HON'BLE SMT. JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION No 7799 of 2023

ORDER:

This Criminal Petition is filed by the petitioner/ accused to quash the proceedings against him in C.C. No.53 of 2019 on the file of the learned Judicial Magistrate of First Class, Udayagiri, for the offences under Sections 418, 426 and 120-B of the Indian Penal Code (hereinafter referred to as 'IPC') read with Section 125A of the Representation of the People Act, 1951 (hereinafter referred to 'the Act, 1951') and Section 228 of the Andhra Pradesh Panchayat Raj Act, 1994 (hereinafter referred to 'the Act, 1994').

2. The prosecution case, in brief, is that the petitioner contested the election for the post of MPTC member from the 2nd segment of Vinjamur Mandal and while submitting his election affidavit dated 20.03.2014, he failed to disclose about the case in Crime No.45 of 2011 of Vinjamur Police Station pending against him, the election was held on 06.04.2014 and the petitioner was elected, and respondent No.2 who has also contested the election and was elected and thereafter, he filed complaint dated 07.07.2014 alleging that the petitioner intentionally submitted false affidavit by concealing the pendency of criminal case with criminal conspiracy and thereby, committed the offence of cheating and mischief. The learned Magistrate forwarded the said complaint to the police concerned and the same is registered as a case in Crime No.119 of 2014 on 28.08.2014 and after completion of investigation, on 31.01.2019, the investigating officer laid charge sheet of the offences stated supra.

3. Learned counsel for the petitioner initially would argue that respondent No.2 is rival candidate of the petitioner and due to political rivalry, he filed complaint with false averments, the allegations do not disclose the ingredients of the offences, the complaint is not supported by an affidavit as per the principle laid down by the Hon'ble Apex Court, the proceedings were initiated after considerable delay and that too, without any application seeking condonation of

delay. Further, the petitioner was subsequently acquitted in Crime No.45 of 2011 and that no election petition or disqualification proceedings were initiated against him by the appropriate authority, and complaint filed by the private person is not maintainable to attract the offence under Section 125-A of the Act, 1951. Learned counsel for the petitioner relied upon the following judgments:

i) Priyanka Srivastava & another vs State of Uttar Pradesh and others[1]

ii) Maksud Saiyed v. State of Gujarat[2]

iii) Smt. Manjula S. alias Manjula Limbavalli v. Sri Nagesh T. alias Nallurhalli Nagesh[3]

iv) Chandrikaben Kishor Dafda v. State of Gujarat[4].

4. Per contra, learned counsel for the respondent No.2 opposes the petition and would argue that the petitioner was required to disclose the relevant information in the election affidavit and he intentionally suppressed the fact of pendency of criminal case and is liable for punishment. Further, the charge sheet discloses a prima facie case and this is not a case to consider the contentions of the petitioner and relied upon the following judgments:

i) Roma Ahuja v. State and another[5]

ii) Chandrikaben Kishor Dafda (supra).

5. As seen from the record, respondent No.2 filed complaint under Section 190 and 200 of Cr.P.C and the learned Magistrate forwarded the same to the police concerned and accordingly, a case in crime No.119 of 2014 of the offences stated supra and after completion of investigation, the investigating officer filed charge sheet for the said offences. Record further reveals that

[1] (2015) 6 SCC 287
[2] (2008) 5 SCC 668
[3] Crl.P. No.2756 of 2024 c/w W.P. No.7458 of 2024 dated. 07.03.2025 of Karnataka High Court
[4] 2026 INSC 665
[5] 2026 Livelaw (SC) 351

respondent No.2 has appended photo copies of nomination papers along with affidavit submitted by the petitioner and further, he had also appended office copy of report dated 24.05.2014 given to the SHO, Vinjamur Police Station and receipt issued by them. Further, both the petitioner and respondent No.2 contested the elections, were elected as MPTC members and their tenure was also completed by 2019. The present complaint is filed on 01.08.2014 and on 28.08.2014, the instant crime is registered and after lapse of more than four years, the investigating officer laid charge sheet. Learned counsel for the petitioner would argue that without explaining the said delay of more than four years, the investigating officer laid charge sheet and the same is registered. In the judgment relied upon by the respondent No.2 in ***Roma Ahuja*** (supra), it is held that for calculating the limitation period under Section 468 Cr.P.C, the relevant date in filing the complaint or institution of prosecution, rather than the date on which the magistrate takes cognizance.

6. In the judgments relied upon by the learned counsel for the petitioner in ***Maksud Saiyed (supra)***, Hon'ble Supreme Court held that a Magistrate exercising jurisdiction under Sections 156(3) or 200 Cr.P.C. must apply judicial mind to the allegations and the ingredients of the offences alleged and in **Priyanka Srivastava (supra),** it is emphasised that an application invoking Section 156(3) Cr.P.C. should ordinarily be supported by an affidavit and should disclose prior recourse to the police authorities under Sections 154(1) and 154(3) Cr.P.C and th safeguards are intended to discourage casual or vexatious invocation of the Magistrate's jurisdiction.

7. The contention of the learned counsel for the petitioner that the proceedings are liable to be quashed for non filing of an affidavit along with application under Section 156 (3) Cr.P.C cannot be accepted as the complainant in the present case is filed on 01.08.2014 i.e., prior to the judgment of Hon'ble Apex Court in ***Priyanka Srivathsava (supra).*** In this regard, it is to be noted

that in ***Kanishk Sinha Vs State of West Bengal***[6]***,*** it is clarified that the requirement of filing an affidavit along with an application under Section 156 (3) Cr.P.C operates prospectively. Added to it, respondent No.2 also appended documents showing that he has given report dated 24.05.2014 and the concerned police issued receipt to that effect. Assuming for the sake of arguments, respondent No.2 has not filed affidavit also, order of the learned Magistrate cannot be vitiated in view of the clarification given by the Hon'ble Apex Court in ***Kanishk Sinha (supra)*** and therefore, the absence of an affidavit in the present case, cannot, by itself, be a ground to quash the proceedings and further, the principle in ***Smt. Manjula S. alias Manjula Limbavalli (supra)*** cannot be applied to the facts of the case at hand.

8. In the other judgment relied upon by both the parties in ***Chandrikaben Kishor Dafda (supra),*** Hon'ble Supreme Court while considering a complaint alleging concealment in an affidavit filed for a local-body election, observed that the definition of 'election' under the Representation of the People Act relates to elections to Parliament or a State Legislature, and considered the applicability of the relevant local-body enactment and the IPC. It is further held that an error in taking cognizance under an incorrect statutory provision does not automatically invalidate the proceedings and Section 465 Cr.P.C may save such an error, where it has not occasioned a failure of justice and accordingly, remitted the matter to the trial Court to take cognizance afresh and proceed according to law.

9. So far as filing complaint by a private person of the offence under Section 125-A of the Act, 1951 is concerned, in ***Rajkumar Madki v. Dr. Shailendra Beldale***[7], Hon'ble Supreme Court held that Section 195(1) Cr.P.C does not bar a private person to file complaint under Section 200 Cr.P.C of the offence under Section 125-A of the Act and Section 125-A of the Act is not among the offences

[6] 2025 INSC 278
[7] 2026 INSC 1138

specified in Section 195(1) (a) Cr.P.C, and that the Court would not extend that restriction to an offence not included by the legislature. It is further observed that the Court has to distinguish the maintainability of a private complaint from the question whether the particular material discloses a sustainable criminal case. So, the contention of the petitioner that the complaint which is filed by a private person i.e., respondent No.2 is not maintainable cannot be taken into consideration. Further, the allegations and documents in this case must be independently examined and it is already stated above that respondent No.2 has appended office copy of report dated 24.05.2014 given to the SHO, Vinjamur Police Station, receipt issued by them and photo copies of nomination papers along with affidavit submitted by the petitioner.

10. The allegation under Section 125-A of the Act, 1951 is that the petitioner knowingly furnished false information or concealed information in the affidavit accompanying his nomination, with the intent of being elected. The relevant question is whether the material prima facie shows that the petitioner knowingly made a false statement or concealed information which he was legally required to disclose. The subsequent acquittal in Crime No.45 of 2011 does not, by itself, establish that the case was not pending when the affidavit was submitted. The affidavit, nomination papers, and records of the earlier crime must be considered together.

11. To sustain the allegation under Section 125-A, the prosecution must identify the specific statement or omission in the affidavit, the information required to be disclosed under the applicable election law, and the material indicating knowing concealment or false information with the intent contemplated by that provision. A general allegation that a criminal case was not disclosed cannot, without examining the contents of the affidavit and the applicable disclosure requirement, substitute for the essential ingredients of the offence.

12. For an offence under Section 418 IPC, the prosecution must disclose the ingredients of cheating and facts showing that the accused had reason to believe that wrongful loss might be caused to a person whose interests he was bound by law or legal contract to protect. Section 426 IPC prescribes punishment for mischief; therefore, the ingredients of mischief under Section 425 IPC, including the requisite intention or knowledge and property-related damage, must be disclosed. For Section 120-B IPC, there must be material indicating an agreement between two or more persons to commit an illegal act or a legal act by illegal means.

13. The mere fact that the petitioner contested an election, that respondent No.2 was an opposing candidate, or that an omission is alleged in an election affidavit does not, without supporting facts, establish cheating, mischief or criminal conspiracy. If the charge sheet does not identify the person whose interests the petitioner was legally bound to protect, any property-related act constituting mischief, or material indicating an agreement to commit an illegal act, the offences under Sections 418, 426 and 120-B IPC cannot be sustained merely by citing those provisions. Further, the mere omission of a criminal case from the affidavit does not, by itself, constitute offences under Sections 418 and 426, as the essential ingredients of cheating and mischief are not thereby established. Similarly, in the absence of specific allegations and the material indicating an agreement to commit an illegal act or a legal act by illegal means, the offence under Section 120 – B IPC cannot be presumed merely from the alleged omission.

14. In so far as Section 228 of the Act, 1994, is concerned, the said provision prescribes punishment for contraventions of the Act or of any rule, notification or order made there under for which no specific penalty is provided, therefore, before invoking the said provision the said provision, it is necessary to identify the particular statutory provision or both allegedly contravened by the accused

and to examine whether the alleged omission attracts the residual penal provision. The applicability of provision must be determined during trial in the light of the disclosure requirements in force on the relevant date and the specific allegations made in the complaint

15. The absence of an election petition or disqualification proceeding and the completion of the petitioner's tenure do not automatically extinguish criminal liability if an offence is otherwise made out. Likewise, the subsequent acquittal in Crime No.45 of 2011 is not by itself conclusive of the present case. These circumstances must be considered with the precise allegations, the contents of the affidavit and the material collected during investigation.

16. For the foregoing reasons, this Court is of the considered view that the continuation of proceedings under Sections 120- B, 418 and 426 IPC cannot be justified solely on the basis of the alleged non-disclosure, and the applicability of Section 125-A of the Act and 228 of the Act, 1994, must be considered independently, in accordance with the allegation, the material on record and the law applicable to the case.

17. **In the result**, this Criminal Petition is allowed in part, quashing the proceedings against the petitioner in respect of the offences under Sections 120-B, 418 and 426 IPC only in C.C. No.53 of 2019 on the file of the learned Judicial Magistrate of First Class, Udayagiri, and dismissed the petition in so far as the offences under Section 125-A of the Act, 1951 and Section 228 of the Act, 1994. The observations made in this order are confined to the consideration of the present petition and shall not be construed as an expression of opinion on the merits of the case. The learned trial Court shall independently consider the allegations, the material on record without being influenced by any of the observations or findings made herein and shall decide the case on its own merits, in accordance with law.

As a sequel thereto, pending miscellaneous petitions, if any, shall stand closed.

SUNITHA GANDHAM, J

Date: 03.11.2026

THE HON'BLE SMT. JUSTICE SUNITHA GANDHAM

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