute the petitioner by filing the complaint. The Letter No. 4/2014/SDR-I dated 26.04.2014 written by the Election Commission of India to the Chief Electoral Officers of all States and Union Territories has been produced by respondent No. 2 to show that a private individual has been permitted to file a complaint in the event a false information is furnished by a candidate as to his assets at the time of submitting nomination papers while contesting election. Paras 3 and 4 of the letter reads as under:

"3. Now that the affidavit is in Form 26 under section 33A. of the R.P. Act, 1951, making false declaration/concealing of information in the affidavit would be covered under Section 125A of the Act. Under Section 125A, there is no stipulation that complaints under that section have to be made by the public servant concerned (in this case the RTO). Therefore, it would be open to any aggrieved person to move petition before the appropriate Court of competent jurisdiction with the petition for action under Section 125A. in the case of any false declaration or concealing of information in the affidavit in Form 26.

4. Therefore, it will be no longer necessary under the Cr.P.C. for the Returning Officer to move the competent court in relation to any complaint about a false affidavit. The complainant himself can be the complainant before the court as well."

10. By reading contents of paras 3 and 4 of the said letter, it is evident that if an offence is committed under Section 125A of the Representation of People's Act, 1951, it would be open to any aggrieved person to move petition before the appropriate Court of competent jurisdiction for action in case of any false declaration or concealing of information in the affidavit in Form No. 26. In that case, it will be no longer necessary to proceed under Cr.P.C. for the



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Returning Officer to move the competent Court in a relation to any complaint about false affidavit. The complainant himself can be the complainant before the Court as well. Under Section 125A, there is no stipulation that complaint under that Section have to be made by the public servant concerned i.e., by the Returning Officer in this case. But in the case on hand, the complainant has invoked the penal provisions of Penal Code, 1860. In that case, Section 195 of Cr.P.C. will come into play and as such the complainant has no locus standi to file the complaint so as to prosecute the petitioner. Therefore, the complaint and the further proceedings arising out of the complaint are liable to be quashed.

11. The other ground on which the petitioner seeks to quash the complaint is that the complaint is not supported by an affidavit of the complainant. In this regard, the decision of the Supreme Court relied upon by the petitioner reported in (2015) 6 SCC 287 in the matter of *Priyanka Srivastava v. State of Uttar Pradesh* is aptly applicable. In head note A the Supreme Court held as under:

"A. Criminal Procedure Code, 1973 - S. 156(3) and Ss.340 to 344 - Application under S. 156(3) CrPC seeking direction for registration of FIR. - Held, must be supported by an affidavit - Purpose of filing of such affidavit, stated is to prevent abuse of process, which is becoming more common nowadays."

12. In view of the above decision of the Supreme Court, the complaint filed by the complainant ought to have been returned by the Magistrate.

13. Yet another ground on which the petitioner seeks to quash the complaint is that the learned Magistrate without application of the mind about the disclosure of offences as alleged in the complaint referred the complaint under Section 156(3) of Cr.P.C. to CPI, Haliyal. It is suffice to say that the order of the Magistrate directing investigation under Section 156(3) of Cr.P.C. without application of mind to allegations made in the complaint is without jurisdiction. In (2008) 5 SCC 668 in the matter of *Maksud Saiyed v. State of Gujarat*, the Supreme Court observed as under:



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'Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of Cr.P.C. the Magistrate is required to apply his mind. Summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima-facie committed by any of the accused'

14. The Division Bench of this Court in a decision reported in 1999 Cri LJ 3909 (1) in the matter of *GuruduthPrubhu v. Krishna Bhat*; held as under:

"if every complaint filed under Section 200, Cr.P.C, is referred to the police under Section 156(3) without application of mind about the disclosure of an offence, there is every likelihood of unscrupulous complainants in order to harass the alleged accused named by them in their complaints making bald allegations just to see that the alleged accused are harassed by the police who have no other go except to investigate as ordered by the Magistrate. Therefore, it is mandatory for the Magistrate to apply his mind to the allegations made in the complaint and in only cases which disclose an offence, the Magistrate gets jurisdiction to order an investigation by the police if he does not take cognizance of the offence. When the allegations made in the complaint does not disclose cognizable offence, the Magistrate has no jurisdiction to order police investigation under sub-section (3). In the present case, the Magistrate without applying his mind had directed an investigation by the police. Such an order which is passed without application of mind is clearly an order without jurisdiction. Therefore, the order passed directing the police to investigate under sub-section (3) of Section 156, Cr.P.C., passed without jurisdiction is liable to be quashed by High Court either under Section 482, Cr.P.C, or under Article 26 of the Constitution of India."

15. Needless to say that no such exercise has been made by the Magistrate and as such the complaint is liable to be quashed for non-application of mind by the Magistrate to refer the complaint under Section 156(3) of Cr.P.C.



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16. The other ground on which the petitioner has sought to quash the complaint is that the petitioner is a Cabinet Minister, the Government of Karnataka and therefore, he is a public servant. The complainant has alleged that he committed offences under Sections 420, 465, 467 and 468 of IPC. In that case, the complaint should have accompanied by an order of sanction as required under Section 197 of Cr.P.C. In support of the same the petitioner has relied upon the decision of the Supreme Court reported in (2006) 4 SCC 584 in the matter of *Sankaran Moitra v. Sadhna Das*, wherein in head Note A the supreme Court has stated as under:

"A. Criminal Procedure Code, 1973 - S. 197 - Requirement under, of obtaining sanction to prosecute a public servant-Necessity of-Stage for raising question as to applicability of S. 197 - Held (per majority), prosecution hit by provision under S. 197 cannot be launched without the contemplated sanction - It is a condition precedent though the question as to applicability of S. 197 may arise not necessarily at the inception but even at a subsequent stage - Request to postpone the decision on the said question in the instant case, held, not acceptable - Complaint that deceased, a supporter of a political party, was beaten to death by police personnel at the instance of appellant police officer near a polling booth on election day - appellant was on duty to prevent any breach of law and maintain order on that day - He had reached the spot on receiving information regarding some disturbances at the polling booth - Held, appellant committed the act in question during the course of performance of his duty - Sanction under S. 197(1) was necessary for his prosecution - High Court's judgment taking contrary view set aside - High Court's reasoning that killing of a person by use of excessive force could never be performance of duty, not proper - Its further reasoning that if High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, is also not acceptable - Per C.K. Thakker, j. (dissenting), on applicability of S.197 it is the duty of the Court to apply its mind to the fact situation before it - In the present case the appellant acted illegally, unlawfully and high-handedly and his act could not be said to be an act in discharge of official duty - Therefore, S. 197 not attracted."

17. In (2013) 10 SCC 705 in the case of *Anil Kumar v. M.K. Aiyappa*, in head note A the Supreme Court held as under:



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"A. Public Accountability, Vigilance and Prevention of Corruption - Prevention of Corruption Act, 1988 - Ss. 19(1) and (3) - Sanction under S 19(1) -Held, is a precondition for ordering investigation against public servant under S. 156(3) CrPC even at pre-cognizance stage - Non-effect of absence of sanction in some circumstances under S. 19(3) - Held, does not mean that requirement of sanction is not mandatory - Private complaint against public servant under S.200 CrPC - Reference of complaint by Magistrate under S. 156(3) CrPC - for investigation by police - No sanction order under S.19(1). PC Act. 1988 - Reference, not valid - Investigation under S 156(3) CrPC cannot be ordered without previous sanction under S. 19(1), PC Act, 1988 - Criminal Procedure Code, 1973, Ss. 197, 200, 202, 156(3) and 482."

18. Thus, from the above decisions of the Supreme Court, it is clear that a sanction under Section 197 of Cr.P.C. is a condition precedent to file a complaint for the aforesaid offences. In the decision relied upon by respondent No. 2 reported in 2014 STPL (Web) 454 SC in a case of *Chandan Kumar Basu v. State of Bihar*, it has been held that the question relating to the need of sanction of under Section 197 of Cr.P.C. is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage."

(Emphasis

supplied)

The issue before the coordinate Bench was that of offence punishable under Section 177 of the IPC *inter alia* the offences of forgery and the crux of the complaint was that the petitioner therein Sri R. V. Deshpande had made a false declaration in the affidavit while contesting the election for the Legislative Assembly from Haliyal Assembly Constituency for the elections held in the years 2004, 2008 and 2013. The coordinate Bench has held that any member of the public can file a private complaint.



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11. Another coordinate Bench in the case of **SRI H.K. MUTHAPPA v. THE STATE ELECTION COMMISSION²**, has held as follows:

"Petitioner and the third respondent were candidates for Councilor in Bruhat Bengaluru Manahaga Palike (for short hereinafter referred to as 'BBMP') and have contested from Ward No.176. The third respondent got elected. Petitioner noticed that the third respondent has suppressed the fact while submitting his nomination paper regarding the pendency of criminal case against him by Tamil Nadu Police in Crime No.505 of 2013 dated 8th September 2013 for offence punishable under Sections 120(b), 341, 357, 365, 294(b) and 506(ii) of the Indian Penal Code. Since he noticed the present incident after the statutory period to file election petition, he filed this petition seeking for a direction to respondents No.1 and 2 to initiate criminal proceedings against the third respondent for having suppressed the fact.

2. The learned counsel appearing for the respondents No.1 and 2 submits that if at all the petitioner is aggrieved, he is at liberty to file criminal petition under Section 125A of the Representation of Peoples Act, 1951 and an opportunity would be given to the third respondent to contest the matter. By referring letter bearing No.4/2014/SDR.y02.I dated 26th April 2014 addressed by the Principal Secretary, Election Commission of India to the Chief Electoral Officers of all the States and Union Territories, the learned counsel submits that in view of the said communication, it is reiterated that the aggrieved party has to file petition under Section 125A of the Representation of Peoples Act. Except the provision referred above, there are no other provisions to initiate criminal case by the first and second respondents. He further submits that the Returning Officer had no power to reject the nomination paper and has to accept and under the circumstance, the respondents No.1 and 2 have not committed any irregularity.

² W.P.No.3336 of 2016 decided on 13th April 2016



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3. The learned counsel appearing for the third respondent placing reliance on the judgment of this Court in the case of P.RAGHU v. STATE OF KARNATAKA reported in 2009 SCC KAR.135; and in the case of KISAN SHANKAR KATHORE V. ARUN DATTATRAY SAWANT AND OTHERS reported in AIR 2014 SC 2069 submits that the aggrieved party can institute case under Section 125A of the Representation of Peoples Act but the election cannot be questioned in Criminal case. The election petition for adjudication before the District Court having jurisdiction, has to be filed within thirty days from the date of publication of result. In the instant case, that statutory period is already over and since the petitioner has not instituted election petition, the election of the third respondent cannot be questioned by the petitioner before this Court.

4. Heard the learned counsel for the parties. As per the communication dated 26th April 2014 from the Election Commission of India, it is the aggrieved person to move petition under Section 125A of the Representation of Peoples Act before the appropriate Court having competent jurisdiction or to institute Election dispute as provided under Section 35 of the Karnataka Municipalities Act, before the Election Tribunal. These are the two provisions available to the aggrieved party. Now-a-days this Court is coming across criminal cases where the persons who have committed serious offences are in the contest for elections. It is a dangerous sign. But, it may not be possible for this Court to interfere unless petition is filed under relevant provision of law. Whoever files nomination for contesting in elections has to disclose all relevant and material facts. If any suppression or hiding any material is found, it is for the Election Commission to consider the same and if it is noticed by the aggrieved party that materials have been suppressed, it is for him to bring before the election commission while filing nomination. But in cases of this nature where suppression of material facts is unearthed after completion of thirty days and the aggrieved party cannot file election petition, for that point there is no relevant provision available under Representation of Peoples Act or the Municipal Corporations Act.



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In that view of the matter, petition stands disposed of. In the facts and circumstances of the matter, Central Crime Branch, Bangalore is directed to register FIR against the third respondent and file Charge sheet after thorough investigation. The charge sheet shall be filed within ninety days from the date of receipt of this order.

Registry is directed to mark a copy of this Order to the Central Crime Branch, Bangalore for further compliance.”

(Emphasis
supplied)

The coordinate Bench holds that it is not necessary that the Election Commission alone should file a complaint, though it was a matter concerning municipal elections. This was carried in Writ Appeal before the Division Bench in Writ Appeal No.1165 of 2016. The Division Bench by its judgment dated 27-10-2016 though sets the order aside, it was for the reason that the Court had directed filing of the charge sheet. The principle laid down was not altered. Therefore, the issue now would be who would be competent to register the complaint.

12. The offence is admittedly non-cognizable. The concept of any person setting the criminal law into motion of a cognizable offence would not become applicable to offences under Section 125A of the Act or even Sections 176 and 177 of the IPC. For the alleged offences, the bar under Section 195(1) of the Cr.P.C. springs into operation. Section 195 of the Cr.P.C. reads as follows:

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—(1) No Court shall take cognizance—

(a) (i) of any offence punishable under



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Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

- (ii) of any abetment of, or attempt to commit, such offence, or
- (iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

- (b)
 - (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
 - (ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
 - (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf], or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:



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Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act, if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—

- (a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;
- (b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

Section 195(1) mandates that no Court shall take cognizance of the offence except upon a complaint by the public servant. This is a legal bar in terms of law. Section 125A of the Act also should pass muster the rigours of Section 195(1) of the Cr.P.C. Therefore, the offence has to be complained of only by the Election Commission particularly, of the offence under Section 125A of the Act. The judgment of the coordinate Bench quoted *supra* was considering the offence under Sections 176 and 177 *inter alia* with several offences of the IPC. Therefore, they were cognizable offences as it was forgery and cheating included in Sections 176 and 177 of the IPC. In the case at hand, it is the complaint under Section 125A of the Act. Therefore, the said judgment of the coordinate Bench in the case of Sri R.V. Deshpande is not applicable to the case at hand.



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13. In the circumstances, I deem it appropriate to hold that it was only the Election Commission which has a right to register the complaint *qua* the offence under Section 125A of the Act. A right given to the voter is only to file an election petition, and not to register a private complaint of crime, of the kind considered *supra*, which is the duty of the Election Commission, if it wants to do so.

14. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition No.7458 of 2024 & Criminal Petition No.2756 of 2024 are allowed.
- (ii) Proceedings in C.C. No.29813 of 2023 and C.C.No. 7393 of 2024 pending before the XLII Additional Chief Metropolitan Magistrate (Special Court for trial of cases against sitting as well as former MPs/MLAs, triable by Magistrate in the State of Karnataka), Bengaluru stand quashed.
- (iii) It is open to the complainants to avail of any other available remedy in law, if so advised.

4. In the light of the order passed by this Court (*supra*) and for the reasons aforementioned, the following:

ORDER

- (i) Criminal Petition is allowed.



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- (ii) Proceedings in C.C.No.30797/2023 pending before the 42nd ACJM, Bengaluru, stand quashed, *qua* the petitioner.
- (iii) It is open to the complainant to avail of any other available remedy in law, if so advised.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

SJK
List No.: 1 Sl No.: 17