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Criminal Revision Case No.864 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2024

PRONOUNCED ON : 22.01.2025

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Revision Case No.864 of 2023

and

CrI.M.P.No.6679 of 2023

K.Palanisamy

... Petitioner

Vs.

1. State of Tamil Nadu

Represented by the Station House Officer
Central Crime Branch, Salem

2. P.Milany

... Respondents

Prayer: Criminal Revision Case filed under Section 397 & 401 of Criminal Procedure Code to call for the records of the learned Judicial Magistrate No.1, Salem relating to passing in online C.M.P. No.540 of 2023 (C.M.P.No.1302 of 2023) dated 26th April, 2023 and set aside the same.



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For Petitioner : Mr.S.R.Rajagopal
Senior Counsel
for Mr.S.R.Raghunathan
For First Respondent : Mr.S.Vinoth Kumar
Additional Public Prosecutor
For Second Respondent : Mr.A.K.M. Venkatesh

ORDER

This Criminal Revision Case has been filed by the petitioner to set aside the order passed by the learned Judicial Magistrate No.1, Salem, invoking Section 156(3) of Cr.P.C., in online C.M.P. No.540 of 2023 (C.M.P.No.1302 of 2023) dated 26.04.2023.

2. The short facts of the case are as follows:-

The second respondent filed a private complaint before the learned Judicial Magistrate No.1, Salem, under Sections 190 and 200 of the Cr.P.C. against the petitioner herein under Section 125A of the Representation of the People Act, alleging that on 26.02.2021, the Election Commission of India announced a General



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Election to the Tamil Nadu State Legislative Assembly, scheduling the poll for

06.04.2021. Subsequently, the contesting candidates filed their nominations with supporting documents before the concerned Returning Officers as per the requirements of the Election Commission of India, within the timeline fixed by them. As per Rule 4 of the Conduct of Election Rules, 1961, a candidate contesting an election must file his nomination paper in Form 2B along with an affidavit in Form 26, in accordance with Section 33(1) and 33A(2) of the Representation of the People Act, 1951. Any false declaration or concealment of information in the nomination papers and affidavit attracts an offence under Section 125A of the Act. On 15.03.2021, the petitioner/accused filed his nomination papers and affidavit before the Returning Officer as per Rule 4 and Rule 4A of the Conduct of Election Rules to contest in the 86-Edappadi Assembly Constituency on behalf of the All India Anna Dravida Munnetra Kazhagam (AIADMK) party. On 22.03.2021, after scrutiny of the nomination papers, the petitioner/accused was allotted the 'Two Leaves' symbol, which is a reserved symbol for AIADMK. There were 28 candidates, including the petitioner/accused, contesting for the 86-Edappadi Assembly



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Constituency. The election was conducted on 06.04.2021, and on 02.05.2021, the

votes for all constituencies, including the 86-Edappadi Assembly Constituency, were counted. On the same day, it was declared that the petitioner/accused won the election with 1,63,154 votes in his favour, and thus the petitioner/accused was elected from the 86-Edappadi Assembly Constituency. The affidavits in Form 26 of the candidates were uploaded to the official website of the Election Commission of India. The complainant/second respondent, being a social activist and an interested person in politics, analysed the election results and the background details of the candidates by downloading their affidavits in Form 26 from the official website of the Election Commission of India. Upon reviewing the documents, he noticed that the petitioner/accused had filed a false affidavit before the Election Commission by suppressing details about his assets, including movable and immovable properties, occupation, sources of income, the real market value of properties, educational qualifications, and furnishing false information wilfully with the intent to secure election in the 86-Edappadi Assembly Constituency. The learned Magistrate took cognizance of the complaint, and after inquiry, directed the first respondent police



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to investigate the case in a fair manner and register a case if a prima facie case was

made out. Challenging this, the petitioner has filed the present petition.

3. The learned senior counsel for the petitioner submits that the second respondent is neither a candidate contesting from the said constituency nor a voter in the constituency from which the petitioner contested. As the complainant is not an aggrieved person, he has no locus standi to prefer the complaint under Sections 190 and 200 of the Cr.P.C. for an offence under Section 25 of the Representation of the People Act. The learned senior counsel further submits that Section 125A of the Representation of the People Act provides that any act of filing a false affidavit is punishable with imprisonment for a term of up to six months, or with a fine, or both, Section 468 of the Cr.P.C. stipulates a limitation period of one year for filing a complaint. In the present case, the complaint was filed beyond the prescribed period of limitation, as the election was scheduled to be conducted on 06.04.2021, whereas the complaint was only filed on 27.02.2023. In support of the same, the learned senior counsel has relied upon the order of this court in CrI.O.P.11475 of



2021, dated 25.04.2023. The learned senior counsel also submits that Section

200 of the Cr.P.C. mandates that a complaint be examined upon oath, in the presence of witnesses, if any. However, in this case, no oath was administered, and the complaint is not even an affidavit but merely a verification petition. Therefore, the complaint is not maintainable. In support of the said contention, the learned counsel refers to the order of this Court in CrI.O.P.No.1404 of 2022, dated 27.07.2023. The learned senior counsel also referred the judgment of Apex Court in ***Anju Chaudhary Vs. State of Uttar Pradesh and other* [2013 (6) SCC 384]**.

4. The learned Additional Public Prosecutor submits that the second respondent has the right to file the complaint, as it pertains to a violation of the Representation of the People Act, which directly affects the integrity of the election process. Regarding the limitation period, it is argued that it does not apply in this case, as the alleged offence has a direct impact on the electoral process. Moreover, in light of the COVID-19 exemption, the limitation issue does not arise, and the learned judge has already addressed and dismissed this objection. On the issue of



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Section 200 of the Cr.P.C., the learned Additional Public Prosecutor acknowledges

that while an oath is typically required, in this case, considering that the complaint is filed against a senior bureaucrat, it cannot be dismissed purely on technical grounds. Therefore, the learned Additional Public Prosecutor prays for the dismissal of the revision petition and for the matter to proceed as per the law.

5. Heard both sides and perused the materials available on record.

6. The main contention of the learned senior counsel for the petitioner is that the complaint is barred by limitation. The Election Commission of India announced the General Election to the Tamil Nadu State Legislative Assembly, with the poll scheduled for 06.04.2021. According to the learned senior counsel, the complaint was filed on 27.02.2023, and hence it is barred by limitation. However, it is crucial to note that the Supreme Court of India, in *Suo Moto Writ Petition No.3 of 2020*, had ordered an extension of the limitation period due to the Covid-19 pandemic. The learned Judge held that, in the case at hand, the affidavit and nomination papers of the petitioner were published on 15.03.2021. The learned



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Judge further held that the period from 15.03.2020 to 28.12.2022 shall stand excluded for the purposes of limitation in view of the pandemic-related exclusion.

Consequently, the complaint filed on 27.02.2023 falls within the extended period and is well within the statutory limitation. In view of this, the learned Judge rightly held that the question of limitation does not arise in this case, as the filing of the complaint is within the extended period provided under the Supreme Court's order. It is also important to note that the case concerns the alleged furnishing of false information regarding the petitioner's immovable properties, annual income, and loan liabilities in the affidavit filed along with his nomination papers. Therefore, the submission of the learned senior counsel for the petitioner, relying on the application of the limitation period, is rendered inapplicable in light of the Court's order and the Covid-19 extension. Additionally, the order cited by the petitioner refers to a direction given by the learned Judge for the registration of an FIR, which is distinguishable from the present case. In the present case, the learned Magistrate merely directed a preliminary inquiry and ordered the police to register a case if a prima facie case is made out.



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7. The next contention of the learned senior counsel is that the second respondent lacks locus standi. However, it is important to emphasize that the second respondent, as a social activist and an interested person in politics, has a direct stake in ensuring the integrity of the electoral process. The second respondent is not only entitled to challenge false declarations made in affidavits filed during elections but is also within his rights to raise concerns about any violation of the Representation of the People Act. As the complainant has highlighted alleged false affidavits submitted by the petitioner, which directly impact the fairness of the election process, the second respondent has sufficient locus standi to file this complaint. Furthermore, the provisions of the Representation of the People Act, which are designed to uphold the democratic process and ensure transparency, make it clear that anyone with an interest in ensuring the integrity of elections has the right to file such complaints. It is incorrect to argue that the second respondent lacks locus standi simply because they are not a voter or candidate in the constituency. The protection of electoral integrity is a public



interest matter, and anyone can raise issues concerning violations of the Representation of the People Act.

8. The final contention of the learned senior counsel is that no oath was administered and that the complaint is not an affidavit but a verification petition. It is important to note that while Section 200 of the Cr.P.C. does require that the complainant be examined upon oath, the primary requirement is that the complaint must present sufficient prima facie material to justify taking cognizance. At this juncture, it would be useful to extract Section 200 of Cr.P.C.:

"200. Examination of complainant.

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate :

Provided that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses -

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192 :



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Provided further that if the Magistrate makes over the case to another

Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

The above provision clearly states that for taking cognizance of an offence on complaint, the learned Magistrate has to examine upon oath the complainant and the witnesses present. However, in the matter at hand, admittedly, no cognizance was taken by the learned Magistrate. Instead, only a direction was given to the police to conduct a preliminary inquiry to assess whether a prima facie case exists and, if such a case is made out, register a case. It is crucial to note that in the proviso clause, it has been clearly stated that when a complaint is made in writing, the Magistrate need not examine the complainant and the witnesses. Now, it is necessary to extract Section 2 of the Criminal Procedure Code, relating to the definition of "complaint":

2(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.



The above definition explains what constitutes a complaint and indicates that it can

be in two forms: orally or in writing. A combined reading of Section 2(d) and the proviso to Section 200 of Cr.P.C. clearly shows that, in the matter at hand, it is not an oral complaint but a written complaint. For the written complaint, as per the proviso clause, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses. The learned Magistrate, after considering the complaint, directed the respondent-Police to conduct a preliminary inquiry to assess whether a prima facie case exists. If such a case is made out, the Police can proceed further with the matter, as per the provisions of law. While Section 200 Cr.P.C. does mandate an oath before taking cognizance, the absence of an oath does not render the complaint entirely invalid. The learned Magistrate has discretion to proceed with the inquiry if there is sufficient material to suggest that the allegations made in the complaint are worth investigating. The learned Magistrate did not allow the case outright but instead directed an inquiry, which is a reasonable approach when a complaint presents issues that may require further examination. Furthermore, the matter pertains to an alleged violation of the



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Representation of the People Act, involving a former Chief Minister. In such cases, it

is particularly important that the electoral process be thoroughly examined, especially when allegations of false declarations are made. The failure to administer an oath should not, in this instance, be used to dismiss the complaint outright, as it does not affect the substance of the complaint, which is based on the alleged false information furnished by the petitioner in his affidavit.

9. It is also pertinent to note that the learned Magistrate, who is dealing with a complaint filed under Sections 190 and 200 of the Cr.P.C., has the authority to direct the police to conduct an investigation by invoking Section 156(3) of the Cr.P.C. The de facto complainant has set out the complaint in detail, alleging that the petitioner, while filing his nomination for the General Election to the Tamil Nadu State Legislative Assembly in 2021, furnished false information regarding assets, including movable and immovable property, occupation, sources of income, the real market value of properties, and educational qualifications, with the intent to be elected in the 86-Edappadi Assembly Constituency election. Though it is a private

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complaint, the uncontroverted fact is that the petitioner is the former Chief Minister of Tamil Nadu, a prominent politician, and currently the General Secretary of the AIADMK Party. Therefore, the offence is not a private one against the de facto complainant but is an offence under Section 125(A) of the Representation of the People Act. Since the de facto complainant is an ordinary citizen, it would be extremely difficult to gather all the materials and prove the case. In light of the nature of the offence involved, the learned Magistrate has, therefore, allowed the petition filed by the de facto complainant and directed the police to inquire into the case and register an FIR, if a prima facie case is made out.

10. Upon perusal of the entire material and the order passed by the Magistrate, this Court does not find any perversity or error, nor any reason to interfere with the order passed by the learned Magistrate and there is no merit in this criminal revision. However, pending this revision, it is brought to the notice of this Court that the first respondent police have registered an FIR in Crime No. 15 of 2023 on 04.05.2023.



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11. Considering the facts and circumstances of the case, the decisions referred to by the learned senior counsel for the petitioner are not applicable to the case at hand, as they are distinguishable on facts.

12. In view of the above findings and discussions, this Criminal Revision Case is dismissed. Since the respondent police found a prima facie case and registered the case in Crime No.15 of 2023, the respondent police are directed to complete the investigation and file a charge sheet as expeditiously as possible. Likewise, since the case in Crime No.15 of 2023 was registered, the petitioner is at liberty to work out his remedy in the manner known to law. Consequently, the connected Miscellaneous Petition is closed.

22.01.2025

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

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To

1. The Judicial Magistrate No.1,
Salem

2. The Station House Officer
Central Crime Branch, Salem



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P.VELMURUGAN. J.

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