



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION NO.1575 OF 2023

Sagar D. Meghe, aged 54 years, Occ-
Business, r/o 144, Pandey Layout,
Khamla, Nagpur.

... APPLICANT

VERSUS

State of Maharashtra, through
Police Station Incharge, Dattapur,
Police Station, Dhamangaon,
Amravati.

... NON-APPLICANT.

Shri S.V. Manohar, Senior Advocate a/w Shri Shantanu Khedkar
Advocate, for the applicant.
Shri Doifode, Addl.P.P. for the State.

CORAM : VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 08.02.2024.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.**

2. The matter is taken up for final disposal by consent of
learned Counsel appearing for the parties.

3. By this application under Section 482 of the Code of Criminal Procedure (for short 'CrPC'), the applicant/accused is seeking to quash the charge-sheet bearing SCC No.329 of 2014 arising out of Crime No.3026 of 2014 registered with the Dattapur Police Station, District Amravati for the offence punishable under Sections 171-H, 188 of the Indian Penal Code(for short 'IPC') and Section 123 of the Representation of the People Act, 1950 (for short 'the Act').

4. The facts in brief are that the applicant was contesting parliamentary elections in the year 2014. During the election period, Police Station Dattapur set up the check point at Mangrul T Point. The Police intercepted a Scorpio vehicle bearing registration no.MH27 U1515 driven by co-accused Manoj Dhatewar. During search, cash amount of Rs.4.75 lakh, two liquor bottles and election material in the form of stickers of the political party have been found. The said vehicle was used in election campaign for the applicant's candidature. The Police took custody of cash amount and articles, on which Tahsildar has lodged the report, resulting into registration of crime.

5. Learned Senior Counsel Shri Manohar would submit that even if the prosecution case is accepted at its face value, none of the

provisions would attract, meaning thereby no *prima facie* case has been made out. He took us through the Sections invoked by the Police to impress that they does not fit in the facts of the case.

6. The charge-sheet has been filed for the offences punishable under Section 123 of the Act and Section 171-H, 188 of the IPC. With the assistance of both side, we have examined one by one penal provision sought to be invoked. Section 123 of the Act is not a punishable Section, but it merely defines a term 'corrupt practices'. Learned Senior Counsel Shri Manohar would submit that in terms of Section 77 of the Act, every candidate is bound to maintain an account of election expenses. Moreover, in terms of Section 100(1)(b) of the Act it is one of the ground for declaring election to be void. In short it is submitted that Section 123 of the Act does not attract penal consequences under the Act itself. The State has not pointed out whether the act of 'corrupt practices' has any penal consequence under the Act. Moreover, it is not a case of prosecution that applicant was indulging into corrupt practices at the time of parliamentary elections. In consequence invokation of Section 123 of the Act is wholly unjustifiable.

7. Section 171-H of the IPC bears some relevance which is about illegal payments in connection with the election. Section 171-H of the IPC reads as below :

“171-H. Illegal payments in connection with an election.—Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.”

8. This Section makes it illegal for anyone, unless authorized by a candidate, to incur any expenses in connection with the promotion of the candidate's election. The plain language employed in the Section

conveys that, it can be invoked against the others than the candidate acting without the authority of the candidate. Section makes the agents and others responsible for the specified acts done without authorization. The applicant being candidate himself Section 171-H of the IPC cannot be invoked against him and thus, prosecution for said Section is not tenable against the candidate.

9. Though the prosecution has invoked Section 188 of the IPC, however the basic requirement of Section 188 has not been complied. In other words there is no order issued by public servant of which breach is alleged. For ready reference Section 188 of the IPC is reproduced below :

“188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple

imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.”

10. In order to constitute an offence under Section 188 of the IPC, there must be an order promulgated by a public servant lawfully empowered to promulgate such an order. Secondly, a person having knowledge of such an order has disobeyed the direction and thirdly, the disobedience must cause the consequence as stated in the Section itself. The police paper never contains an order promulgated by a public servant of which disobedience has been claimed. Learned Addl.PP is unable to point out promulgation of such an order. The very heart of

the Section is promulgation of an order by a public servant which itself is missing.

11. Besides that the charge-sheet has been filed by the Police Officer at the instance of the report lodged by the Tahsildar. Learned Senior Counsel Shri Manohar would submit that due to specific bar created under Section 195 of the CrPC, the Court cannot take cognizance of charge-sheet filed by the Police pertaining to the offence punishable under Section 188 of the IPC. In this regard, he relied on the decision of the Supreme Court in case of *Daulat Ram vs. State of Punjab AIR 1962 SC 1206*. In the said decision on the basis of complaint lodged by the Tahsildar, Police investigated and filed charge-sheet. In similar circumstances it has been ruled that, it does not meet the requirement of Section 195 of the CrPC. In fact Section 195 of the CrPC puts a rider on Court to take cognizance for certain offences including Section 188 of the IPC, except on the complaint in writing made by the concerned public servant or his subordinate. Concededly no such a complaint of which cognizance could be taken under Section 190(1)(a) of the CrPC has been lodged, therefore, Section 188 of the IPC could not have been invoked.

12. Having regard to the above facts, it is evident that none of the provisions can be invoked against the applicant candidate. Besides that the learned Counsel for the applicant has produced a copy of Government of India Notification dated 28.02.2014 to impress that for contesting election for parliamentary constituency, the maximum limit for election expenses in the State of Maharashtra is of Rs.70 lakhs. In that context, mere finding of cash amount to the tune of Rs.4.75 lakh cannot be construed as an offence under either of the statute. It is also submitted that there is no declaration that said vehicle was used for election campaign.

13. In view of above, the material collected during the course of investigation does not make out a *prima facie* case. Certainly continuation of prosecution amounts to the abuse of the process of the Court. In the result, we have no alternative than to quash the proceedings. While parting with, we are tempted to take a note about careless attitude of law enforcement agency. Curiously we have inquired with the learned Additional Public Prosecutor about the internal mechanism of the Police relating to verification of charge-sheets by higher Police Authority before presentation in the Court. In response, learned Additional Public Prosecutor would submit that every

charge-sheet in routine used to be verified by the Deputy Superintendent of Police or the Sub-Divisional Police Officer or the Assistant Commissioner of Police as the case may be.

14. The purpose of a charge-sheet, is to notify a person of criminal charges being issued against him. After the charge-sheet is filed, the person against whom the charge-sheet has been filed comes to be known as an accused. The contents of charge-sheet have been specified in Section 173(2) of the CrPC. In other words, a charge-sheet is the final report prepared by the Investigating Agency for proving the accusation of a crime in Court of law and the charge-sheet forms a genesis of criminal trial. Before filing of the charge-sheet, the Police have to satisfy themselves about adequacy of material which could stand in the Courts of law.

15. In case at hand, the Sections invoked by the Police does not apply at all. The little amount of care would have prompted verifying authority to arrive to the conclusion that there exists no material in support of the charges levelled. In that case, the Police would not have filed charge-sheet in the Court. The consequence of filing charge-sheet are many fold. The person named as an accused require to obtain bail,

attend Court and face prosecution. Moreover, uncalled police reports would increase the docket which is ultimately a futile exercise in the Courts of law. We expect that the Police shall take proper care before filing of charge-sheets, to verify and only on satisfaction file it in the Courts of law.

16. In view of the above, we pass the following order :

- (a) The Criminal Application is allowed.
- (b) We hereby quash and set aside the charge-sheet bearing SCC No.329 of 2014 arising out of Crime No.3026 of 2014 registered with the Dattapur Police Station, District Amravati for the offence punishable under Sections 188, 171(6) of the Indian Penal Code and Section 123 of the Representation of the People Act, 1950.
- (c) The Magistrate shall pass an appropriate order regarding refund of cash amount and disposal of liquor bottles in accordance with law.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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