
(2014) 03 DEL CK 0238

Delhi High Court

Case No: Criminal M.C. 3197 of 2010

Mohd. Nafees

APPELLANT

Vs

Mohd. Imran Ismail

RESPONDENT

Date of Decision: March 14, 2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) - Section 156(3) 193 195 195(1)(a) 200#Penal Code, 1860 (IPC) - Section 147 148 172 172 173#Representation of the People Act, 1951 - Section 125A

Citation: (2014) 03 DEL CK 0238

Hon'ble Judges: Pratibha Rani, J

Bench: Single Bench

Advocate: S.D. Ansari and Mr. I. Ahmed, for the Appellant; P.D. Gupta and Mr. Atul Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Pratibha Rani, J.

Feeling aggrieved by the dismissal of Criminal Revision No. 22/2009 vide order dated 23.01.2010 passed by learned

Addl. Sessions Judge affirming the order dated 11.09.2009 passed by learned MM in CC No. 1987/2008, the Petitioner has filed this CrI. M.C.

No. 3197/2010 praying for quashing of the orders dated 11.09.2009 and 23.01.2010. Briefly stating, the facts of the present case are that the

Petitioner herein filed a complaint u/s 200 Cr.P.C. praying for summoning of Respondent for committing the offences complained of. As per the

accusations made in the complaint, the Respondent, while submitting his Nomination Form before the Election Commissioner for contesting the

elections of Councilor of MCD declared for 05.04.2007, filed documents alongwith an affidavit giving required status and antecedents as per the

provisions of DMC Act and Public Representative Act. In the said affidavit, the Respondent stated on oath that he was facing trial in a case but he

intentionally and deliberately did not disclose the particulars of the case i.e. FIR No. 220 dated 04.07.1998 u/s 147/148/34 IPC, PS Sadar Bazar.

Thus, he concealed the material fact in the Form and affidavit and violated the specific terms and conditions for contesting the election. The

Respondent contested the elections on the basis of said manipulated Form and false affidavit and got elected.

2. The Petitioner also filed a complaint dated 30.05.2008 addressed to State Election Commissioner praying for appropriate action to be taken

against the erring person but the State Election Commissioner did not act upon the said complaint dated 30.05.2008. Alongwith the Complaint u/s

200 Cr.P.C., an application u/s 156(3) Cr.P.C. was also filed before the learned MM.

3. For the purpose of disposal of this petition, it is necessary to understand the nature of accusations made by the complainant in paras 3 and 4 of

Complaint Case No. 1987/2008, which are extracted as under:

3. That the respondent/accused wanted to contest the said election for councilorship in said Award No. 88 and the respondent/accused submitted

the Form with papers before the Election Commissioner alongwith his affidavit giving his particulars in the affidavit on oath and he stated in the said

Form that he was facing the trial in case. However, the respondent/accused intentionally and deliberately did not disclose about the FIR No. 220

dated 4.7.1998 under Sec. 147/148/34 IPC of PS Sadar Bazar, Delhi and the said case is still pending in the Court of Shri Vinay Singal, M.M.,

Tis Hazari Courts and the same is fixed for 29.4.2008.

4. That the respondent/accused has concealed this material fact, and filed false affidavit and suppressed the answers to the queries made in the

Form.

4. The application u/s 156(3) Cr.P.C. was dismissed by learned MM vide order dated 25.03.2009 and matter was fixed for pre-summoning

evidence. After recording the pre-summoning evidence, the complaint case was also dismissed by learned MM vide order dated 11.09.2009,

which read as under:

11.09.09

Present: None for the complainant.

Matter is listed today for order on summoning.

The present complaint has been filed by the complainant Md. Nafees against accused Md. Imran Ismail wherein the allegation is that the accused

had given false evidence before the public servant by deliberately not disclosing about FIR 220 dated 04.07.98 and hence, having concealed this

material fact he has committed perjury by giving false evidence upon the affidavit filed before the election commissioner.

Having gone through the complaint and the nature of offence it is clear that the allegation of accused having given false information upon the

affidavit before the election commissioner the case comes within the definition of the offence u/s. 181 IPC. As the cognizance of the offence u/s.

181 IPC has to be taken upon the complaint of the public servant concerned or his superior as per section 195(1)(a) Cr.P.C. and in this case,

there is no complaint of the election commissioner, rather a private complaint has been filed by the complainant.

Hence, the cognizance of the offence on the basis of private complaint filed by the complainant Md. Nafees being barred as per section 195(1)(a)

Cr.P.C., the complaint is dismissed u/s. 203 Cr.P.C. File be consigned to Record Room.

5. Feeling aggrieved by the order dated 11.09.2009 passed by learned MM, the Petitioner filed Criminal Revision No. 22/2009. However, while

impugning the order dated 11.09.2009, the Petitioner tried to give a new color to the averments by further claiming that since the alleged false

affidavit was sworn before Notary Public, who is not a public servant, any person can file a complaint and in support of this contention, he relied

upon Nityananda Behera Vs. State of Orissa and Another,

6. The learned Addl. Sessions Judge, while dismissing the revision petition, despite the fact that there were averments in the revision petition which

were not pleaded in Complaint Case No. 1987/2008 filed before the learned MM, dealt with those averments also and arrived at the following

conclusion:

7. At the outset, it may be mentioned that petitioner has filed photocopy of affidavit along with the complaint before learned trial Court and said

affidavit is attested by Notary Public and not by Oath Commissioner. The law laid down in Nityananda Behera"s case (supra) is undisputed.

8. It is settled principle of law that criminal law can be set into motion by any person. The general principles that private complaint can be filed by

any person is applicable unless there is a specific statutory provision to the contrary. In this regard, reliance can be placed on a Judgment in case

reported as 1984 Criminal Law Journal 647.

After reproducing Sections 181 and 182 of Indian Penal Code, arrived at the following conclusion:-

10. The provisions of Section of 195 of the Code of Criminal Procedure provides that no Court shall take cognizance in respect of any offence

punishable u/s 172 to 188 (both inclusive) of the Indian Penal Code except on the complaint in writing of that Court or by such officer of the Court

as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate. The provisions of Section 195

Cr.P.C. are mandatory and no Court has jurisdiction to take cognizance of any offence mentioned therein unless there is complaint in writing as

required by Section 195 of the Code.

11. In the instant case, according to the allegations of the petitioner, the respondent filed false affidavit along with the application form for

contesting the elections of Councilors of MCD before the Election Commissioner and the said affidavit was false. No complaint has been filed by

Election Commissioner and the complaint filed by the petitioner is hit by Section 195(1)(a) of Code of Criminal Procedure. I do not find any

infirmary or illegality in the impugned order, passed by learned Trial Court.

7. Twice being unsuccessful in his attempt to get the Respondent summoned as an accused for allegedly filing the false affidavit before the Election

Commissioner without disclosing the details of the FIR No. 220/1998, PS Sadar Bazar wherein the Respondent was facing trial, the Petitioner has

knocked the door of this Court invoking the inherent jurisdiction u/s 482 Cr.P.C. for issuance of directions to the learned MM to summon the

Respondent and try him for the offences complained of.

8. The grievance of the Petitioner is that while contesting the MCD elections, the Respondent submitted the form alongwith papers and affidavit in

which, though he mentioned that he was facing trial in a case, however, the Respondent intentionally and deliberately did not disclose about the

FIR No. 220/1998, u/s 147/148/34 IPC, PS Sadar Bazar registered on 04.07.1998. The Respondent was facing trial in the above case at the

time of filing Complaint Case No. 1987/2008 before learned MM by the Petitioner.

9. The Respondent won the election held on 05.04.2007 and even though the period of five years for which he was elected, has already been

completed, the legal battle by the Petitioner to ensure that the Respondent is booked for filing a false affidavit alongwith the nomination papers,

continues till date.

10. I have heard Mr. S.D. Ansari, learned counsel for the Petitioner and Mr. P.D. Gupta, learned counsel for the Respondent. Brief written

synopsis have also been filed by the Respondent. The Petitioner despite availing opportunity to file written synopsis by 12th March, 2014, failed to

do so.

11. On behalf of Petitioner, Mr. S.D. Ansari, Advocate submitted that there are two stages in the present case, (i) swearing of the affidavit i.e.

making statement before the Notary Public and (ii) submitting the said affidavit before the Election Commissioner. He further submitted that the act

of swearing the affidavit in front of the Notary, which in this case was done by making a false statement, is not hit by Section 195 Cr.P.C. but

attracts the provisions of Section 193 Cr.P.C. because the Notary is not a public servant. Thus, the Courts below erred in holding that the present

complaint is hit by Section 195(1)(a) Cr.P.C.

12. On behalf of Respondent, Mr. P.D. Gupta, Advocate has submitted that the Petitioner nowhere in his complaint has taken the plea that a false

statement has been made by the Respondent before the Notary. In the complaint, the Petitioner has only stated that a false affidavit was filed by

the Respondent before the Election Commissioner and this plea of making a false statement before the Notary has been taken up for the first time

in Criminal Revision No. 22/2009. He further submitted that the Courts below have rightly held that the complaint of the Petitioner is hit by Section

195(1)(a) Cr.P.C. in the absence of any complaint by the Election Commissioner to this effect.

13. In the written submissions filed on behalf of the Respondent, it has been submitted that Form-21 i.e. the affidavit required to be filed while

submitting the nomination papers by prospective candidates for MCD elections, contains the following clause:

1. I am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which charge(s) has/have been

framed by the court(s) of competent jurisdiction.

Learned counsel for the Respondent submitted that it is not the allegation of the Petitioner that the charge in the aforesaid FIR had been framed

before the date of filing of nomination papers. He further submitted that the order of framing of charge in case FIR No. 220/1998 PS Sadar Bazar

was passed on 07.03.2008 i.e. much after the date of filing of the nomination paper by the Respondent which is 17.03.2007.

14. Learned Counsel for the Respondent further submitted that no complaint has been made by the Election Commissioner/Returning Officer

before whom the said affidavit was filed and the complainant herein is not competent to file the complaint as per provisions of Section 195 Cr.P.C.

15. On behalf of Respondent, it was further contended that as per Delhi Municipal Corporation Act, 1957 and Delhi Municipal Corporation

(Election of Councilors) Rules, the alleged concealment/suppression of any information of this kind has not been prescribed as an offence.

However, Section 125A of Representation of Peoples Act, by which election of State Assembly and Parliament are governed, provides penalty

for filing false affidavit, etc. but such a provision is not there in Delhi Municipal Corporation Act, 1957 and Delhi Municipal Corporation (Election

of Councilors) Rules.

16. Learned counsel for the Respondent further submitted that the Courts below have rightly held that under the provisions of Section 195

Cr.P.C., no Court can take cognizance in respect of any offence punishable under Sections 172-188 IPC except on the complaint in writing of the

public servant concerned. The offence, as alleged by the Petitioner, would fall within the meaning of Sections 176 & 177 IPC and would,

therefore, be covered by the mandate of Section 195 Cr.P.C. Moreover, under Chapter "Grounds for Rejection of Nomination Paper", it has

been clearly prescribed by the Election Commission of India in its Handbook for Returning Officers as under:-

N.B. If the prescribed affidavits have been filed, but are found or considered to be defective or incomplete or containing false information, the

nomination should NOT be rejected on this ground.

Learned counsel for Respondent has, thus, prayed for dismissal of the present Petition.

17. I have considered the rival contentions and perused the record.

18. At the outset, it is relevant to refer the brief allegations against the Respondent made in Complaint Case No. 1987/2008 (Annexure P-1) for

which the Petitioner is seeking prosecution of the Respondent. As per the averments made in the complaint, the Respondent, for contesting the

MCD elections submitted his form with papers before Election Commissioner alongwith his affidavit on oath giving his particulars wherein he stated

that he was facing trial in a case. However, the Respondent/accused intentionally and deliberately did not disclose about the FIR No. 220 dated

04.07.1998 under Sections 147/148/34 IPC of PS Sadar Bazar, the case in which he was facing trial at that time. The Respondent has concealed

the material fact and filed false affidavit and suppressed the answers to the queries made in the form.

19. Suffice it to record that the factum of registration of the criminal case has not been concealed by the Respondent in the affidavit submitted

before the Election Commissioner and mere omission to mention the FIR number or the date of registration of the case would not have resulted in

rejection of nomination of the Respondent. It may be noted that the Election Commissioner, despite filing of complaint dated 30.05.2008 by the

Petitioner, did not act upon the same and the Respondent has already completed his tenure as an elected representative.

20. In this case, we have concurrent finding by two Courts below to the effect that in the absence of any complaint by the Election Commissioner,

the complaint of the Petitioner is hit by Section 195(1)(a) Cr.P.C.

21. In a proceeding u/s 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent

finding of facts of two courts below. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to

make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case.

22. After taking into consideration the facts and circumstances of the case, it appears that the present petition invoking the jurisdiction of this Court

u/s 482 Cr.P.C. is just to satisfy the personal vendetta by the Petitioner, the inherent power of this Court cannot be exercised in such type of

cases. Resultantly, the present CrI.M.C. No. 3197/2010 is hereby dismissed.