



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 5TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

CRIMINAL PETITION NO. 1560 OF 2024

BETWEEN:

SMT. SHASHIKALA,

...PETITIONER

(BY SRI. SHIVRAJ S BALLOLI.,ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
THROUGH NIPPANI TOWN POLICE STATION,
REPRESENTED BY THE STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA, DHARWAD BENCH,
DHARWAD 580 001.
2. SHRI MAHANTESH S/O SADASHIV HAROLI
AGED ABOUT 33 YEARS,
OCC STATE GOVT EMPLOYEE FST NIPPANI ASSEMBLY
NOW AT TOWN PLANNING OFFICE GURUWAR PETH
NIPPANI, TQ NIPPANI,
DIST BELAGAVI 591 237.

...RESPONDENTS

(BY SRI.B N JAGADEESH.,ADDL SPP)

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C.,
SEEKING TO QUASH THE ENTIRE PROCEEDINGS INITIATED IN
CC NO.2990/2023 BEFORE THE CIVIL JUDGE AND JMFC
COURT, NIPANI ARISING OUT OF CRIME NO.52/2023 OF
NIPPANI TOWN POLICE STATION FOR THE OFFENCE
PUNISHABLE U/S 120(1) OF REPRESENTATION OF PEOPLE ACT
AND SECTION 171(E) OF IPC, 1860 IN SO FAR AS THE
PETITIONER/ACCUSED NO.2 IS CONCERNED.





THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This Petition seeks quashment of the proceedings initiated vide FIR No.52/2023 registered on 10.05.2023 by Nipani Town Police which has been given CC No. 2990/2023 after taking cognizance for the offences punishable under Section 171(E) of IPC 1860 & for the offence punishable under Section 123 of Representation of People Act, 1951.

2. Learned counsel for the Petitioner vehemently argues that the proceedings are liable to be voided because:

- i) What all has been alleged in the FIR/Charge Sheet do not disclose commission of any offence and the ingredients of the alleged offences are lacking; therefore, the matter would fit into one of the postulates in **STATE OF HARYANA vs CHOWDHARY BHAJAN LAL, AIR 1992 SC 604** which has been reiterated in **M/S NEEHARIKA INFRASTRUCTURES PVT. LTD. Vs. STATE OF**



**MAHARASHTRA AND OTHERS, 2021 SCC
OnLine 315.**

- ii) The order of the learned Magistrate which grants permission which occurs at page No.33 of the PETITION is as cryptic as can be and further it does not disclose any application of mind nor it is reasoned.

3. Learned Addl. SPP appearing for the Respondent – State vehemently opposes the Petition contending that by looking to the entire material of charge Sheet filed by the police after investigation, it cannot be said that the proceedings are unsustainable. If petitioner faces the trial, no prejudice would be caused to her and that the same would do justice to herself and to the public interest. Even otherwise, petitioner can tap the provisions for discharge or the like, at the hands of learned Magistrate himself, instead of pressing this petition. So contending, he seeks dismissal of the Writ Petition.

4. Having heard the learned counsel for the parties and having perused the Petition papers, this Court is



inclined to grant indulgence in the matter for the following reasons:

(a) Chapter IXA came to be added to the statute book namely IPC, 1860 by way of amendment, with intent to bring purity in election process. *It seeks to make punishable under the ordinary penal law, bribery, undue influence & personation, and certain other malpractices at elections not only to the Legislative bodies, but also to membership of public authorities where the law prescribes a method of election. Further, it intends to debar persons guilty of malpractices from holding positions of public responsibility for a specific period. This chapter has to be read along with the relevant provisions of the Representation of People Act, 1951 as it contains additional penalties for certain offences, e.g., sections 171E to 171F of this Code. Thus a conviction under section 171E or section 171F of IPC amounts to a disqualification u/s.8 of RP Act, 1951.* This chapter comprises of both a dictionary clause and penal provisions.



(b) The offence of bribery is defined under Section 171B of IPC as under:

"171B. Bribery—

(1) Whoever—(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward".



This section defines bribery as an electoral offence, primarily as the giving or accepting of a gratification either as a motive or as a reward to any person, either to induce him to stand, or not to stand as, or to withdraw from being a candidate or to vote or refrain from voting at an election. In terms of sub-section (2) *inter alia* it includes offers or agreements to offer and attempt to procure a gratification. "Gratification" is explained in section 161 as not being restricted to only pecuniary things. Section 171-B(1)(i) provides that if gratification is given to any person inducing him or any other person to exercise any electoral right, it amounts to commission of the offence of bribery.

c) In the above backdrop, let me examine the penal provision namely Section 171(E) of IPC which reads as under:

"Punishment for bribery.—Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both: Provided that bribery by treating shall be punished with fine only."



In order to fit into the definition of 'bribery' the requirement is that there should be a person who gives or at least offers to give any gratification as a reward for exercising the electoral right or for having exercised such a right, by another person. Thus, there should be minimum two persons involved in the act, namely one who bribes or offers to bribe and the other who is bribed or offered bribe.

(d) Added to the above, it is not the case of respondents that the alleged act has been done by the person concerned for and on behalf of the petitioner herein. To put it succinctly, what emerges from the complaint is that a particular person was carrying the money and that the same has been seized since it was suspected to be used for electoral offences. All that does not amount to the offence of bribery, even if the allegations are taken at their face value, and therefore there is no scope for invoking section 171(E) of IPC, as rightly submitted by learned counsel for the petitioner.



e) The next allegation in the complaint relates to the offence punishable under section 133 of the Representation of People Act, 1951. The same reads as under:

"Penalty for illegal hiring or procuring of conveyance at elections.—If any person is guilty of any such corrupt practice as is specified in clause (5) of section 123 at or in connection with an election, he shall be punishable with imprisonment which may extend to three months and with fine."

The above penal provision in turn refers to a corrupt practice as is specified *inter alia* in clause 5 of section 123 at or in connection with an election. Section 123 deals with certain acts as corrupt practices. Sub-section(5) specifies one of them, with the following text:

"(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person [with the consent of a candidate or his election agent] [or the use of such vehicle or vessel for the free conveyance] of any elector (other than the candidate himself the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll"



Employing the vehicle or vessel as contemplated in the above provision, is a *sine qua non* for the invocation of section 133. It is nobody's case that something of the kind exists in the allegations leveled against the person concerned and more particularly, the petitioner herein. In the absence of ingredients as specified in section 123(5), one would be miles away from the precincts of section 133 of 1951 Act.

In the above circumstances, this petition succeeds. The proceedings in Crime No.52/2023 of Nipani Town Police Station, now pending in CC No.2990/2023 on the file of learned JMFC, Nipani, for the offences punishable under sections 120(1) & 133 of Representation of People Act, 1951 and also for the offence punishable under Section 171(E) of IPC, 1860 are hereby quashed. Petitioner is set free of the subject case.

**Sd/-
JUDGE**

Bsv/snb/
List No.: 1 Sl No.: 5