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O.A.No.40 of 2022

ORDERS RESERVED ON : **07.04.2022**

ORDERS DELIVERED ON : **28.04.2022**

O.A.No.40 of 2022
in E.L.P.No.12 of 2021
and O.A.No.167 of 2022

V.BHARATHIDASAN, J.,

ORDER

This application, has been filed under Order VII Rule 11 of the Code of Civil Procedure, 1908, (hereinafter referred to as 'CPC'), to reject the Election Petition in E.L.P.No.12 of 2021. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Election Petition.

2. This application has been filed by the fourth respondent / returned candidate, from Chepauk - Thiruvallakeeni Legislative Assembly constituency.

3. The election petitioner claiming herself as an eligible elector from Chepauk - Thiruvallakeeni Legislative Assembly constituency, has filed this election petition, (i) to declare the acceptance of nomination of the fourth respondent, namely the petitioner in O.A.No.40 of 2022, to the Chepauk -



O.A.No.40 of 2022

Thiruvallekeni Legislative Assembly constituency, is not in accordance with law, illegal and consequently the result declared is null and void and (ii) to declare the election held in Chepauk - Thiruvallekeni constituency is of undue influence and not free and fair election.

4. The brief facts leading to filing of the election petition is that, the petitioner is a practicing Advocate and also a voter in the above said Assembly Constituency. In the General Election to the Tamil Nadu Legislative Assembly held in April, 2021, the fourth respondent contested the election from Chepauk - Thiruvallekeni Legislative Assembly constituency as the official candidate of the Dravida Munnetra Kazhagam (in short 'DMK') and he was declared elected.

5. According to the election petitioner, the fourth respondent while filing his nomination, filed Form 26, under Rule 4-A of the Conduct of Election Rules, 1961 (hereinafter referred to as the 'Rules'). In the above said affidavit, in Column No.5(ii), which requires information regarding criminal case details, the fourth respondent has stated that he filed the details in Annexure-I. In the said Annexure-I, he has mentioned 22 criminal cases pending against him. However he has stated 'Nil' in Columns 3 and 4 in Para



O.A.No.40 of 2022

5(ii) in Form 26. In Column (d), which requires particulars regarding brief description of the offence, the fourth respondent simply stated that the cases were filed for violation of law during political agitations for public.

6. According to the election petitioner, all the 22 cases, were registered against the fourth respondent for various offences, however he suppressed the same and simply stated that the cases were filed for violation of law during political agitation for public, which is a false statement, misleads the voters and deprives the voters right to information.

7. Further according to the election petitioner, Sub-Clause (i) of Section 33(A)(1) of the Representation of People Act, 1951 (hereinafter referred to as the 'Act') requires effectuate information in cases where cognizance were taken should be comprehended within the area of information accessible to the voters and the fourth respondent deliberately filed a false affidavit to influence the voters.

8. That apart, the fourth respondent has furnished incorrect and false information in the affidavit and non-disclosure of material information amounts to violation of the Act and the Rules therein. Since there is false



O.A.No.40 of 2022

disclosure on the part of the fourth respondent, which amounts to undue influence and therefore the election has to be declared as null and void as per Section 100(1)(a), 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) of the Act.

9. That apart, one Mr.J.V.Mohanakrishnan, who was appointed as the Presiding Officer in Zonal Party No.2 was associated with the fourth respondent and his political party and he has also written a book regarding the party to which the fourth respondent belongs. That apart, he was teacher to the spouse of the fourth respondent. This officer misused/influenced the voters and get polled to their affiliation in collusion with the booth agents appointed by these political parties. He was under control of 10 polling booths at Chintadripet and he influenced the officials directly or indirectly, threat or other means and get favoured by illegal voting. On the above grounds, the election of the fourth respondent has to be set aside.

10. With the above allegations, the election petitioner has sought to declare the election of the fourth respondent from Chepauk - Thiruvalluvar Legislative Assembly constituency as null and void.

11. The fourth respondent has filed the present application, under



O.A.No.40 of 2022

Order VII Rule 11 of CPC, to reject the election petition on the ground that though the main allegation against the fourth respondent is that he has not disclosed the information properly in Form 26, however it is admitted by the election petitioner herself that the fourth respondent has disclosed all the criminal cases pending against him and thus there is scrupulous compliance of Form 26.

12. Further, mere mentioning of 'No' in the tabular column in Form 26, will in no way amounts to suppression of cases pending against the fourth respondent and the voters have complete knowledge about the cases pending against him and thus there is complete compliance of Section 33A of the Act.

13. It is further stated that in Form 26, Note 4, gives liberty to the candidates to enclose separate sheets, which was preciously done in this case. As the Tabular Column requires details of pending cases either within the Tabular Column or on separate sheets as annexure to the form. As the fourth respondent has filed separate sheets disclosing all the criminal cases pending against him he has strictly complied Section 33A of the Act.



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14. So far as the allegation regarding the misuse of official power by one Mr.J.V.Mohanakrishnan, the allegations contained in para 22 of the election petition is bereft of any material particulars constituting a complete cause of action and absolutely there is no averment as to how the same has affected the election. The election petitioner has stated that the presiding officer acted in collusion but she did not specify what is the collusion and what are the things done by him. The averments contained in para 22 is completely absent of any material particulars and facts. Even the affidavit filed by the election petitioner in Form 25 has not disclosed the same and it is not in compliance of Form 25 and there is no averment regarding the details of the corrupt practice which is a mandatory requirement, and it is not in tune with Section 85 of the Act and in terms of Order VI Rule 15 of CPC.

15. That apart, it is also stated that two more election petitions were filed with the same averments and allegations and the said election petitions are verbatim repetition of the same set of facts. Thus, the election petitioner has not set out any case of non-compliance with the provisions of the Act and Rules, as the election petitioner does not substantially set out any material facts on which the election petitioner relies to challenge the election of the fourth respondent, and therefore the election petition is liable to be



rejected. That apart, each and every paragraph of the election petition is bereft of any material particulars and facts, it does not disclose any triable issue and no cause of action has been made out. In the said circumstances, according to the fourth respondent, the election petition ought to be rejected at the threshold under Order VII Rule 11 of CPC.

16. Mr.N.R.Elango, learned senior counsel appearing for the fourth respondent/returned candidate, would submit that the main allegation against the fourth respondent is that, he has suppressed the vital information regarding the criminal cases pending against him. Under Section 33-A(1)(i) & (ii) of the Act. Section 33-A(1)(i) & (ii) of the Act mandates the candidates to provide information as to whether the candidate is an accused of any offence punishable with imprisonment for two year or more in a pending case in which a charge has been framed by the Court of competent jurisdiction and whether he has been convicted of an offence and sentenced to imprisonment for one year or more. Section 33-A only requires the candidates to furnish information regarding cases where charges have been framed or he has been convicted for any offence and sentenced to imprisonment for one year or more and does not contemplate any information regarding criminal case pending investigation.



O.A.No.40 of 2022

WEB COPY 17. Admittedly, in the instant case, 22 criminal cases are registered against the fourth respondent and investigation is pending, so far no final report has been filed, no cognizance have been taken, and charges have not been framed by a Court of competent jurisdiction, and he has not been convicted in any criminal case. In such circumstances, there is no necessity for the fourth respondent to disclose the criminal cases in which only investigation is pending. However, the fourth respondent came forward to disclose all the 22 criminal cases pending against him and there is no allegation that he has suppressed any of the criminal cases.

18. The other allegation against the fourth respondent is that the fourth respondent failed to provide the details of pending criminal case against him in the column provided in Form 26, instead he has filed a separate annexure giving details in column 2 and 3. The learned senior counsel submitted that the appended Note, to Form 26, provides that the candidate can file a separate sheet in the form of annexure disclosing criminal cases pending against them. Admittedly, the petitioner filed separate sheets mentioning all the particulars regarding the pending criminal cases and he has also given reason that the cases were filed for violation of



O.A.No.40 of 2022

law during political agitation for public. Even though, there is no necessity on the part of the fourth respondent to disclose the same, he has given all the details.

19. So far as the other allegation contained in para 22 of the election petition, the averments are totally bereft of any material particulars and the averments are too vague. Hence, according to the learned senior counsel, no case is made out to show that the election has been materially affected. A vague averments that non-disclosure of information in Form 26 materially affected the election is not sufficient without any supporting materials therein. According to the learned senior counsel, as the election petitioner has not disclosed any cause of action and raised any triable issue, the election petition has to be rejected at the threshold. The learned senior counsel also relied upon number of judgments, which will be referred to in the later part of this order.

20. Per contra, Mr.K.Sakthivel, the learned counsel appearing for the election petitioner, would contend that, Section 33-A(1)(i) requires a candidate to disclose all the criminal cases pending against him as specified in Form 26, which contains tabular columns and the candidate is required to



O.A.No.40 of 2022

fill up all the columns, but the fourth respondent has only stated 'Nil' in the columns, by which, he has given misinformation, to mislead the voters with intention to defraud the voters. Therefore, on that ground itself, the election of the fourth respondent has to be declared null and void and the election petition cannot be rejected under Order VII Rule 11 of CPC.

21. Further according to the learned counsel, the averments contained in the election petition disclose a cause of action and it cannot be rejected at the threshold. The learned counsel also relied upon number of judgments, which will be referred to in the later part of this order.

22. I have considered the rival submissions and also perused the materials available on record carefully.

23. The election petition has been filed alleging noncompliance of the provisions of Section 33-A(1) of the Act, which is in violation of Section 100(1)(a), 100(1)(b), 100(1)(d)(i) and (iv) of the Act. It is stated that while filing the nomination an affidavit has been filed under Form 26, in which, the fourth respondent did not disclose the criminal cases pending against him. That apart, the fourth respondent has indulged in corrupt practice by



engaging one of the Presiding Officers of the election, who has influenced the voters and made them to vote in favour of the fourth respondent.

24. Before considering the issues, it would be useful to refer to the relevant provisions of CPC, the Representation of People Act, 1951 and Conduct of Election Rules, 1961.

25. Order VII Rule 11 CPC, deals with rejection of plaint, which is extracted hereunder :

"Order VII Rule 11 Rejection of plaint.—

The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the



Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff. "

26. Section 33 of the Act, speaks about presentation of nomination paper and the requirements for a valid nomination. Section 33-A of the Act, speaks about right to information, and Section 100 of the Act, speaks about the grounds for declaring an election as void. Rule 4-A of the Rules speaks about the form of affidavit to be filed at the time of delivering nomination paper. Form 26 of the Rules speaks about the form of affidavit to be filed by



the candidate along with the nomination paper. Sections 33, 33-A and 100 of

the Act and Rule 4-A and Form 26 of the Rules are extracted below:

"Section 33. Presentation of nomination paper and requirements for a valid nomination.

—
(1) On or before the date appointed under clause

(a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer :

Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday:

Provided also that in the case of a local



authorities' constituency, graduates' constituency or teachers' constituency, the reference to "an elector of the constituency as proposer" shall be construed as a reference to ten per cent. of the electors of the constituency or ten such electors, whichever is less, as proposers.

(1-A) Notwithstanding anything contained in sub-section (1), for election to the Legislative Assembly of Sikkim (deemed to be the Legislative Assembly of that State duly constituted under the Constitution), the nomination paper to be delivered to the returning officer shall be in such form and manner as may be prescribed :

Provided that the said nomination paper shall be subscribed by the candidate as assenting to the nomination, and—

(a) in the case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, also by at least twenty electors of the constituency as proposers and twenty electors of the constituency as seconders;

(b) in the case of a seat reserved for Sanghas, also by at least twenty electors of the constituency as proposers and at least twenty electors of the constituency as seconders;

(c) in the case of a seat reserved for



O.A.No.40 of 2022

Sikkimese of Nepali origin, by an elector of the constituency as proposer:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.

(3) Where the candidate is a person who, having held any office referred to in Section 9, has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

(4) On the presentation of a nomination



paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls :

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.



(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency.

(7) Notwithstanding anything contained in sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election,—

(a) in the case of a general election to the House of the People (whether or not held simultaneously from all Parliamentary constituencies), from more than two Parliamentary constituencies;



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O.A.No.40 of 2022

(b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies), from more than two Assembly constituencies in that State;

(c) in the case of a biennial election to the Legislative Council of a State having such Council, from more than two Council constituencies in the State;

(d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than two such seats;

(e) in the case of bye-elections to the House of the People from two or more Parliamentary constituencies which are held simultaneously, from more than two such Parliamentary constituencies;

(f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously, from more than two such Assembly constituencies;

(g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a State, which are held simultaneously, for filling more than two such seats;



(h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held simultaneously, from more than two such Council constituencies.

Explanation.— For the purposes of this sub-section, two or more bye-elections shall be deemed to be held simultaneously where the notification calling such bye-elections are issued by the Election Commission under section 147, section 149, section 150 or, as the case may be, section 151 on the same date.

Section 33-A. Right to information.—

(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) or section 33, also furnish the information as to whether —

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence



[other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate of 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, also deliver to him an affidavit sworn by the candidate in a prescribed form very fine the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.]

* * *

Section 100. Grounds for declaring election to be void.—

(1) Subject to the provisions of sub-section



(2) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non—compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,



O.A.No.40 of 2022

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) Omitted

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents then the High Court may decide that the election of the returned candidate is not void."

* * *

Rule 4-A. Form of affidavit to be filed at the time of delivering nomination paper.—

The candidate or his proposer, as the case



O.A.No.40 of 2022

may be, shall, at the time of delivering to the returning officer the nomination paper under subsection (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."

* * *

Form 26. Affidavit to be filed by the candidate along with Nomination Paper.—

"FORM 26
[See Rule 4-A]

*Please affix your
recent passport
size photograph here*

Affidavit to be filed by the candidate along with nomination paper before the returning officer for election to.....(name of the House) from.....constituency (Name of the constituency)

PART A

*I, **son/daughter/wife of.....
..... Aged.....years, resident of
..... (mention full postal address), a candidate at the above election, do hereby solemnly affirm and state on oath as under—*

*(1) I am a candidate set up by.....(**name of the political party)/**am contesting as an Independent candidate.*

*(**Strike out whichever is not applicable)*



O.A.No.40 of 2022

(2) My name is enrolled in
(Name of the constituency and the State), at Serial No.
...in Part No.

(3) My contact telephone number(s) is/are.....
and my E-mail ID (if any) is

5. Pending criminal cases.-

(i) I declare that there is no pending criminal cases against me.

(Tick this alternative, if there is no criminal case pending against the Candidate and write NOT APPLICABLE against alternative (ii) below)

OR

(ii) The following criminal cases are pending against me:

(If there are pending criminal cases against the candidate, then tick this alternative and score off alternative (i) above, and give details of all pending cases in the Table below)

TABLE

(a)	FIR No. with name and address of Police Station concerned,			
(b)	Case No.with Name of the Court			
(c)	Section of concerned Acts/Codes involved (give no. of the section, e.g., Section..... of IPC, etc.)			
(d)	Brief description of offence			
(e)	Whether charges have been framed (Mention YES or NO)			
(f)	If answer against item (e) above is YES, then give the date on which charges were framed			
(g)	Whether any Appeal/Application for			



O.A.No.40 of 2022

revision has been filed against the proceedings (Mention YES or NO)

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(6) Cases of conviction.-

(i) I declare that I have not been convicted for any criminal offence.

(Tick this alternative, if the candidate has not been convicted and write NOT APPLICABLE against alternative (ii) below)

OR

(ii) I have been convicted for the offences mentioned below:

(If the candidate has been convicted, then tick this alternative and score off alternative (i) above, and give details in the Table given below)

TABLE

(a)	Case No			
(b)	Name of the Court			
(c)	Sections of Acts/Codes involved (give No.of the Section, e.g.,Section of IPC, etc.			
(d)	Brief description of offence for which convicted			
(e)	Dates of orders of conviction			
(f)	Punishment imposed			
(g)	Whether any Appeal has been filed against conviction order (Mention YES or NO)			
(h)	If answer to item (g) above is YES, give details and present status of appeal			

(6-A) I have given full and up-to-date information to my political party about all pending criminal cases against me and about all cases of conviction as given in paragraphs (5) and (6).

(candidates to whom this item is not applicable should clearly write NOT APPLICABLE IN VIEW OF ENTRIES IN PARAGRAPHS 5(i) and 6(i) above.)



O.A.No.40 of 2022

WEB COPY

NOTE: 1. Details should be entered clearly and legibly in BOLD letters.

2. Details to be given separately for each case under different columns against each item.

3. Details should be given in reverse chronological order, i.e., the latest case to be mentioned first and backwards in the order of dates for the other cases.

4. Additional sheet may be added if required.

5. Candidate is responsible for supplying all information in compliance of the Hon'ble Supreme Court's judgment in W.P.(C)No.536 of 2011.)." (emphasis added)

27. Now the question to be decided is, whether the fourth respondent has violated Section 33-A of the Act and failed to disclose the criminal cases pending against him.

28. The contention of the election petitioner is that the fourth respondent failed to disclose the pending criminal cases in Form 26, and he has given the details in a separate annexure. That apart, in column (d) of Form 26, gives brief description of offence, the fourth respondent has simply answered that, all the cases were filed for violation of law during political agitation for public, which is not correct and thus the fourth respondent has suppressed the information and thereby violated Section 33-A(1)(i) of the Act.

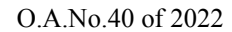


O.A.No.40 of 2022

29. It is an admitted case that, the fourth respondent have 22 criminal cases registered against him and are pending investigation and he has also disclosed all the 22 criminal cases in a separate annexure along with Form 26. It is also an admitted fact that in none of the criminal cases investigation has been completed and no final report has been filed and no charges have been framed by the Court of competent jurisdiction against the fourth respondent. It is also admitted that he was not convicted for any offence.

30. It is the contention of the learned senior counsel for the fourth respondent that since the fourth respondent is only expected to disclose particulars regarding the cases in which charges have been framed by the Court of competent jurisdiction, in the instant case, in none of the criminal cases registered against the fourth respondent investigation has not been completed and final report has been filed and charges are yet to be framed. In these circumstances, he is not expected to disclose the information regarding those criminal cases.

31. The learned senior counsel relied upon a judgment of the Hon'ble Supreme Court in *Satish Ukey Vs. Devendra Gangadharrao Fadnavis* reported in **(2019) 9 SCC 1**, to support his contention and in paragraph 24,



"24. A cumulative reading of Section 33-A of the 1951 Act and Rule 4-A of the 1961 Rules and Form 26 along with the letters dated 24-8-2012, 26-9-2012 and 26-4-2014, in our considered view, make it amply clear that the information to be furnished under Section 33-A of the 1951 Act includes not only information mentioned in clauses (i) and (ii) of Section 33-A(1), but also information, that the candidate is required to furnish, under the Act or the Rules made thereunder and such information should be furnished in Form 26, which includes information concerning cases in which a competent court has taken cognizance [Entry 5(ii) of Form 26]. This is apart from and in addition to cases in which charges have been framed for an offence punishable with imprisonment for two years or more or cases in which conviction has been recorded and sentence of imprisonment for a period of one year or more has been imposed [Entries 5(i) and 6 of Form 26 respectively]."

<https://www.mhc.tn.gov.in/judis>
28/41



WEB COPY



O.A.No.40 of 2022

"82. Having stated about the need for vibrant and healthy democracy, we think it appropriate to refer to the distinction between disqualification to contest an election and the concept or conception of corrupt practice inhered in the words "undue influence". Section 8 of the 1951 Act stipulates that conviction under certain offences would disqualify a person for being a Member either of the House of Parliament or the Legislative Assembly or Legislative Council of a State. We repeat at the cost of repetition unless a person is disqualified under law to contest the election, he cannot be disqualified to contest. But the question is when an election petition is filed before an Election Tribunal or the High Court, as the case may be, questioning the election on the ground of practising corrupt practice by the elected candidate on the foundation that he has not fully disclosed the criminal cases pending against him, as required under the Act and the Rules and the affidavit that has been filed before the Returning Officer is false and reflects total suppression, whether such a ground would be sustainable on the foundation of undue influence. We may give an example at this stage. A candidate filing his nomination paper while giving



information swears an affidavit and produces before the Returning Officer stating that he has been involved in a case under Section 354 IPC and does not say anything else though cognizance has been taken or charges have been framed for the offences under the Prevention of Corruption Act, 1988 or offences pertaining to rape, murder, dacoity, smuggling, land grabbing, local enactments like the Maharashtra Control of Organised Crime Act, 1999, U.P. Control of Goondas Act, 1970, embezzlement, attempt to murder or any other offence which may come within the compartment of serious or heinous offences or corruption or moral turpitude. It is apt to note here that when an FIR is filed a person filing a nomination paper may not be aware of lodgement of the FIR but when cognizance is taken or charge is framed, he is definitely aware of the said situation. It is within his special knowledge. If the offences are not disclosed in entirety, the electorate remain in total darkness about such information. It can be stated with certitude that this can definitely be called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body.



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O.A.No.40 of 2022

94.4. As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act."

33. In the instant case, the fourth respondent has disclosed all the criminal cases pending against him. Now the contention of the election petitioner is that even though the fourth respondent is having 22 criminal case pending against him, in Form 26 he has not mentioned the above criminal cases in the Form 26 itself, instead he has filed a separate annexure. According to the learned counsel for the election petitioner, spaces are available in the first three columns in Form 26, and the fourth respondent could have mentioned the first three criminal cases in the space available in Form 26 itself and the remaining criminal cases he could have filed in a separate annexure. The said contention of the learned counsel cannot be countenanced for the reason that, a cursory perusal of Form 26, the candidate is expected to mention the pending criminal case, FIR No. with name and



O.A.No.40 of 2022

address of police station concerned. Column (a) contains three columns for enabling the candidate to mention the pending cases. However, the Note (4) appended to Form 26, it is clearly mentioned that additional sheet may be added if required. In the instant case, the fourth respondent is having 22 criminal cases and space provided in Form 26 is not sufficient to mention all the criminal cases, hence he filled it in a separate annexure and there is no illegality in it. When a candidate disclose all the pending cases in a separate annexure, there is no necessity to fill up the columns provided in Form 26. Hence, the contention of the learned election petitioner in this regard cannot be countenanced.

34. The next contention is that Column (d) of Form 26 requires brief description of the offence. The fourth respondent mentioned that the cases were filed for violation of law during political agitation for public. A perusal of the criminal cases pending against the fourth respondent, it could be seen that all the cases have been registered against the fourth respondent while he was participating in public agitations against the Government. In such circumstances, he briefly mentioned that the cases have been filed for violation of law during political agitation for public and there is no illegality or irregularity in it. Hence, considering the above circumstances, this Court



is of the view that the fourth respondent has not suppressed any information violating the provisions of Section 33-A of the Act.

35. The next allegation with regard to corrupt practice is that, one of the election official is closely related to the fourth respondent and also wrote a book on the party in which the fourth respondent belongs and he has influenced the voters to vote for the fourth respondent and thereby involved in corrupt practice. The relevant paragraph No.22 in the election petition reads as follows:

"22. The petitioner states the one Mr.J.V.Mohanakrishnan was appointed Presiding/section officer, in Zonal Party No.2. His unique no.13074. Independent Candidate one Mr.C.Kannan raised objection, that the said officer was associated with the 4th respondent and his political party. He has written book/published on Dravida Munnetra Khazagam Youth wing. He was teacher for Krithika Udayanithi, spouse of 4th respondent. These officer's misuse/influence votes and get polled to their affiliation in collusion with agents appointed by these political party. As for the information he was under control of 10 polling booths at Chintadripet. The all mishaps occur



mostly during in the afternoon secession of polling, where booth agents and the officials collide. The major parties that rule or ruled influence the officials directly or indirectly, threat or other means and get forward by illegal voting. People once polled are not allowed to enter the booth again to verify or know the facts. The other parties who's candidates contest are were not able to coupe up before these money and muscle powered parties, election commission becomes mute spectators."

36. It is settled law that Section 83(1)(a) of the Act mandates that the election petition shall contain concise statement of material facts on which the election petitioner relies. The material facts would include positive statement of fact, which may be proved during trial by the party to establish existence of a cause of action. Failure to plead material facts is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition. But the averments regarding corrupt practice absolutely there is no specific allegation and the statements are very vague and based on those pleadings no trial can be held .



O.A.No.40 of 2022

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37. The learned counsel appearing for the election petitioner would submit that at the time of considering the application filed under Order VII Rule 11 of CPC, the averments in the election petition alone has to be considered and the contention the fourth respondent cannot be considered. To support his contention, the learned counsel relied upon a judgment of the Hon'ble Supreme Court in ***Roop Lal Sathi Vs. Nachhattar Singh*** reported in ***1982 AIR(SC) 1559***. The learned counsel further submitted that the petitioner failed to give complete information in the format provided in the Statute and merely filing Annexure amounts to non disclosure of details. In support of his contention, the learned counsel for the election petitioner relied upon judgment of the High Court of Manipur in ***Shri Yumkham Erabot Singh Vs. Shri Okram Henry Singh Singh*** in E.L.P.No.2 of 2017 dated 15.04.2021. In paragraph 44 it is held as follows:

"44. On further perusal of the Exbt.P/7 which is the Affidavit dated 13/02/2017 of the Respondent No.1 this Court found that the Respondent No. 1 failed to disclose the details of the Criminal Case pending against him as provided in Column No. 5 (i) particularly Special Trial Case No. FIR No. Short description of the offence (s) for



which charged etc. and as such, it is not case of filling in wrong Column but also it is the clear case of non-disclosure of the details and complete information as per the Format provided by the Statute."

38. The learned counsel for the election petitioner further submitted that defect in verification of an affidavit filed by the election petitioner cannot be a ground to reject the election petition. In support of his submission, the learned counsel relied upon a judgment of the Hon'ble Supreme Court in *A.Manju Vs. Prajwal Revanna alias Prajwal R.* reported in **2021 SCC Online SC 1234**.

39. As stated above, the averments in the election petition do not disclose any triable issue. That apart, election petition did not mention how the alleged defect materially affected the result of the election. It is well-settled law that election petition can be summarily rejected, if it does not furnish a complete cause of action as required under Order VII Rule 11 of CPC.

40. In *Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari*, reported in **2014 (5) SCC 312**, the Hon'ble Supreme Court, in para 15, has



held as follows;-

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15. This Court has consistently held that the court cannot go beyond the pleadings of the parties. The parties have to take proper pleadings and establish by adducing evidence that by a particular irregularity/illegality, the result of the election has been “materially affected”. There can be no dispute to the settled legal proposition that “as a rule relief not founded on the pleadings should not be granted”. Thus, a decision of the case should not be based on grounds outside the pleadings of the parties. In the absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings.”



41. In Udhav Singh v. Madhav Rao Scindia, reported in (1977) 1

SCC 511, the Hon'ble Supreme Court has held as follows:-

41. Like the Code of Civil Procedure, this section also envisages a distinction between “material facts” and “material particulars”. Clause (a) of sub-section (1) corresponds to Order 6 Rule 2, while clause (b) is analogous to Order 6 Rules 4 and 6 of the Code. The distinction between “material facts” and “material particulars” is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16 of the Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.



O.A.No.40 of 2022

WEB COPY 42. In **V.Narayanaswamy v. C.P.Thirunavukkarasu**, reported in **(2000) 2 SCC 294**, the Hon'ble Supreme Court has held that the election petition is liable to be dismissed, if it lacks material facts.

43. The next contention of the fourth respondent that already two election petitions with same averments have been filed which came to be dismissed by this Court and the present application is barred by the principles of Res Judicata. However the said contention cannot be countenanced for the simple reason that even though this election petition is verbatim repetition of the earlier two election petition, those two election petitions have been dismissed not on merits but on technical grounds and not filed by the petitioner, hence the principles of Res Judicata is not applicable to the instant case.

44. Considering all the above principles and the facts and circumstances of the instant case, this Court is of a considered view that the election petition does not disclose a cause of action, and failed to give rise to triable issues, and therefore it is only liable to be rejected.



O.A.No.40 of 2022

45. In the result, the application in **O.A.No.40 of 2022** filed under Order VII Rule 11 of CPC is allowed and consequently the election petition in **E.L.P.No.12 of 2021** is rejected. Consequently, the application in **O.A.No.167 of 2022**, seeking to amend affidavit in Form-25, is closed. No costs.

28.04.2022

Index: Yes
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O.A.No.40 of 2022

V.BHARATHIDASAN, J.

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PRE DELIVERY ORDER

in O.A.No.40 of 2022

in E.L.P.No.12 of 2021

and O.A.No.167 of 2022

RESERVED ON : **07.04.2022**

DELIVERED ON : **28.04.2022**