



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1544 OF 2024

Mr. Sandip Bhanudas Kotkar
Age 40 years, Occupation Business,
R/ at Heritage Building,
Behind Sahyadri Hospital,
Shastri Nagar, Yerawada, Pune

... PETITIONER

VERSUS

1. The State of Maharashtra
(through Kotwali Police Station)
2. Mr. Sudhakar Deshmukh,
Age --- years, Occupation Service,
R/o Municipal Corporation,
Ahmednagar

... RESPONDENTS

.....
Mr. Hrushi Ghorpade, Advocate a/w
Mr. Amarjeet Patil, Advocate holding for
Mr. B.S. Dhawale, Advocate for petitioner
Mr. S.A. Gaikwad, A.P.P. for respondent No.1 – State
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CORAM : MEHROZ K. PATHAN, J.

Date of reserving judgment : 30th MARCH, 2026

Date of pronouncing judgment : 20th APRIL, 2026

J U D G M E N T :

1. Heard. The petitioner has filed the present Criminal
Writ Petition, thereby praying for quashing and setting aside the

R.C.C. No.468/2007 pending before the learned Sessions Judge, Ahmednagar to the extent of Section 171-G of the Indian Penal Code.

2. The case of the prosecution is as under :

The complaint has been lodged by Mr. Sudhakar Deshmukh against the present petitioner for the offences punishable under Sections 177, 181, 171-G, 471 of the Indian Penal Code. It is alleged by the informant that, the petitioner was contesting election for Municipal Corporation from Ward No.7 at Kedgaon. It is further alleged that, while submitting the nomination form, the present petitioner filed a false affidavit before the Returning Officer on 8/11/2003, stating therein that no criminal case is pending against him in any Court of law. It is further alleged that, the present petitioner also suppressed vital information regarding his assets and he furnished false information to the Election Returning Officer on 18/11/2003 and 22/11/2003 and as such, prosecution came to be initiated for the offences punishable under Sections 177, 181, 171-G, 471 of the Indian Penal Code.

3. A non-cognizable offence came to be registered by the respondent against the petitioner for the offences punishable under

Sections 177, 181 of the Indian Penal code. As the offences alleged were non-cognizable offences, the respondent No.1 filed an application under Section 155 of the Code of Criminal Procedure before the learned Judicial Magistrate, First Class, Ahmednagar, thereby seeking permission to investigate the present crime. The learned Judicial Magistrate, First Class, Ahmednagar was pleased to allow the application and directed the respondent No.1 to investigate the present crime. Accordingly, the respondent No.1 carried out investigation and filed Charge Sheet before the learned Judicial Magistrate, First Class, Ahmednagar for the offences punishable under Sections 177, 181, 171-G, 471 of the Indian Penal Code. Thereafter the petitioner preferred an application before the learned Judicial Magistrate, First Class, Ahmednagar below Exh.81 under Section 195 of the Code of Criminal Procedure for dropping the proceedings arising out of non-cognizable Registration No.I-165/2007 registered at Kotwali Police Station, Ahmednagar.

4. After hearing, the learned Judicial Magistrate, First Class, Ahmednagar was pleased to reject the application below Exh.81 by order dated 11/12/2023. Pursuant to the said order, the petitioner preferred Criminal Revision No.157/2023 before the

learned Sessions Judge, Ahmednagar, which came to be partly allowed and the order dated 11/12/2023 was set aside to the extent of rejection of prayer for dropping the Section 177 and 181 of the Indian Penal Code. However, the learned sessions Judge has observed that, framing of a charge under Section 171-G of the Indian Penal Code cannot be said to be bad. The proceedings against the petitioner under Section 171-G of the Indian Penal Code shall be continued. The petitioner has challenged the order to the extent of continuation of Section 171-G proceedings against him.

5. The only ground raised by the petitioner is the delay in taking cognizance of the offence under Section 171-G of the Indian Penal Code by the trial Court. According to the learned counsel for the petitioner, the cause of action for filing of the complaint is the date of filing of affidavit by the petitioner before the public servant, on 18/11/2003 as there are allegations of false information provided by the petitioner about the criminal antecedents and also false information about disclosure of assets while the petitioner contested the elections in the year 2003 for Ahmednagar Municipal Corporation for the post of Corporator. The First Information Report is registered on 17/3/2007 by the Deputy Commissioner of

the Ahmednagar Municipal Corporation. The Charge Sheet is filed on 20/11/2007 i.e. after almost four years of cause of action.

6. It is submitted that, as per Section 468 of the Code of Criminal Procedure there is three years limitation for lodging of the complaint under Section 171-G of the Indian Penal Code and as such, the complaint is barred by limitation and thus, needs to be quashed and set aside on the ground of delay in view of Section 468 of the Code of Criminal Procedure.

7. It is submitted that, the cause of action took place on 18/11/2003, the First Information Report is registered on 17/3/2007 whereas the Charge Sheet is filed on 20/11/2007 and the cognizance of the complaint is taken by the learned Magistrate on the same day i.e. on 20/11/2007. As taking of the cognizance is beyond the period of three years, the same is specifically prohibited under section 468 of the Code of Criminal Procedure and as such, the proceedings itself shall be quashed and set aside.

8. The learned counsel for the petitioner relied on the order of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Sarwan Singh (1981) 3 SCC 34** to submit that, the prosecution by the State or by a private complainant must abide by letter of law

or take the risk of the prosecution failing on the ground of limitation. The object of the Criminal Procedure Code in putting a bar of limitation on prosecution 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.

9. The learned counsel further relied on the judgment of the Bombay High Court in **Criminal Writ Petition No.1854/2018 (Mahesh Murthy Vs. The State of Maharashtra & anr.)**, decided on 9/9/2019, whereby, relying upon Section 468 of the Code of Criminal Procedure, the prosecution was quashed by the Division Bench of the Bombay High Court.

10. The learned A.P.P., on the other hand, strongly opposes the petition on the ground that the First Information Report itself show that though the applicant has filed the affidavit in the year 2003 for participating in the election which was conducted in the month of December 2003. Thereafter a complaint was filed by the complainant Jayant Nimbalkar on 11/8/2005 to the State Election Commission about the false affidavit filed by the petitioner. The said application was received to the office of the Commissioner,

Municipal Corporation on 24/8/2005 for further action. One of the complainant also filed Writ Petition before the High Court, being Writ Petition No.7012/2006 for taking action against the petitioner Sandip Kotkar for filing false affidavit. After conducting a preliminary enquiry by the complainant, it was found that, from the communication issued by the Income Tax Department, Revenue Department and the Town Planning Department, the information was called, and it was found that the petitioner has given false information on an affidavit while contesting the election for the Municipal Corporation in the month of December 2003. After preliminary enquiry, a communication was issued to the State Election Commission by letter dated 27/2/2006, for calling the opinion of the State Election Commission. The State Election Commission has submitted its opinion on 4/3/2006, thereby directing the Commissioner, Municipal Corporation to take action as per the Circular dated 18/11/2005. However, the Circular dated 18/11/2005 was not clear as to how the action is to be taken for filing false affidavit, since another opinion was sought from the State Election Commission vide communication dated 12/12/2006. The State Election Commission, vide communication dated 6/1/2007, had submitted the opinion that the Municipal Commissioner shall take the appropriate action of lodging of an

F.I.R. The said communication came to be received on 13/3/2007 through Fax. The Commissioner, Municipal Corporation had then authorised the complainant – Deputy Commissioner to register an F.I.R. Thus, the F.I.R. came to be registered on 17/3/2007.

11. The learned A.P.P., therefore, submits that, the F.I.R. explains the delay in registering the F.I.R. as the administrative opinion and permissions for lodging the F.I.R. for submitting false information by the petitioner while contesting the election. The learned A.P.P. therefore submits that, even if the last date of receiving the information is to be considered, as the complaint made by Jayant Nimbalkar on 11/8/2005, the three years period would commence from 11/8/2005 and end on 11/8/2008. The F.I.R. is filed on 17/3/2007 and as such, within three years of the cause of action which is to be construed as the date of knowledge as per Section 469 of the Code of Criminal Procedure. The learned A.P.P., therefore, submits that, the present petition is devoid of substance and merits and is filed only with an intention to protract the trial and, therefore, liable to be rejected.

12. I have gone through the F.I.R., the order passed by the learned Trial Court, dated 11/12/2023 and the learned Revisional Court, dated 22/12/2023. I have also gone through the judgments

relied upon by learned counsel for the petitioner.

13. Section 468 of the Code of Criminal Procedure reads as under :

468. Bar to taking cognizance after lapse of the period of limitation.—

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. 1

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

14. Section 469 of the Code of Criminal Procedure reads as under :

469. Commencement of the period of limitation:-

(1) The period of limitation, in relation to an offender, shall commence, --

*(a) on the date of the offence **OR***

(b) where the commission of offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier

(c)

(2)

Thus, perusal of Section 469(1)(b) of the Code of Criminal Procedure would show that the limitation commences from the date of knowledge to the complainant. The perusal of the F.I.R. would show that, it is only when Jayant Nimbalkar had filed a complaint on 11/8/2005, that day the complainant can be said to have acquired the knowledge of the offence committed by the petitioner under Section 171-G of the Indian Penal Code of filing false affidavit with intent to affect the result of the election by making a statement purporting to be a statement of fact which is false and which he believed to be false and does not believe to be true in relation to personal conduct of the candidate. The petitioner was charged with offence under Sections 177 and 181 of the Indian Penal Code along with Section 171-G of the Indian Penal Code. Section 181 of the Indian Penal Code was punishable with three

years imprisonment and as such, the limitation for taking cognizance of the complaint would start from the date of acquiring knowledge and would be till three years from the date of acquiring knowledge. The F.I.R. is lodged on 17/3/2007 whereas the Charge Sheet is filed on 20/11/2007.

Clause (b) of sub-section (1) of Section 469 of the Code of Criminal Procedure would make it clear that, where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the period of limitation shall commence on the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier. Thus, since the knowledge of the commission of the offence of filing a false affidavit was acquired by the informant/ Municipal Corporation on 24/8/2005, the commencement of the period of limitation would begin from the date, i.e. 24/8/2005 at the complaint received from the complainant Mr. Nimbalkar, dated 11/8/2025 stating that the false affidavit was filed by the petitioner was forwarded to the informant and received on 24/8/2005.

15. The perusal of the F.I.R. would show that, after the complaint was filed on 11/8/2005, the same was forwarded to the office of the Municipal Corporation on 24/8/2005. The Commissioner

had issued a communication to the State Election Commission on 27/2/2006 for obtaining an advice and opinion. The first opinion was given by the State Election Commission on 4/3/2006 to act upon the Circular dated 18/11/2005. The second communication was issued by the Commissioner of Municipal Corporation on 12/12/2006 for seeking advice of filing complaint. The second opinion was thus received on 6/1/2007 by a Fax dated 13/3/2007. The complaint/ F.I.R. came to be filed on 17/3/2007 and the Charge Sheet was filed on 20/11/2007 and the cognizance of the same is taken by the learned Trial Court by issuing summons on 20/11/2007.

16. It is the submission of learned counsel for the petitioner that, even considering the date of knowledge as 24/8/2005, when Shri Jayant Nimbalkar had filed the complaint to the State Election Commission, which came to be forwarded through the office of the Collector to the office of the Commissioner, Municipal Corporation, Ahmednagar, the informant though has filed the F.I.R. on 17/3/2007, the Charge Sheet was filed on 20/11/2007 and the cognizance of the offence can be said to have been taken by the learned Judicial Magistrate, First Class, Ahmednagar on 20/11/2007 as the summons were issued on 20/11/2007. Thus, even considering the date of knowledge of filing false affidavit as 11/8/2005 or 24/8/2005, the date

of taking cognizance is 20/11/2007, which is beyond limitation and specifically prohibited under Section 468 of the Code of Criminal Procedure.

17. The learned counsel for the petitioner, therefore, submits that, in view of the specific prohibition under Section 468 of the Code of Criminal Procedure, taking cognizance of offence beyond the period of limitation, the present proceedings shall be quashed and set aside as the same is non est as barred by limitation, as held by the Hon'ble Supreme Court in case of State of Punjab Vs. Sarwan Singh (supra).

18. A perusal of Sections 468 and 469 of the Criminal Procedure Code would make it amply clear that the relevant date for computation of limitation so as to attract a bar under Section 468 of the Criminal Procedure Code would be the date of filing of the complaint/ F.I.R. and not the issuance of summons or taking cognizance of complaint.

19. The Hon'ble Supreme Court, in recent judgment delivered in the case of **Ghanshyam Soni Vs. State (Govt. of NCT of Delhi) & anr. (2025 SCC OnLine SC 1301)**, was pleased to observe as under :

“15. It is a settled position of law that for the computation of the limitation period under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution **and not the date on which the Magistrate takes cognizance.**”

The Hon'ble Supreme Court has relied upon the judgment reported in **(2003) 8 SCC 559 (Bharat Damodar Kale & anr. Vs. State of Andhra Pradesh)** to hold that, for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court.

20. Thus, it is clear that, the period of limitation will have to be computed from the date of filing of the complaint or the date of institution of the prosecution and not the date on which the Magistrate takes cognizance in view of the recent judgment of the Hon'ble Supreme Court in the case of Ghanshyam (supra). The reliance placed by the learned counsel for the petitioner in the case of State of Punjab Vs. Sarwan Singh (supra) is, therefore, misconceived and liable to be rejected.

21. The perusal of the F.I.R. would make it clear that, the informant got the knowledge about the false affidavit filed by the

petitioner, through a complaint made by the complainant Jayant Nimbalkar on 11/8/2005, which was forwarded by the Collector Office to the Municipal Corporation, Ahmednagar on 24/8/2005. the date of knowledge, thus, could be construed as 24/8/2005. The F.I.R. is lodged on 17/3/2007 which is well within the period of limitation as provided under Section 468 of the Code of Criminal Procedure. In view of this, though the Charge Sheet is filed on 20/11/2007 and the cognizance of the same is taken on 20/11/2007, the complaint can be said to have been filed within limitation, on 17/3/2007, within a period of three years if the period is computed as the date of filing of the complaint in view of the judgment of the Hon'ble Supreme Court in the recent judgment in the case of Ghanshyam (supra). The petitioner has thus failed to make out any case for interference in exercise of extraordinary jurisdiction of this Court. The petition, is, therefore, devoid of substance and merit and is hereby dismissed.

22. Since the trial is of the year 2007, the learned Trial Court shall make an endeavour to complete the same within a period of eight months from the date of this order.

(MEHROZ K. PATHAN, J.)

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