

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH***

CWP No. 22391 of 2018

Date of Decision:-05.09.2018

Sachin Galav

...Petitioner

Versus

Panjab University, Chandigarh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Davinder Singh Khurana, Advocate
for the petitioner.

Mr. Anupam Gupta, Sr. Advocate assisted by
Mr. Digvijay Singh, Advocate
for the respondents.

RAKESH KUMAR JAIN J.(Oral)

The petitioner, a student of M.A. (Women Studies), Department of Women Studies at Panjab University, Chandigarh, has challenged the order dated 30.8.2018, by which his candidature to contest the election to the post of President of the Panjab University Campus Students Council (PUCSC) (for short 'the Council') has been rejected on the ground that he is being tried in a criminal case registered against him.

It is not disputed that an FIR No.0335 dated 16.11.2017 has been registered against the petitioner under Section 324 read with Section 34 IPC at Police Station West Sector 11, Chandigarh. It is also not in

dispute that after completing the investigation, the prosecution has filed the report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.'), in which the Court of Judicial Magistrate 1st Class, Chandigarh has framed the charges against the petitioner for having committed the offence punishable under Section 324 read with Section 34 IPC. The Dean, Student Welfare, Panjab University, Chandigarh issued the election schedule of the Council for the year 2018-19 to elect the Office Bearers, Departmental Representative(s) and Executive Committee. The nomination papers were to be filed on 30.8.2018 in between 9.30 a.m. to 10.30 a.m. and filing of objection to the nomination(s) was scheduled in between 12.30 p.m. to 1.30 p.m. An objection against the candidature of the petitioner was made to the Director, Department-cum-Centre for Women Studies & Development, Panjab University, on which time is mentioned at 12.05 p.m., to the effect that the petitioner is ineligible to contest the election in view of Clause II(7) of the Eligibility Criteria for Candidates, contained in the General Guidelines for Panjab University Campus Students' Election. The Grievance Redressal Cell headed by the Dean Students Welfare sought legal opinion from the Legal Retainer of the University about the objection having been raised, which was tendered on 30.8.2018 in writing, in which he opined that in view of Clause II(7) of the General Guidelines for Panjab University Campus Students' Election, the petitioner is not eligible to contest the election because he is being tried for a criminal offence. The Registrar of the University obtained legal opinion from another Legal Retainer on the same subject generally, in which it was

stated that the candidate who has been made accused in any criminal case and against whom charges have been framed before the competent Court and has been tried for such offence that is to say trial has been concluded/come to an end would be debarred from contesting student's election/filling nomination and the candidate who has been made an accused in any criminal case against whom only charge has been framed by the competent Court and the trial is still pending, would be eligible to contest student's election. The same opinion had earlier been given on 25.8.2018 by a panel Advocate of the University. Besides this, a meeting of the Disciplinary Committee, constituted by the Vice-Chancellor, was held on 20.11.2017 to discuss the incident held on 15.11.2017 in the campus on the basis of which the FIR No.033 dated 16.11.2017 was registered against the petitioner and other students. In the said meeting, chaired by the Dean of University Instruction and was attended by Dean Student Welfare, Dean Student Welfare (W), Professor Sanjay Kaushik UBS and Professor Ashwani Koul, Chief of University Security. The said Committee found that the complaint was made by Pargat Singh, allegedly injured on 15.11.2017, stated to be the student of French Department, whereas he was not the student of the French Department of the University. The Committee took a serious view on it and after discussion decided that suitable proceedings be initiated against Pargat Singh as to why he mislead the Committee, letter be written to the police informing that Pargat Singh is not the student of the Panjab University, Chandigarh and it was also proposed that the outsiders namely Pargat Singh, Pradeep Gujjar and

Yadwinder Singh, who were involved in the incident may be banned from entering the University.

This petition was listed before this Court on 4.9.2018 in which notice was issued for today and was ordered to be shown in the urgent list because the election is scheduled to be held on 06.9.2018.

Keeping in view the urgency involved, the counsel appearing for the University has not filed the reply but has argued the case on merits on the basis of the information supplied by the petitioner in the writ petition and has also referred to the original file of this case retained with the University.

Learned counsel for the petitioner has submitted that firstly, the petitioner has been victimised as a false complaint has been made against him by a person namely, Pargat Singh, who is not found to be a student of the French Department and the Disciplinary Committee has decided to write a letter to the police in this regard and to take suitable action against Pargat Singh, who was allegedly got injured in the alleged incident occurred on 15.11.2017, on the basis of which the petitioner has been falsely implicated in FIR No.335 dated 16.11.2017. It has further submitted that the objections have been filed, though the time for filing objections was in between 12.30 p.m. to 1.30 p.m. but objections against nomination of the petitioner were entertained before the scheduled time i.e. 12.05 p.m. He has also submitted that the legal opinion of the Legal Retainer of the University Shri Anupam Gupta, learned senior Advocate is not in accordance with law rather he has relied upon the legal opinion of the

other Legal Retainer Dr. Anmol Rattan Sidhu, senior Advocate and the legal opinion of the panel counsel Shri Shiv Charan Bhola, Advocate, Mohali to contend that the provision of Clause II(7) of the General Guidelines for Panjab University Campus Students' Election (for short 'the Guidelines'), which he has not challenged in the writ petition, are not applicable to the case of the petitioner because the said guidelines would be applicable only on the culmination of the trial resulting into conviction. It is submitted that the mere fact that charge has been framed in the criminal case registered vide FIR No.335 dated 16.11.2017 would not suffice. In this regard, the sole reliance has been placed by the petitioner upon a judgment of the constitution Bench of the Supreme Court rendered in the case of **Manoj Narula vs. Union of India (2014) 9 SCC 1**.

On the other hand, Shri Anupam Gupta, learned senior counsel appearing on behalf of University has submitted that in the wake of the fact that charge has been framed against the petitioner by the Judicial Magistrate 1st Class on the basis of the challan presented by the prosecution for the trial of an offence committed and registered vide FIR No.335 dated 16.11.2017, the minutes of the meeting of the Disciplinary Committee, in which it has been opined that Pargat Singh is not a student of the University is inconsequential. He has further submitted that the legal opinion by Dr. Anmol Rattan Sidhu, learned senior counsel dated 30.8.2018 relied upon by the petitioner and the legal opinion of Shri S.C. Bhola, Advocate are by misreading the decision of the Supreme Court in **Manoj Narula's** case (supra). It is further submitted that Clause II(7) of the Guidelines, which is

based upon the report of the Committee headed by Shri J.M. Lyngdoh, the former Chief Election Commissioner of India relating to Students' Union election which has been accepted by the Supreme Court in the case of **University of Kerala(1) vs. Council, Principals', Colleges, Kerala and others (2006) 8 Supreme Court Cases 304**, and directions have been issued to all the Colleges/Universities to adopt the Lyngdoh's Committee recommendations in regard to elections to be held thereafter. It is further submitted that the guidelines were thus laid down by the University on the basis of the aforesaid decision in the case of **University of Kerala** (supra). While explaining the decision of the Supreme Court rendered in the case of **Manoj Narula** (supra) relied upon by the petitioner, he has submitted that in the said judgment Hon'ble the Chief Justice Dipak Misra was speaking for the Bench on the reference to interpret the scope and purpose of Article 75 and 164 of the Constitution in regard to induction of Ministers in the council of the Ministers in the Union and States having criminal background. It is submitted that the view expressed by one of the Member of the Bench by Hon'ble Mr. Justice Madan B. Lokur in para 122 is his own view and not the view of the Bench because as according to him the view of the Bench is separately recorded in para 96, 99 and 100 of the said judgment. He has also referred to the decision of the Constitution Bench judgment of the Supreme Court in the case of **Hardeep Singh vs. State of Punjab and others (2014) 3 Supreme Court Cases 92** in which object and scope of Section 319 of the Cr.P.C. has been discussed in which it has been held that the trial means determination of adjudication of issues adjudging

the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the Court informs him of the same, the trial commences only when the charges are framed. He has also submitted that once there is no dispute about Clause II(7) of the Guidelines, therefore, the only issue is as to whether the petitioner would be debarred from contesting the election after his conviction or even after he has been ordered to be tried? In this regard it is submitted that in the said provision after the word “tried” and/or has been used for conviction. Thus, it is submitted that the word “tried” and/or “convicted” are disjunctive and not conjunctive. In this regard he has referred to three judgments. Firstly, in the case of **Joint Director of Mines Safety vs. Messrs Tandur and Nayandgi Stone Quarries (P) Ltd. (1987) 3 Supreme Court Cases 208** in which the Supreme Court has read down 'and' used in the proviso as 'or'; secondly, the decision in the case of **Ishwar Singh Bindra and others vs. State of U.P. AIR 1968 Supreme Court 1450** in which again the word 'and' was read as 'or' in the context of the case; and thirdly, referred to the decision of the Supreme Court in **Maharishi Mahesh Yogi Vedic Vishwavidyalaya vs. State of Madhya Pradesh and others (2013) 15 Supreme Court Cases 677** in which again 'and' has been read down as 'or'. It is further submitted that had there been an intention of the Committee to use the word 'conviction' then there was no necessity of using the word 'tried' as well because according to him no person in India can be convicted without trial. The word used by the Committee, adopted by the University and incorporated in the guidelines in

regard to tried and/or convicted is in order to remove the criminalisation in the politics in the Universities/Colleges. The persons who are contesting the election and are being tried should not be allowed to fill their nomination papers. It is submitted that in Article 102(1)(e) of the Constitution of India, which deals with the disqualification, it is provided that a person shall be disqualified for being chosen as and for being a member of either House of Parliament if he is so disqualified by or as per law made by the Parliament. He further submits that Section 8 of the Representation of the People Act, 1951 provides disqualification of conviction on certain offences i.e. by act of the Parliament. But in the present case not only the word “conviction” has been used by the Lyngdoh Committee but the word used by the Lyngdoh Committee is “tried” as well.

I have heard learned counsel for the parties and perused the record with their able assistance.

The question which calls for consideration in this case is as to whether the petitioner, who is contesting the election of the University muchless for the post of President of the Council can be debarred from contesting on the ground that charge has been framed against him in a criminal case by the Court of Judicial Magistrate 1st Class, Chandigarh or he can contest the election until and unless order of conviction is passed against him for the alleged criminal offence? In order to search answer to this question Clause II(7) of the Guidelines is to be looked into which is the guiding factor in this case as the said provision has been incorporated by the University on the basis of the direction by the Supreme Court in the case

of **University of Kerala(1)** (supra), in which the Supreme Court has given a general direction to all the Universities/Colleges in the country to adopt the recommendations of the Lyngdoh Committee in which Clause 6.5.7 of the Lyngdoh Committee's recommendations is the same which has been verbatim taken by the University in the guidelines. The controversy thus boils down as to what is the meaning of “tried”. As according to the petitioner merely that there is a charge framed against him would not debar and in this regard, relied upon the observation of Hon'ble Judge of the Supreme Court, member of the Constitution Bench in the case of **Manoj Narula** (supra). The said observation is reproduced as under :-

“122. The law does not hold a person guilty or deem or brand a person as a criminal only because an allegation is made against that person of having committed a criminal offence - be it in the form of an off-the-cuff allegation or an allegation in the form of a First Information Report or a complaint or an accusation in a final report under Section 173 of the Criminal Procedure Code or even on charges being framed by a competent Court. The reason for this is fundamental to criminal jurisprudence, the rule of law and is quite simple, although it is often forgotten or overlooked - a person is innocent until proven guilty. This would apply to a person accused of one or multiple offences. At law, he or she is not a criminal - that person may stand “condemned” in the public eye, but even that does not entitle anyone to brand him or her a criminal. Consequently, merely because a First Information Report is lodged against a person or a criminal complaint is filed against him or her or even if charges are framed against that person, there is no bar to that person being elected as

a Member of Parliament or being appointed as a Minister in the Central Government.”

The legal opinion of Dr.Anmol Rattan Sidhu, senior Advocate is also based upon the aforesaid observations of Hon'ble Member of the Bench in the case of **Manoj Narula** (supra) but the opinion of Shri Bhola, Advocate is on his own interpretations and not based upon any case law. It may be pertinent to notice that in the case of **Manoj Narula** (supra) the issue involved was about the legality of the person, with the criminal background and/or charge with offences involving moral turpitude being appointed as Ministers in the Central and State Governments. The Hon'ble Judge, who has passed the leading judgment has made following observations, which may be read as under :-

“96. The repose of faith in the Prime Minister by the entire nation under the Constitution has expectations of good governance which is carried on by Ministers of his choice. It is also expected that the persons who are chosen as Ministers do not have criminal antecedents, especially facing trial in respect of serious or heinous criminal offences or offences pertaining to corruption. There can be no dispute over the proposition that unless a person is convicted, he is presumed to be innocent but the presumption of innocence in criminal jurisprudence is something altogether different, and not to be considered for being chosen as a Minister to the Council of Ministers because framing of charge in a criminal case is totally another thing. Framing of charge in a trial has its own significance and consequence. Setting the criminal law into motion by lodging of an FIR or charge

sheet being filed by the investigating agency is in the sphere of investigation. Framing of charge is a judicial act by an experienced judicial mind. As the Debates in the Constituent Assembly would show, after due deliberation, they thought it appropriate to leave it to the wisdom of the Prime Minister because of the intrinsic faith in the Prime Minister. At the time of framing of the Constitution, the debate pertained to conviction. With the change of time, the entire complexion in the political arena as well as in other areas has changed. This Court, on number of occasions, as pointed out hereinbefore, has taken note of the prevalence and continuous growth of criminalization in politics and the entrenchment of corruption at many a level. In a democracy, the people never intend to be governed by persons who have criminal antecedents. This is not merely a hope and aspiration of citizenry but the idea is also engrained in apposite executive governance.

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99. It is worthy to note that the Council of Ministers has the collective responsibility to sustain the integrity and purity of the constitutional structure. That is why the Prime Minister enjoys a great magnitude of constitutional power. Therefore, the responsibility is more, regard being had to the instillation of trust, a constitutional one. It is also expected that the Prime Minister should act in the interest of the national polity of the nation-state. He has to bear in mind that unwarranted elements or persons who are facing charge in certain category of offences may thwart or hinder the canons of constitutional morality or principles of good

governance and eventually diminish the constitutional trust. We have already held that prohibition cannot be brought in within the province of 'advice' but indubitably, the concepts, especially the constitutional trust, can be allowed to be perceived in the act of such advice.

100. Thus, while interpreting Article 75(1), definitely a disqualification cannot be added. However, it can always be legitimately expected, regard being had to the role of a Minister in the Council of Ministers and keeping in view the sanctity of oath he takes, the Prime Minister, while living up to the trust reposed in him, would consider not choosing a person with criminal antecedents against whom charges have been framed for heinous or serious criminal offences or charges of corruption to become a Minister of the Council of Ministers. This is what the Constitution suggests and that is the constitutional expectation from the Prime Minister. Rest has to be left to the wisdom of the Prime Minister. We say nothing more, nothing less.”

Besides this, another Member of the Hon'ble Bench has also expressed his own view while concurring with the majority views in the following manner :-

“147. When does a person come in conflict with law? No quarrel, under criminal jurisprudence, a person is presumed to be innocent until he is convicted. But is there not a stage when a person is presumed to be culpable and hence called upon to face trial, on the court framing charges?

148. Under Section [228](#) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.PC'),

charge is framed by the court only if the Judge (the Magistrate - under Section 240 Cr.P.C.) is of the opinion that there is ground for presumption that the accused has committed an offence, after consideration of opinion given by the police under Section 173(2) Cr.P.C. (challan/police charge-sheet) and the record of the case and documents. It may be noted that the prosecutor and the accused person are heard by the court in the process. Is there not a cloud on his innocence at that stage? Is it not a stage where his integrity is questioned? If so, is it not a stage where the person has come in conflict with law, and if so, is it desirable in a country governed by rule of law to entrust the executive power with such a person who is already in conflict with law? Will any reasonably prudent master leave the keys of his chest with a servant whose integrity is doubted? It may not be altogether irrelevant to note that a person even of doubtful integrity is not appointed in the important organ of the State which interprets law and administers justice; then why to speak of questioned integrity. What to say more, a candidate involved in any criminal case and facing trial, is not appointed in any civil service because of the alleged criminal antecedents, until acquitted.

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152. No doubt, it is not for the court to issue any direction to the Prime Minister or the Chief Minister, as the case may be, as to the manner in which they should exercise their power while selecting the colleagues in the Council of Ministers. That is the constitutional prerogative of those functionaries who are called upon to

preserve, protect and defend the Constitution. But it is the prophetic duty of this Court to remind the key duty holders about their role in working the Constitution. Hence, I am of the firm view, that the Prime Minister and the Chief Minister of the State, who themselves have taken oath to bear true faith and allegiance to the Constitution of India and to discharge their duties faithfully and conscientiously, will be well advised to consider avoiding any person in the Council of Ministers, against whom charges have been framed by a criminal court in respect of offences involving moral turpitude and also offences specifically referred to in Chapter III of The Representation of the People Act, 1951.”

In the case of **Hardeep Singh** (supra) it is also the decision of the Constitution Bench of the Supreme Court on the issue of arraigning any person as an accused during the course of inquiry or trial as contemplated under the Cr.P.C. In one of the judgments i.e. **Ratilal Bhanji Mithani vs. State of Maharashtra 1979(2) SCC 179** it has been held that once the charge has been framed, the Magistrate has no power under Section 227 Cr.P.C. or any provision of the Code to cancel the charge and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. It was also held in the case of **Commion Cause vs. Union of India (1996) 6 SCC 775** that in the cases of trial before the Sessions Court, the trial shall be treated to have commenced when charges are framed under Section 228 of the Code of Criminal Procedure,

1973 in the cases concerned. It is also held that in the cases of trial of warrant case by Magistrate, if the case is instituted upon police report the trials shall be treated to have commenced when charge is framed under Section 240 of the Code of Criminal Procedure, 1973 while in the trial of warrant case by Magistrate when case is instituted otherwise than on police report such trial shall be treated to have commenced when charges are framed against the accused concerned under Section 246 of Cr.P.C. It is also held that the summon trial would commence when the accused, who appear or brought before the Magistrate and asked under Section 251 whether he plead guilty or have any defence to make. While summerising , the Supreme Court in that case held that the trial commences with the framing of charges.

In the present case the trial against the petitioner has thus commenced after the charges were duly framed against him and even the said order of framing of charge has not been challenged by the petitioner for the reasons best known to him. Thus, in my considered opinion, the word used in Clause II(7) of the Guidelines “tried” and/or convicted are not conjunctive but disjunctive because a person who has been tried and acquitted of the criminal offence would not attract the bar of Clause II(7) of the Guidelines but a person who is tried and/or convicted would have the bar at both the stages.

Thus, there is no error in the order dated 30.8.2018 passed by the University in debarring the petitioner from contesting the election. In view of the aforesaid facts and circumstances, I do not find any reason to

interfere in this petition and the same is hereby dismissed though without any order as to costs.

September 05, 2018
Vijay Asija

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No