



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P(MD)No.17996 of 2019 and

Crl.M.P(MD)Nos.10581 & 10582 of 2019

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M.K.Alagiri

... Petitioner

Vs.

Returning Officer,
32, Madurai Parliamentary Constituency,
The District Collector,
Madurai.

... Respondent

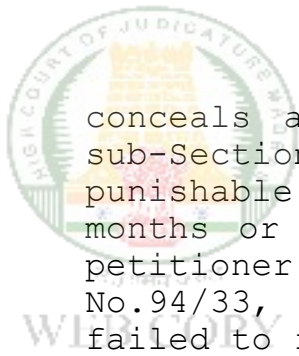
PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to private complaint in C.C.No.789 of 2019 on the file of the learned Judicial Magistrate No.I, Madurai and quash the same as against the petitioner.

For Petitioner	: Mr.R.Srinivas for Mr.S.Mahendrapathy
For Respondent	: Mr.Hasan Mohammed Jinnah, State Public Prosecutor Assited by Mr.A.Damodaran, Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.789 of 2019 pending on the file of the Judicial Magistrate Court, No.I, Madurai.

2.The gist of the case is that the respondent is the Returning Officer for 32 Madurai Parliamentary Constituency of Madurai District and also the District Collector of Madurai District. The respondent is designated by the Election Commission of India under Section 21 of the Representation of the People Act, 1951 as competent authority to receive nominations from the candidates who are contesting for the 32 Madurai Parliamentary Constituency held on May 2009. The respondent is the competent person to initiate prosecution against the person as per the provisions of the Representation of the People Act, 1951 and under Section 195 of Cr.P.C., in order to deal with the cases where any complaint regarding furnishing of false information in affidavits, Form-26 and other documents, information furnished along with nomination as per the Representation of People Act, 1951 and the Conduct of Election Rules, 1964 by any candidate either by himself or through his proposer. The contesting candidate who himself or through his proposer with intent to be elected in an election gives false information which he knows or has reason to believe to be false or



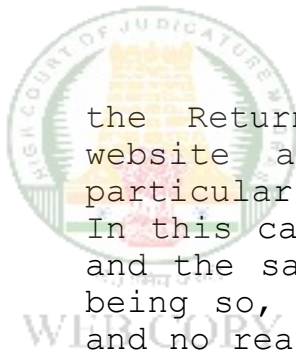
conceals any information in his nomination paper delivered under sub-Section(1) of Section 33 shall not withstanding any other law punishable with imprisonment for a term which may extend to six months or with fine or with both. The respondent found that the petitioner was in possession of following property in survey No.94/33, patta No.353 to the extent of 0.11.50 (Manai), but he failed to furnish the details in his affidavit, dated 24.04.2009.

3.The above suppression committed by the petitioner came to the knowledge of the respondent only on 02.05.2013 when one S.Jeganathan of Thalathankudi, Saliperi Post, Nannilam Taluk had sent a complaint to the respondent regarding the above suppression in the declaration of the petitioner while he contested the 32 Madurai Parliamentary Constituency during the General Election in the year 2009. The Chief Electoral Officer and Principal Secretary to Government Public (Election) Department, Secretariat, Chennai addressed the District Collector, Thiruvarur to submit a report and a report was submitted on 26.07.2013.

4.The respondent came to know about the offence committed by the petitioner only on 29.10.2013, on which day the District Collector, Thiruvarur sent a report with particulars. Based on the report and other documents, a complaint came to be filed before the trial Court on 26.02.2014.

5.The learned counsel for the petitioner submitted that the impugned complaint is liable to be quashed on the sole ground that the limitation under Section 468 Cr.P.C., is a bar. The offence under Section 177 of IPC and Section 125(a) of the Representation of the People Act, 1951 provide maximum punishment of two years and six months and fine respectively. This being the position, the complaint ought to be lodged before completion of three years from the date of occurrence or from the knowledge of the occurrence. According to the respondent, the occurrence came to his knowledge on 02.05.2013, but the present complaint was filed on 26.02.2014, which cannot be accepted for the reason that the affidavit published in public domain from 24.04.2009. Hence, the complaint has been filed beyond the period of limitation, which is hit by Sections 468 and 469 of Cr.P.C. The learned counsel further submitted that Section 177 of IPC is pari-materia to Section 125(A) of the Representation of People Act, 1951. Section 177 of IPC is a common law and Section 125(A) of the Representation of Peoples Act, is a special law.

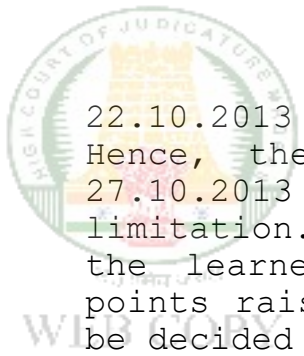
6.The learned counsel further submitted that the present prosecution against the petitioner is out of political vendetta and with malafide. The filing of declaration/affidavit admittedly was made on 24.04.2009 and the complaint was lodged by one S.Jeganathan of Nannilam Taluk on 02.05.2013. The said Jeganathan has not stated for what reason such delay has been caused. It is a known fact that once the candidate submits his application along with annexure and



the Returning Officer and uploaded in the election commission website and thereby making it public to everyone about the particulars furnished by the candidate while filing the nomination. In this case, the petitioner furnished the details in the affidavit and the same displayed in the public domain from 24.04.2009. This being so, why this complaint is made in the year 2013 is not known and no reason given by the said Jeganathan. The Election Commission of India by communication, dated 27.08.2013 forwarded the complaint of Jeganathan to the Chief Electoral Officer, Tamil Nadu. Added to it, the District Collector, the Chief Electoral Officer had forwarded the same to the District Election Officer, Thiruvarur to furnish the land records of the petitioner. The District Electoral Officer, Thiruvarur in his communication dated 22.10.2013 furnished the particulars of the petitioner. In the communication of the Election Commission as well as the Chief Electoral Officer, it is clearly mentioned that prior to the complaint, advice of the Deputy Director of Prosecution, Madurai to be obtained. In this case, no such advice obtained.

7.In support of his submissions, the learned counsel for the petitioner relied on the cases of **"Maziezokho Nisa Versus T.R.Zeliang reported in 2016 SCC OnLine Gau 584; 2017 Crl. L.J 2312** and **Sarah Mathew Versus Institute of Cardio Vascular Diseases & Ors., reported in (2014) 2 SCC 62."**

8.The learned Government Advocate (Crl. Side) appearing for the respondent submitted that the respondent is the Returning Officer of 32 Madurai Parliamentary Constituency and Competent Authority and he has to receive nominations from the candidates who are contesting for the general election and he is competent authority to initiate prosecution against the person as per the Representation of the People Act and Section 195 of Cr.P.C., in case of any complaint regarding furnishing false information in affidavits, Form 26 and other documents. He further submitted that the petitioner had filed nomination Form along with declaration on 24.04.2009 as per the Representation of the People Act. It is the duty cast on the petitioner as per the order of the Election Commission of India in 3/ER/2003/JS-II, dated 27.03.2003 to furnish full information of his properties with complete details. The petitioner while furnishing the particulars of movable and immovable properties in annexure-I, failed to disclose the land owned by him at Kattur Village, Kodavasal Taluk, Thiruvarur District. The petitioner who is legally bound to furnish the information, has filed the annexure-I of the affidavit on 24.04.2009 before the respondent/Returning Office with false information. The suppression of the petitioner came to the knowledge of the respondent on 02.05.2013 after S.Jeganathan of Nannilam Taluk sent a complaint. Thereafter, the Chief Electoral Officer, the Principal Secretary to the Government addressed the District Collector, Thiruvarur to submit a report and accordingly, a detailed report was submitted on 26.07.2013 by his letter, dated



22.10.2013 which was received by the respondent on 27.10.2013. Hence, the respondent came to know about the offence only on 27.10.2013 and the complaint is filed within the period of limitation. On receipt of the complaint, cognizance was taken by the learned Judicial Magistrate No.I, Madurai. Therefore, the points raised by the petitioner are factual in nature which has to be decided during trial and opposed the petition.

9.This Court considered the rival submissions and perused the materials available on record.

10.It is not in dispute that the petitioner filed nomination for the Parliamentary Election of the year 2009 and also filed declaration/affidavit and Form 32 on 24.04.2009 furnishing particulars and other documents. The petitioner contested 32 Madurai Parliamentary Constituency held during the month of May 2009. A complaint of one S.Jeganathan sent to the Election Commissions of India disclosed the suppression of fact that the petitioner failed to disclose immovable property bearing survey No.94/33 Manai 0.11.50 extent in patta No.353 situated at Kudavasal Taluk, Kattur Village. On 27.08.2013, the Election Commission of India intimated the Chief Electoral Officer to take further action in this regard. The District Collector, Thiruvarur directed the District Election Officer, Thiruvarur to verify the same and provide required particulars. Thus, the Election Commission as well as the Chief Electoral Officer had come to the knowledge of the suppression and false declaration made by the petitioner during the month of August 2013. Thereafter, the complaint came to be filed before the trial Court only on 26.06.2014. Admittedly, in this case, the petitioner is being prosecuted for offence under Sections 177 IPC and Section 125(A) of the Representation of People Act, wherein the punishment prescribed is for two years and six months and fine.

11.It is not in dispute that the nomination papers of the petitioner is displayed in the notice board of the office premises of the Returning Officer and uploaded in the website of the Chief Election Officer. All the particulars provided in the Form/Annexure-I were available in the public domain. From the A-Register extract, it reveals that the property in survey No.94/32 stands in the name of the petitioner and it is not survey No.94/33. This foundational flaw of the authorities would clearly confirm that how in a haste the complaint was filed without properly verifying the particulars. Further, no reason given for the delay and the same is not condoned. The direction of the Election Commission was not followed and failed to get advice from the Deputy Director Prosecution, Madurai.

12.In the case of "**Sarah Mathew**" (cited supra), the Hon'ble Apex Court dealt with the period of limitation under Chapter XXXVI (Section 467 to 476) in detail which is consistently followed. The

<https://hcservices.ecourt.gov.in/hcservices/> is extracted as follows:-



"24.Read in the background of the Law Commission's Report and the Report of the JPC, it is clear that the object of Chapter XXXVI inserted in the Criminal Procedure Code was to quicken the prosecution of complaints and to rid the criminal justice system of inconsequential cases displaying extreme lethargy, inertia or indolence. The effort was to make the criminal justice system more orderly, efficient and just by providing period of limitation for certain offences. In *Sarwan Singh [State of Punjab v. Sarwan Singh, (1981) 3 SCC 34 : 1981 SCC (Cri) 625 : AIR 1981 SC 1054]* , this Court stated the object of the Criminal Procedure Code in putting a bar of limitation as follows : (SCC p. 36, para 3)

"3. ... The object of the Criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation."

13.In the case of **"Maziezokho Nisha Versus T.R.Zeliang reported in (2017) 2 Gau LR 778"** it is held as follows:-

"48.From the provision of sub-section (3) of section 33A of the RP Act, 1951, it is seen that by affixing a copy of the affidavit, delivered by the candidate under sub-section (2) of said section 33A, at a conspicuous place at his office, the concerned returning officer informs the electors relating to the constituency for which the nomination paper is delivered, by which electors are made aware of the contents of the affidavit filed by the candidate concerned. As per the policy of law to assist the vigilant and not the sleepy, which is expressed in the Latin maxim "*vigilantibus et non dormientibus, jura subveniunt*", a diligent voter or a person aggrieved or a complainant, while being interested to know the educational qualification and other antecedent of the candidate, after going through such affidavit of a candidate, displayed by the returning officer before



scrutiny of nomination, can raise objection against any such false statement made by a candidate in his affidavit before the concerned returning officer, and such objection can be considered by the said returning officer at the stage of scrutiny of nomination papers of the said candidate."

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14.Thus, looking the case from any angle, it is seen that on 24.04.2009, the petitioner filed the nomination and nomination particulars and property details are displayed and also available in public domain. How a complaint and information received from one Jeganathan on 02.05.2013 with such delay was acted upon, and the verification was also not proper. The complaint was filed in haste without proper verification and the delay was not explained and condoned. Hence, on factual and legal grounds, the complaint against the petitioner is not sustainable. The continuation of the proceedings against the petitioner would amount to abuse of process of law.

15.Thus, this Court finds and holds the prosecution launched against the petitioner is not sustainable. The proceedings in C.C.No.789 of 2019, on the file of the learned Judicial Magistrate No.I, Madurai, is quashed and this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition are closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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To

- 1.The Judicial Magistrate Court No.I,
Madurai.
- 2.The Returning Officer,
32, Madurai Parliamentary Constituency,
The District Collector,
Madurai.
- 3.The Public Prosecutor,
High Court, Madras.



4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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