IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

**CRIMINAL PETITION No.7545/2020**

**BETWEEN:**

Sri. B.G. Uday,
Aged about 60 years,
S/o. Sri. B.N. Garudachar,
Resident of No.727/1,
46th Cross, Jayanagar 8th Block,
Bengaluru – 560 082. ... Petitioner

(By Sri. C.V. Nagesh, Senior Advocate for
Sri. Ajay Kadkol, Advocate)

**AND:**

Sri. H.G. Prashanth,
Major in age,
S/o. H.N. Goponataha Rao,
No.129/2, 1st Floor, Temple Street,
ITI Layout,
Banashankari 3rd Stage,
Bengaluru – 560 085. ... Respondent

(By Sri. H. Manjunath, Advocate)

This Criminal Petition is filed under Section 482 of Cr.P.C., praying to set aside the order dated 22.10.2020 passed by the LXXXI Additional City Civil and Sessions Judge and Special Court exclusively to deal with Criminal Cases registered against elected MLAs/MPs in the State of Karnataka, Bangalore in (PCR No.4/2020),

Spl.C.C.No.764/2020 in the said case directing the registration of a case against the petitioner for an offence which is made penal under section 125-A of Representation of the People Act and ordering process against him for his appearance in the case before the Court, presumably after taking cognizance of the offence and further be pleased to quash all proceedings that are being recorded in the case.

This Criminal Petition coming on for *Admission,* this day, the Court made the following:

**O R D E R**

Heard Sri. C.V. Nagesh, learned Senior Counsel for Sri. Ajay Kadkol, counsel appearing for petitioner and Sri. H. Manjunath, learned counsel for respondent.

2. Aggrieved by the order dated 22.10.2020 passed by the Special Court in PCR No.4/2020 directing registration of criminal case against the petitioner for the offence punishable under Section 125-A of the Representation of the People Act, 1951 (hereinafter referred to as the 'R.P.Act') and issuing summons to him, the petitioner has approached this Court under Section 482 of Cr.P.C. seeking to set aside the impugned order and to quash the proceedings in Spl.C.C.No.764/2020 arising out of PCR No.4/2020.

3. The outline facts of the case are that the respondent herein presented a private complaint under Section 200 Cr.P.C. seeking prosecution of the petitioner for the offence punishable under Section 125-A of the R.P.Act. In the said complaint, he alleged that on 18.04.2018, petitioner herein had filed an affidavit before the Returning Officer for the Election to the Karnataka Legislative Assembly from Chickpet Constituency, Bengaluru, and in the said affidavit, petitioner suppressed pendency of the criminal case registered against him in Crime No.281/2017 filed by one Sri. Prakash M. Shetty, for the offences punishable under Sections 420, 341, 448, 504, 380 and 506 of IPC.

4. Learned Special Judge on taking cognizance of the offence, recorded the sworn statement of the complainant/respondent and received exhibits P1 to P14 and considering the averments made in the complaint and the contents of the above documents, by the impugned order issued summons to the petitioner.

5. Learned Senior Counsel for petitioner has assailed the initiation of criminal action against the petitioner, on the following grounds:

(i) Section 125-A of the R.P.Act provides for punishment with imprisonment for a term which may extend to six months, or with fine, or with both. In view of the bar contained under Section 468 of Cr.P.C., prosecution ought to have been initiated against the petitioner within one year from the date of commission of the offence. Under the said circumstances and in the absence of application to condone the delay and delay not being condoned, the impugned order passed by the learned Special Judge taking cognizance of the alleged offence, in view of the prohibition contained under Section 468 of Cr.P.C. renders the impugned order without jurisdiction.

(ii) Referring to the averments made in the complaint, learned Senior Counsel for petitioner emphasized that the complainant had come up with the allegation that the petitioner had suppressed the registration of Crime

No.281/2017, but after investigation, the Investigating Agency filed a 'B' report in the said Crime No.281/2017 on 22.02.2018. The affidavit in question was filed on 18.04.2018 and as on that day, no case was pending against the petitioner and hence there was no basis for the complainant to allege that the affidavit contained false or incorrect statement. It is the submission of the learned Senior Counsel for the petitioner that Format in Part – A requires the candidate to declare only the pending cases in which charge has been framed by the Court of the competent jurisdiction. Since no charge was framed in the said case, there was absolutely no basis for the respondent to invoke Section 125-A of the R.P.Act. He further contended that the learned Magistrate has committed an error in taking cognizance of the alleged offence on the assumption that mere registration of the FIR amounts to a "case pending" . In support of his submission, the learned Senior Counsel has placed reliance on the decision of this Court in W.P.No.8958/2000 wherein this Court has

extracted the judgment of the Hon'ble Supreme Court reported in 1997 SC 1539, which reads as under:

> *"II. The phrase 'pendency of trials' as employed in paragraphs from 1(a) to 1(c) and the phrase 'non-commencement of trials' as employed in paragraphs from 2(b) to 2(f) shall be construed as under:*
>
> *(i) In case of trials before Sessions Court the trials shall be treated to have commenced when charges framed under Section 228 of the Code of Criminal Procedure, 1973 in the concerned cases.*
>
> *(ii) In cases of trials of warrant cases by Magistrates if the cases are instituted upon police reports the trials shall be treated to have commenced when charges are framed under Section 240 of the Code of Criminal Procedure, 1973 while in trials of warrant cases by Magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the concerned accused under Section 246 of the Code of Criminal Procedure, 1973.*
>
> *(iii) In cases of trials of summons cases by Magistrates the trials would be considered*

*to have commenced when the accused who appear or are brought before the Magistrate are asked under Section 251 whether they plead guilty or have any defence to make."*

6. Learned counsel for respondent has refuted the above submission and by drawing my attention to paras 8, 10, 11, 12 of the impugned order would submit that the complainant had produced material to show that as on the date of submission of the affidavit by the petitioner before the Returning Officer, apart from Crime No.281/2017, C.C.No.915/2016 was also pending against the petitioner and he was very much aware of pendency of this case as it is evident that he himself had filed Crl.P.No.5714/2016 and W.P.No.4742/2018 before this Court. Though ultimately, C.C.No.915/2016 came to be quashed vide order dated 13.08.2019, yet as on the date of filing the affidavit, both these cases were pending and therefore, the concealment of these facts attract the offence under Section 125-A of the R.P.Act.

7. Meeting the argument based on Section 468 Cr.P.C., the learned counsel for respondent would submit that prosecution having been initiated against the petitioner under the Special Act which does not prescribe any period of limitation, rigours of Section 468 of Cr.P.C. are not applicable. Further, referring to Section 469 of Cr.P.C. and the specific averments made in the complaint to the effect that the cause of action arose only on 23.12.2019 and the trial Court having considered this submission would submit that Section 468 of the Code is not attracted to the facts of the case.

8. In the light of the contentions raised by the parties, the only question that arise for consideration is:

(i) *Whether the Special Court has committed any error of law or fact in issuing summons to the petitioner to face trial for the offence under Section 125-A of the R.P.Act?*

Even though the learned Senior Counsel for petitioner has vehemently assailed the impugned order stating that there was no suppression of the pendency of criminal cases

against the petitioner, but the facts noted by the learned Special Judge in paras 10 to 13 of the impugned order would clearly indicate that as on the date of filing of the nomination by the petitioner, he was very much aware of pendency of C.C.No.915/2016 wherein cognizance was taken for the offences punishable under Sections 417, 420, 423 r/w 34 of IPC. The relevant observations made by the trial Court in this regard are extracted here below:

> *"10. However, the complainant has produced certified copies of the order dated 13.8.2019 in Crl.P.No.5714/2016 and the order dated 26.9.2019 in W.P.No.4742/2018 of the Hon'ble High Court or Karnataka. Those documents are at Exs.P.9 and P.10 respectively. As per the order at Ex.P.9, the accused challenged the order dated 12.02.2016 in CC No.915/2016 of the learned Addl. Civil Judge & JMFC, Devanahalli and sought for quashing the proceedings of the said case. The said petition was filed in the year 2016 by the accused, he being the petitioner. As per the order at Ex.P.9 the Hon'ble High Court of Karnataka allowed the petition and quashed the proceedings of the said case on 13.8.2019. <u>This material on record clearly goes to show that the criminal case in CC</u>*

*No.915/2016 on the file of the learned Addl. Civil Judge & JMFC, Devanahalli was pending against the accused for the offence punishable under Sec.471, 420, 423 r/w Sec.34 of IPC as on the date of filing of his nomination and affidavit in the Assembly Elections 2018.*

11. *Further, the order of the Hon'ble High Court of Karnataka at Ex.P.10 shows that the accused filed Writ petition under Articles 226 and 227 of the Constitution of India praying for an order to set aside his disqualification from being Director of a Company under Sec.164(2)(A) of the Companies Act, 2013 pursuant to the order of the Registrar of Companies, Bengaluru, who is the respondent No.2 in the said Writ petition. The certified copies of the affidavit and additional affidavit filed by the accused before the Returning Officer in the above said Assembly Elections are produced by the complainant as per Ex.P.12 and P.13 respectively. The document at Ex.P.14 is the letter issued by the Assistant Revenue Officer of BBMP to the complainant regarding information given to him under Right to Information Act ('RTI Act' for short). Hence, the materials on record prima facie show that the accused was aware of the fact that the case in CC No.915/2016 on the file of the learned Addl.*

*Civil Judge & JMFC, Devanahalli was pending against him for the offence punishable under Sec.417, 420, 423 r/w Sec.34 of IPC as on the date of filing of his affidavit in support of his nomination filed in the said Assembly Elections.*

12. *However, as submitted by the learned counsel for the complainant, in the affidavit as Ex.P.12 in item No.5(i)(a) the accused has not mentioned any of the criminal cases pending against him in which charges have been framed by the Court for the offence punishable with imprisonment for two years or more. Further in item No.5(ii)(a) no details of the case are mentioned. In the said item the accused should mention the cases pending against him in which cognizance has been taken by the Court other than the cases mentioned in item No.5(i)(a)."*

13. *As discussed herein above, the case in Cr.No.281/2017 of Ashoknagar P.S. was pending for investigation when the accused filed his affidavit before the Returning Officer in the Assembly Elections 2018. However, no material is forthcoming from the complainant at this stage to show that the accused was aware of the said case in Cr.No.281/2017 pending for investigation when the accused filed nomination and affidavit in support of his nomination in the*

*Assembly Elections of 2018. But the order of the Hon'ble High Court of Karnataka in Crl.P.No.5714/2016, the certified copy of which is produced by the complainant at Ex.P.9, clearly shows that the accused was aware of the fact that the case in CC No.915/2016 on the file of the Court of the learned Addl. Civil Judge & JMFC, Devanahalli was pending against him for the offence punishable under Sec.417, 420 and 423 r/w Sec.34 of IPC and in the said case the learned Magistrate already took cognizance of the alleged offences. The accused should have mentioned the pending of the said case in CC No.915/2016 and the date of order of taking cognizance of the criminal case in his affidavit in Form No.26 at Ex.P.12 in item No.5(2)(a). But in the said item the accused has mentioned "not applicable". Hence, as submitted by the learned counsel for the complainant, the materials on record prima facie show that the accused suppressed the criminal case pending against him and thereby filed false affidavit before the Returning Officer in the Assembly Elections 2018.*

9. As could be seen from the above facts noted by the learned Special Judge that the complainant has produced reliable material to show that as on the date of

filing of the nomination by the petitioner and swearing to an affidavit as required under Section 33 of the R.P.Act, cognizance was taken in respect of the offences under Sections 417, 420, 423 r/w Section 34 of IPC registered against the petitioner in C.C.No.915/2016. Section 125A of the R.P.Act reads as under:

> ***"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 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."*

As per the above provisions, failure to furnish the information relating to sub-section(i) of Section 33A of the

R.P.Act as well as giving false information which the candidate knows or has reason to believe to be false or concealing any information known in his nomination paper delivered under Section 33(1) of the R.P.Act or in his affidavit delivered under sub-section (2) of Section 33A of the R.P.Act, is made a punishable offence.

10. In the backdrop of the above provision, if Form-26 submitted by the petitioner is perused, it is seen that the details of the offences in respect of which cognizance has been taken has not been mentioned even though the same was required to be stated in the affidavit/Form-26. Undeniably, Form-26 is issued in terms of Rule 4A of the Conduct of Election Rules, 1961, which reads as under:

> ***"4A. Form of affidavit to be filed at the time of delivering nomination paper.***—*The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26."*

As held by the Hon'ble Supreme Court in ***KRISHNAMOORTY v. SIVAKUMAR AND OTHERS*** reported in ***AIR 2015 SC 1921***, *"This Rule is in consonance with Section 33-A of the 1951 Act. Section 33(1) envisages that information has to be given in accordance with the Rules. This is in addition to the information to be provided as per Section 33(1)(i) and (ii). The affidavit that is required to be filed by the candidate stipulates mentioning of cases pending against the candidate in which charges have been framed by the Court for offences punishable with imprisonment for two years or more and also the cases which are pending against him in which cognizance has been taken by the court other than the cases which have been mentioned in Clause 5(i) of Form 26. Apart from the aforesaid, Clause 6 of Form 26 deals with conviction."*

This exposition of law makes it clear that in addition to the case wherein charges were framed, the candidate is also required to furnish information regarding the pending case against him, in respect of which, cognizance has been

taken by the Court other than the case which have been mentioned in Clause 5(i) of Form 26.

11. Undisputedly, in the instant case, the petitioner has failed to mention the pendency of C.C.No.915/2016 in respect of which cognizance was taken by the Court. As such, there is prima-facie material to show that the petitioner has not only failed to disclose the information mandated under Section 33A(1) of the R.P.Act, but has also concealed the necessary information rendering him liable under Section 125-A (iii) of the R.P.Act. It is needless to say that Clauses (i), (ii) and (iii) of Section 125-A of the R.P.Act have to be read disjunctively and not conjunctively. In that view of the matter and having regard to the material produced by the respondent which prima facie disclose the ingredients of the offence under Section 125-A of the R.P.Act, the Special Court was well justified in directing registration of the case and issuing summons to the petitioner. As a result, I do not find any good reason to interfere with the impugned order.

12. In answering the contention urged by the learned Senior Counsel for petitioner touching the bar under Section 468 of Cr.P.C. is concerned, it is relevant to note that in the complaint as well as in the sworn statement, respondent has narrated the circumstances leading to the delay in lodging the complaint. It is stated therein that on coming to know of the false affidavit filed by the petitioner in Form–26, the complainant submitted a representation to the Chief Electoral Officer and vide endorsement dated 23.12.2019, he was informed to move the appropriate Court under Section 125-A of the R.P.Act. This explanation appears to have been accepted by the learned Special Judge. Though the learned Special Judge has not stated in so many words that the delay in lodging the complaint is condoned, but it is seen from the records that an elaborate order has been passed taking cognizance of the offence on 04.02.2020 before recording the sworn statement of the complainant and the explanation offered by the complainant and the endorsement issued by the Election Commissioner has been taken note by the Special Judge. This explanation

in my view is sufficient to condone the delay if any in the interest of justice.

13. Section 473 of the code empowers the Court to condone the delay in making the complaint at any stage before the conclusion of the trial in appropriate cases even if the prosecution is launched after the expiry of the period prescribed under Section 468 Cr.P.C. Section 473 Cr.P.C. lays down two exceptions to Section 468 of the Code viz:

a) *Where a proper and satisfactory explanation of delay is available and*

b) *Where it is necessary to condone the delay in the interest of justice.*

In the instant case, the circumstances pleaded by the complainant offer a proper and satisfactory explanation for the alleged delay. The Section does not require a formal application to excuse the delay as long as the delay has been properly explained. In this context, it is worth to note that the object of Section 468 Cr.P.C. is to put a bar of limitation on prosecution so as to prevent the parties from

filing cases after lapse of long time, but Section 473 Cr.P.C. confers power on the Court taking cognizance after the expiry of the period of limitation, if it is satisfied that on the facts and circumstances of the case, the delay has been properly explained and it is necessary to do so in the interest of justice. Respondent has offered clear, convincing and satisfactory explanation for the delay in lodging the complaint, the same stands condoned. As a result, the objection raised by the learned Senior Counsel for the petitioner in this regard is liable to be rejected and is accordingly rejected.

For the above reason, petition is not fit for admission and is ***dismissed*** accordingly.

**Sd/-**
**JUDGE**

SV