

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2018

DELIVERED ON: 10.07.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.21603 of 2014
and
Crl.M.P.Nos.1 and 3 of 2014

B.V.Ramana Petitioner/ Accused

Vs.

K.M.Balaji Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.173 of 2014 pending on the file of Judicial Magistrate No.I, Thiruvallur and quash the same.

For Petitioner : Mr.M.Krishnappan, Senior Counsel
for V.Srinivasababu

For Respondent : Mr.P.Kumar

ORDER

The petitioner is the accused in C.C.No.173 of 2014 on the file of the Judicial Magistrate No.1, Thiruvallur. The respondent/complainant had filed a private complaint under Section 200 of the Code of Criminal Procedure before the Judicial Magistrate No.1, Thiruvallur against the present petitioner for the offences punishable under Sections 177, 191 and 193 of the Indian Penal Code and Section 125 A of the Representation of People Act, 1951.

2. The complaint of the respondent is that the petitioner (accused) contested the assembly elections from Thiruvallur Constituency in May 2011 and he had filed an affidavit in Form 26, as mandated by the Election Commission of India, in which, there was suppression of certain facts and also making certain false statements, which according to the complainant, attracts the provisions of 125 A the Representation of People Act, 1951. It is alleged by the complainant in

C.C.173 of 2014, on the file of the Judicial Magistrate No.1, Thiruvallur that the petitioner was already married to one Mrs.Lalitha and had two children through the wedlock and that the divorce proceedings under HMOP No.112 of 2000 in Sub Court, Poonamallee was already pending, as on the date of filing of the nomination along with affidavit in Form 26. While admitting that the petitioner was married to one Mrs.Lalitha, has also stated, presently he was married to one Mrs.Latha, after getting separation by mutual consent from Mrs.Lalitha by an order of Lok adalat, Poonamallee. According to the complainant, the HMOP No. 112 of 2007 was dismissed for default on 21.09.2010 and therefore, the statement of the petitioner in his affidavit in Form 26, filed before the District Collector, Thiruvallur, while filing his nomination has suppressed the material facts and this would make him liable to be punished under the provisions of Section 125 A of the Representation of People Act, 1951 and Sections 177, 191 and 193 of the Indian Penal Code.

3. The complaint made before the Judicial Magistrate No.1, Thiruvallur is dated 27.04.2014. This complaint was consequent upon the writ petition No.12681 of 2014 filed by the complainant and withdrawn subsequently, with a liberty to file a private complaint, as per the notification dated 26.04.2016 by the Election Commission of India. In the said notification dated 26.04.2014, the Election Commission of India had intimated about the amendment to Form 26 with effect from 01.08.2012 stating that the revised Form 26 is with effect from 01.08.2012. Section 33(A) of the Representation of People Act, 1951 envisaged the right to file a complaint before the appropriate court of competent jurisdiction for action under Section 125 A of the Representation of People Act, 1951 for any false declaration or concealing of information in the affidavit in Form 26. It is to be noted that prior to the amendment, any suit, complaint could be made only by the Returning Officer in the competent court, after any such act is brought to his knowledge by the public. Learned Senior counsel Mr.M.Krishnappan, appeared for Mr.V.Srinivasababu, learned counsel for the petitioner argued that the said notification dated 26.04.2014 had no retrospective effect and even as per the reply dated 19.08.2014, received from the Election Commission of India in the R.T.I. application dated 05.08.2014, the amendment in the Conduct of Election Rules, 1961 had prospective effect only from 01.08.2014 and therefore, the complaint of the respondent/ complainant is not maintainable.

4. Another contention of the learned counsel for the petitioner is that the complainant was not an aggrieved person in any manner and therefore, the complaint need to be quashed.

5. In the light of the aforesaid arguments along with the provisions contained in the notification dated 26.04.2014 issued by the Election Commission of India and also keeping in mind the fact that the affidavit in Form 26 was filed on 24.03.2011, much before the amended Form 26 came into existence with effect from 01.08.2012, it is clear that the complaint is not maintainable. Therefore, on this ground, the entire proceedings in C.C.No.173 of 2014 on the file of the Judicial Magistrate No.1, Thiruvallur is liable to be quashed.

6. In the result, this Criminal Original petition is allowed and the proceedings in C.C.No.173 of 2014 on the file of the Judicial Magistrate No.1, Thiruvallur is quashed. Consequently, connected criminal miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mst

To

The Judicial Magistrate No.1,
Thiruvallur.

+lcc to V.Srinivasababu, Advocate sr.no.24/07/2018

सत्यमेव जयते

Cr1.O.P.No.21603 of 2014

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