

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.983 OF 2016

(SATISH MAHADEORAO UKE...VS.. THE RETURNING OFFICER, 52-SOUTH WEST NAGPUR
 LEGISLATIVE ASSEMBLY CONSTITUENCY ELECTION-2014 & OTH.)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Petitioner in person.
 Shri S.P.Dharmadhikari, Senior Advocate a/b Ms Niraja Choube,
 Advocate for Respondent Nos. 1 and 2.
 Shri Sunil Manohar, Senior Adv. a/b. Shri Nikhil Gaikwad, Advocate for
 Respondent No.3.

CORAM : Z.A.HAQ AND
M.G.GIRATKAR, JJ.
DATED : NOVEMBER 14, 2019.

1. By order dated 18th March 2019, this Court allowed Criminal Application (APPW) No.160 of 2018 and directed the petitioner to implead Shri Devendra Gangadharrao Fadnavis as respondent No.3.

The petitioner has not amended the cause title of the petition and name of the respondent No.3 is not shown. The petitioner, who appears in-person, undertakes to effect the amendment immediately.

2. In the elections for legislative assembly, which were conducted in 2014, the respondent No.3 had submitted his nomination form and along with it had submitted affidavit in Form No.26 as per Rule 4-A of the Conduct of Election Rules 1961, as referred above.

According to the petitioner, while submitting the nomination form and the affidavit the respondent No.3 had not given certain details about pending criminal cases against him in which the Court had taken cognizance and therefore,

according to the petitioner, the respondent No.3 had made false statement on oath and false information was given and therefore, offence under Section 181 and Section 182 of the Indian Penal Code was committed by the respondent No.3. According to the petitioner, the respondent No.3 had also committed offence punishable under Sections 199 and 200 of the Indian Penal Code, and as cognizance of the above referred offences can be taken by the Court only on complaint in writing of the concerned public servant or some other public servant superior to that concerned public servant, the petitioner had sent a complaint dated 2nd October 2014 to the Election Observer, District Election Officer and the Returning Officer calling upon them to find out the truth and initiate legal action against the respondent No.3. The petitioner contends that after receiving the complaint, the concerned authorities/officers had initiated inquiry, however, they abruptly stopped the enquiry and therefore, the petitioner approached this Court seeking directions to the respondent No.1/Returning Officer to take decision on the complaint dated 2nd October 2014 sent by the petitioner and on the notice issued by the Returning Officer to the respondent No.3 on 4th October 2014. The petitioner has prayed for similar directions to the respondent No.2-District Election Officer.

3. In response to the notice issued by this Court, the respondent Nos.1 and 2 have filed their reply, opposing the petition. The main submission on behalf of the respondents is that they are not conferred with the powers to examine the truthfulness or otherwise of the affidavit which was submitted by the respondent No.3, and as per the directions of the Election Commission of India, they have to only publish the affidavit filed along with nomination form by the candidate

and any counter affidavit filed by any objector, on the official website.

4. The learned Senior Advocate appearing for the respondent No.3 submitted that the petitioner has filed complaint bearing **Summary Criminal Case No. 0027036 of 2019** (initially registered as Misc. Criminal Application No. 3550 of 2014) (*Satish Uke vs. Devendra Fadnavis*) which is pending before Judicial Magistrate First Class, Nagpur and in the complaint the petitioner is seeking conviction of the respondent No.3 for the offence punishable under Section 125-A of the Representation of the People Act, 1951 (hereinafter referred to as “the Act of 1951”) and therefore, the grievance of the petitioner *vis-a-vis* the offence punishable under Section 125-A of the Act of 1951 does not require any consideration by this Court in this petition. It is submitted that the offence punishable under Section 182 of the Indian Penal Code is not made out as the respondent No.3 had not given any false information intending to cause such public servant (in this petition the Returning Officer) to do or omit anything which the Returning Officer ought not have done or would have omitted to do if true facts in respect of such information would have been given to him. We made a specific query to the petitioner and the learned Senior Advocate representing the respondents, as to whether the Returning Officer could have rejected the nomination form, had the respondent No.3 supplied the information which according to the petitioner was suppressed. The petitioner categorically stated that the nomination form could not have been rejected by the Returning Officer if the concerned information would have been supplied by the respondent No.3 in the affidavit.

As far as Section 182(b) of the Indian Penal Code is concerned, learned Senior Advocate for the respondent No.3 submitted that the offence is made out only if it is proved that because of the false information, public servant uses his lawful power to the injury or annoyance of any person. It is argued that the petitioner has not made any grievance in the complaint on the basis of which the offence under Section 182(b) is *prima facie* made out.

5. The petitioner submitted that as the respondent No.3 failed to supply the information about pendency of two criminal cases against him in which the Court had taken cognizance, valuable right of the petitioner, who happens to be the voter of the same constituency, conferred by Section 33-A of the Act of 1951 is infringed. It is argued by the petitioner that such omission on the part of the respondent No.3 is an offence under Section 125-A of the Act of 1951. As stated earlier, we are not delving into the issue as to whether the offence under Section 125-A of the Act of 1951 is *prima-facie* made out or not as the private complaint filed by the petitioner is pending before the trial Court. We are examining whether offences punishable under Sections 181, 182, 199 and 200 of the Indian Penal Code are *prima-facie* spelt out, which necessitates issuance of mandamus to the respondent Nos. 1 and 2 to deal with the complaint dated 2nd October 2014 submitted by the petitioner.

6. As far as Section 199 of the Indian Penal Code is concerned, it lays down that any false statement made in declaration which is by law receivable by evidence and making of any false statement in such declaration which is

receivable as evidence, is an offence. On consideration of the grievance of the petitioner, we find that there is no allegation that the Returning Officer is bound to receive the affidavit submitted by the respondent No.3 as per Form 26, as evidence. Hence, in our view, the ingredients necessary to constitute the offence under Section 199 of the Indian Penal Code *prima-facie* do not exist. For the same reason, offence punishable under Section 200 of the Indian Penal Code also is not *prima-facie* made out.

7. The petitioner submitted that the scope of the writ petition need not be widened and this Court need not undertake the exercise of finding out whether the offence punishable under Sections 181, 182, 199 and 200 of the Indian Penal Code are made out or not. According to the petitioner, he would be satisfied if the respondents are directed to take decision on the complaint dated 2nd October 2014 submitted by him. It is further argued that in the reply filed before this Court, the respondent Nos.1 and 2 have stated that they are not empowered to verify the truthfulness of the affidavit submitted by the respondent No.3 as per Form 26 and it would have been sufficient had the respondent Nos. 1 and 2 given this reply to the petitioner directly.

We fail to understand this attitude of the petitioner. The extraordinary jurisdiction of this Court cannot be invoked by a party to multiply the litigation. In our view, it would not be just and proper for this Court to issue Writ of Mandamus directing the authorities or officers to decide any representation or complaint lodged by any person unless Court *prima-facie* finds that there is some substance in the complaint. Keeping this in mind, we have examined whether

any *prima-facie* case is made out for issuing directions to the respondent Nos. 1 and 2 to take decision on the complaint dated 2nd October 2014, after five years and when this petition has been pending before this Court for about three years.

9. For the reasons recorded that *prima-facie* ingredients of the offences punishable under Sections 181, 182, 199 and 200 of the Indian Penal Code do not exist, we are not inclined to issue Writ of Mandamus, as sought by the petitioner.

As far as grievance of the petitioner regarding the offence punishable under Section 125-A of the Act of 1951 is concerned, we have not examined the matter as the private complaint case filed by the petitioner is pending before the learned Judicial Magistrate First Class.

10. In view of the above, the petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

JUDGE