

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12778 OF 2016**

Shri Vijay Shankar Vanne

..Petitioner.

Vs

The State of Maharashtra and
Ors.

.. Respondents

Mr.Vaibhav V Ugle, Advocate for Petitioner.
Mr. Sachin Kankal, A.G.P for Respondent no.1.
Mr. S.D.Shetye, Advocate for Respondent no.4.

**CORAM : R.G.KETKAR,J.
DATE : 16/11/2016**

PC:

1. Not on Board. At the request of Mr. Ugle, taken up for admission. Heard Mr. Vaibhav Ugle, learned counsel for the petitioner, Mr. Sachin Kankal, learned A.G.P for respondent no.1 and Mr. S.D.Shetye, learned counsel for respondent no.4 at length. Leave to amend so as to implead State Election Commission is granted.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged order dated 2.11.2016 passed by the Returning Officer as also the Judgment and order dated 9.11.2016 passed by the learned District Judge-4, Satara in Election Appeal No. 3 of 2016. By order dated 2.11.2016, the Returning Officer rejected the nomination form of the petitioner on the ground that the petitioner is convicted by the learned Judicial Magistrate First Class, Mahabaleshwar under section

498(A) Indian Penal Code and is sentenced to suffer rigorous imprisonment for three years and fine of Rs. 5000/-. Failure to pay fine will result in 15 days rigorous imprisonment. Though the petitioner has preferred Appeal, the learned Sessions Judge has suspended the sentence and not the conviction. Aggrieved by this decision, the petitioner preferred Appeal which was dismissed by the learned District Judge.

3. In support of this petition, Mr. Ugle relied upon the decision of this Court in the case of Bharamu Subrao Patil Vs Narsingrao Gurunath Patil, AIR 2001 Bombay 104. He submitted that the suspension of sentence amounts to suspension of conviction as well. He, therefore submitted that the authorities below were not justified in rejecting the nomination form.

4. It is not possible to accept this submission. Perusal of the order passed by the learned Sessions Judge shows that pending hearing of the Appeal, the learned Sessions Judge suspended the sentence on furnishing P.R. and S.B. Bond of Rs.50,000/-. In other words, the learned Sessions Judge has not suspended/stayed the order of conviction. Precisely, on that ground the Returning Officer has rejected the nomination form. While rejecting the nomination form, the Returning Officer also referred to the decision of the Apex Court in Lily Thomas Vs Union of India, AIR 2013 SC 2662 and of Lokpahari through it's General Secretary S N Shukla Vs Union of India, Writ Petition (Civil) No.231 of 2005 .

While dismissing the Appeal, the learned District Judge has considered the decisions in Lily Thomas case (supra), as also Ravikant S. Patil Vs. S.S.Bangali, (2007) 1 SCC 673. In that case the Apex Court clarified that order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of the case. Where the execution of sentence is stayed, the conviction continues to operate. The learned District Judge also considered the decision in Nharamu Subrao Patil Vs. Narsingrao Gurunath Patil, AIR 2001 Bombay 104. In the present case, Mr. Ugle was not in a position to demonstrate that the learned District Judge has stayed the conviction of the petitioner. Apart from that, section 16(1)(a) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 lays down that a person shall be disqualified to become a councillor if he has been convicted by the Court in India of any offence and sentenced to imprisonment for not less than two years. For all these reasons, no case is made out for interfering with the impugned orders. Hence, Petition fails and the same is dismissed reserving liberty to the petitioner to institute election dispute, if so advised. Order accordingly.

(R.G.KETKAR, J.)