

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

CRIMINAL WRIT PETITION NO. 259 OF 2021

(Dominic s/o Gabriel Philip vs. State of Maharashtra and another)

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

Court's or Judge's orders

Mr. Dominic Philip, in person.
Mr. S. D. Sirpurkar, APP for respondent No.1.
Mr. U. P. Dable, Advocate for respondent No.2.

CORAM : MANISH PITALE J.

DATED : 03/08/2021

Mr. Philip, the petitioner has appeared in person. The subject matter of challenge in this writ petition is an order passed by the Sessions Court on 18/12/2020, whereby a revision application filed by the petitioner was dismissed and an order dated 11/03/2020 passed by the Court of Judicial Magistrate First Class, Nagpur stood confirmed.

2. The facts in brief leading to the filing of the present writ petition are that the petitioner had instituted a criminal complaint against respondent No.2 for proceeding against him for alleged offence under Section 125-A of the Representation of People Act, 1951. It was the case of the petitioner that the respondent No.2 had filed a false affidavit while submitting his nomination form for contesting election as Corporator of

the Municipal Corporation, Nagpur, in the year 2017. It was submitted that the false statement in the affidavit was to the extent that the respondent No.2 did not divulge pendency of case against him under Section 53(7) of the Maharashtra Regional and Town planning Act, 1966, wherein cognizance had been taken.

3. The Court of Judicial Magistrate First Class, by order dated 19/03/2019, dismissed the said complaint, upon finding that no sufficient ground was made out for proceeding in the matter. The Magistrate specifically relied upon judgment of this Court passed in the case of **Devendra Gangadharrao Fadanavis vs. Satish s/o Mahadeorao Ukey and another (Criminal Revision Application No.94 of 2016)**. By judgment and order dated 03/05/2018, passed in the said Revision Application, this Court had held that failure to divulge pendency of such cases would not amount to filing a false affidavit under Section 125-A of the aforesaid Act.

4. It is an admitted position that the petitioner did not challenge the aforesaid order dated 19/03/2019 passed by the Court of Magistrate. Thereafter, on 01/10/2019, the Hon'ble Supreme Court passed its judgment and order in the case of **Satish Ukey vs. Devendra Gangadharrao Fadanavis and anr. (Criminal Appeal Nos.1515 – 1516 of 2019)**, reversing the position of law laid down by this Court. It was held that in the affidavit to be filed along with nomination form, the candidate is required to state details of all pending cases,

wherein cognizance has been taken, even where charges were yet to be framed by the Court for offences punishable with imprisonment for few years and more.

5. Thereafter, the petitioner file Criminal Misc. Application No.80 of 2020, before the Court of Judicial Magistrate First Class seeking to reopen the complaint case that was already dismissed by order dated 19/03/2019. The aforesaid Court rejected the application on the ground that there is no provision in the Code of Criminal Procedure (CrPC) for reopening of a case in this manner, which virtually amounted to seeking a review of earlier order dated 19/03/2019.

6. Aggrieved by the same, the petitioner filed Criminal Revision Application No.164 of 2020, before the Sessions Court at Nagpur. By the impugned judgment and order dated 18/12/2020, the Court of Additional Sessions Judge, Nagpur, dismissed the Revision Application, thereby confirming the order dated 11/03/2020, passed by the Magistrate.

7. Mr. Philip, the petitioner appearing in person, submitted that the Courts below erred in holding against the petitioner for the reason that when the position of law clarified by the Hon'ble Supreme Court demonstrated that the affidavit filed by respondent No.2 could be said to be false and offence under Section 125-A of the aforesaid Act was prima facie attracted, the case ought to have been reopened.

8. On the other hand Mr. Dable, learned counsel appearing for respondent No.2 opposed the prayer made in the present writ petition on the ground that there is no provision in the CrPC for reopening a case and virtually reviewing the earlier order dated 19/03/2019, passed by the Magistrate

9. Mr. S. D. Sirpurkar, learned APP appearing on behalf of respondent State also submitted that there is no provision in the CrPC under which the petitioner could have approached the Court for reopening of a case by seeking review of the order dated 19/03/2019.

10. The petitioner appearing in person was unable to show any provision in the CrPC, which could enable him to approach the Magistrate again to reopen the case which stood dismissed by order dated 19/03/2019. It would obviously amount to reviewing the order dated 19/03/2019. It is an admitted position that the petitioner did not challenge the order dated 19/03/2019, passed by the Magistrate, whereby the complaint filed by him had been considered and dismissed on merits.

11. In the absence of any provision granting power to the Magistrate to review his own order dated 19/03/2019, no fault can be attributed to the Magistrate in holding in his order dated 11/03/2020, that the application filed by the petitioner for reopening the case was not maintainable.

12. The Sessions Court in the impugned judgment and order has also specifically recorded that when a query was put to the petitioner as to under which provision he was seeking review of the earlier order dated 19/03/2019 and reopening of the case before the Magistrate, there was no answer forthcoming. It is an admitted position that the only order made subject matter of challenge before the Sessions Court was the order dated 11/03/2020, whereby it was held that the application seeking reopening of the complaint case was not maintainable.

13. In the absence of any provision in the CrPC for reviewing earlier order by the Magistrate and for reopening of the complaint case as sought by the petitioner, this Court is of the opinion that no error can be attributed to the impugned orders passed by the Sessions Court, as well as the Magistrate.

14. In view of the above, the writ petition is found to be devoid of any merit. Hence, it is dismissed. No costs.

JUDGE