REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4821 OF 2012

N.S. Nandiesha Reddy .....Appellant(s)

Versus

Kavitha Mahesh ....Respondent(s)

With
Civil Appeal No. 6171/2012

J U D G M E N T

A.S. Bopanna, J.

1. The appellants in both these appeals are assailing the order dated 01.06.2012 passed by the learned Single Judge of the High Court of Karnataka at Bangalore in Election Petition No. 7/2008. By the said order, the election of the appellant in C.A. No. 4821/2012 (Mr. Nandiesha Reddy) from 151 K.R. Pura Legislative Assembly constituency in Bangalore Urban District is held to be void, in terms of Section 100 (1) (c) of the

Representation of People Act 1951. Further, in the course of the said order the learned Judge has directed the Registrar General of the High Court to register a complaint against the appellant in C.A. No.6171/2012 (Mr. Ashok Mensinkai) before the Competent Court for proceeding in accordance with law for the purpose of provisions of Section 193 Indian Penal Code, 1860. The said direction is issued since according to the learned Judge, the appellant in the said appeal who was the Returning Officer for the said election; on being examined as PW.3 in the Election Petition had given false evidence before the Court. In the above circumstance, the appellant in C.A. No. 4821/2012 (Mr. Nandiesha Reddy) has assailed the order in its entirety while the appellant in C.A. No. 6171/2012 (Mr. Ashok Mensinkai) has assailed the order insofar as directing prosecution against the appellant.

2. In the above background, we have heard Mr. Jayant Mohan, learned counsel for the appellant in C.A. No.4821/2012 and Mr. S.N. Bhat, learned counsel for the appellant in C.A. No.6171/2012. We have also heard the

respondent who had appeared as a party-in-person in both these appeals and perused the relevant material, as also the written submission filed on either side.

3. The issue arises from the election which was held in April/May 2008 to the Karnataka State Legislative Assembly. The present case as noted earlier, relates to one of the constituencies, namely, 151 K.R. Pura Legislative Assembly Constituency. The elections were notified on 16.04.2008 and as per the calendar of events the publication of result was fixed on 27.05.2008, soon after which the Karnataka State Legislative Assembly for that term was constituted. In that background, the term of the Assembly was up to May, 2013 whereafter the subsequent election to constitute the Karnataka State Assembly afresh for the next term has taken place. In that circumstance though by the order impugned dated 01.06.2012, the election of the appellant in C.A. No.4821/2012 (Mr. Nandiesha Reddy) was held to be void, immediately thereafter, the instant appeal was filed and this Court had granted stay of the impugned order while issuing notice on 11.06.2012. In that view, the

appellant has completed the term of the Assembly for which he was elected. As such Mr. Jayant Mohan, learned counsel for the appellant in C.A. No.4821/2012 (Mr. Nandiesha Reddy) has submitted that the grievance put forth in the appeal does not survive for consideration. Having noted the sequence it is evident that the prayer in C.A. No.4821/2012 has rendered itself infructuous and the appeal does not survive for consideration.

4. Though that be the position, Mr. S.N. Bhat, learned counsel for the appellant in C.A. No.6171/2012 submits that the said appeal needs consideration in view of the direction issued by the learned Judge to prosecute the appellant Mr. Ashok Mensinkai. In that regard, the learned counsel has drawn our attention to the manner of consideration made by the learned Judge presiding over the election tribunal and contends that there is no proper and definite conclusion reached by the learned Judge as to the deliberate falsehood uttered in the statement alleged to have been made by the appellant. It is contended that the appellant in fact was cited as a witness by the election petitioner herself and in the

course of the examination-in-chief; in answer to the questions put by the learned Judge and in the cross-examination, the appellant has been consistent in narrating the facts sequentially as it had occurred on that day. The appellant though was initially arrayed as respondent No.4 to the election petition, he had been deleted and as such the appellant did not have the opportunity of putting forth his written statement/objection statement to the Election Petition so as to controvert the allegations made against the appellant. In any event, the election petitioner had examined the appellant and in respect of the statements made by the appellant the election petitioner did not choose to cross-examine the appellant after seeking to treat him as a hostile witness if the allegation of tendering false evidence was to be made. Further, the learned Judge after noticing the two versions, one by the election petitioner and the other by the appellant, though was entitled to rely upon one of the versions as probable to arrive at his conclusion on the merit of the case, that by itself cannot be made the basis to order prosecution.

That apart no opportunity was granted to the appellant in terms of Section 340 of the Criminal Procedure Code, 1973 before forming an opinion to direct the Registrar to lodge a complaint. It is his further case that the action of the present nature could not have been initiated unless there was material to indicate that the witness had uttered falsehood intentionally. The appellant could not have gained either way if the election petitioner had contested the election or not. In such situation no purpose would have been served by not accepting her nomination if she had actually complied with the requirement and presented the nomination papers. The appellant had accepted 30 nomination papers from 18 different candidates for the same election and on 23.04.2008 i.e., the last day itself the appellant had received 18 nomination papers and one more would not have made any difference. In that view he contends that the order is not sustainable.

5. The respondent party-in-person however, contends that the appellant had by not accepting the nomination, denied an opportunity for the respondent to contest the

elections and in such circumstance the learned Judge had noted the inconsistent statements made by the appellant in the course of his evidence to justify his illegal action. The learned Judge has therefore rightly arrived at the conclusion to direct prosecution and such order does not call for interference is her contention.

6. Having noticed the contentions put forth in C.A. No. 6171/2012 and also having noted that the dispute in C.A. No.4821/2012 has rendered itself infructuous, we restrict our consideration limited to the question as to whether the appellant in C.A.No.6171/2012 (Mr. Ashok Mensinkai) should be exposed to criminal prosecution and whether it is expedient to do so in a matter of the present nature. It is no doubt true that the election petition itself is predicated on the allegation against the appellant in C.A. No.6171/2012 to the effect that as a Returning Officer for the said election he had wrongly refused to accept the nomination papers sought to be submitted by the election petitioner which amounts to improper rejection of the nomination papers in terms of

Section 100 (1) (c) of the Act. The consequence of the same has befallen on the elected candidate. However, presently the ground of improper rejection of nomination paper as alleged and the conclusion of the learned Judge on that aspect fades into insignificance for the reasons stated earlier.

7. Therefore, the limited aspect we are required to notice in the present situation is only with regard to the statements made by the appellant in his evidence as PW.3 which are considered by the learned Judge to be inconsistent and, therefore, stated to amount to perjury. In that regard whether the action initiated by the learned Judge on that aspect is justified is the issue, if not, it will call for interference. As noted, the appellant was examined as PW.3. In the course of his deposition, he had stated that he can identify the election petitioner as an intending candidate in 151 K.R. Pura Legislative Assembly Constituency. He has further stated that he does not remember if the election petitioner had met him on three occasions on 23.04.2008 which was the last day

for filing nomination papers. He has however stated that he remembers to have seen the election petitioner on two occasions, on that day. He has also stated that he does not remember the exact time of the election petitioner meeting him for the first time, but it could be between 3.00 pm and 3.15 pm. On the second occasion he recollects to have met the election petitioner on the same day between 5.30 pm and 6.00 pm while he was going out from office after work for the day. The request made by the election petitioner at that stage to accept the nomination paper was declined since the time for acceptance was over. In that context he states that the nomination paper which was marked as Exhibit P1 had not been presented before him between 11.00 am and 3.00 pm on 23.04.2008 which was the permitted time for filing. He also states that he did not refuse to accept Exhibit P1(nomination paper) for the reason it was not accompanied by other necessary documents but in fact it was not presented before him.

8. As against what has been stated by the appellant, the election petitioner who examined herself as PW1 has

stated that on 23.04.2008 she had submitted her nomination paper before the appellant for the general election. On delivering the nomination papers she had requested the Returning Officer for extracting the new part number and serial number of the ten proposers to fill in column no. 2B. The Returning Officer is stated to have told her that he did not have the electoral roll of K.R. Pura State Assembly Constituency and that she should approach the revenue officials working in the ground floor of the building. She states that as per his request she had entrusted the job to her husband and supporters to collect the details from the ground floor office. Later, she came to know from her husband and her supporter that everybody in the revenue office were having lunch break and the details could not be secured. She thereafter, states that for the first time at 14.00 hours when she delivered nomination papers, the Returning Officer directed her to collect the details but she could not get the details of her ten proposers who had signed the nomination papers. She states that on realising the time factor that it was the last day for filing

nomination papers she submitted her nomination papers by 15.00 hours before the Returning Officer once again and stated that she would fill the column subsequently as she has time upto 24 hours to fill the column. She has further alleged that the appellant refused to receive the nomination papers. What is relevant to be noted is that the election petitioner in the course of her cross-examination recorded in para 37 states that after deputing her husband and supporter to get the details and while she was waiting, she was outside the hall where the Returning Officer was sitting. This would indicate, what the election petitioner has stated is in tune with the sequence stated by the appellant except for the variance in the stand insofar as actually tendering the nomination paper and pressing for acceptance and according to election petitioner the same not being accepted.

9. From the two sets of statements, one by the appellant as PW.3 and the other by the election petitioner as PW.1 in the course of adjudication, the reliability of one of them was to be deduced. The crux of the matter

was to find out as to whether the election petitioner had actually submitted her nomination paper and the appellant had declined to receive the same. Insofar as that aspect, if the conclusion was in favour of the election petitioner it would be a case of an improper rejection and, on that aspect, it is not necessary for us to pronounce upon since the appeal on that question does not survive. However, only issue for consideration is, from the nature of the statements made above, can the Court come to a conclusion that the appellant has uttered deliberate or intentional falsehood in the course of Court proceedings. In that regard, it is to be noted that the learned Judge during the course of the proceedings had made certain observations and had extracted the earlier order in the final impugned order dated 01.06.2012, the same reads as hereunder: -

ORDER PASSED IN THE MORNING SESSION

> "The witness is not very sure of what development took place and the manner of his deposition is inconsistent every second and minute keeps varying and to support his version that he had conducted in accordance with rules and regulations and in a proper manner states that a certain development had

taken place around some time, but goes back on the earlier version that the last nomination paper was received at 2.58 pm but later mentioned it was after 3 pm and on being cautioned by the court, goes back to the earlier version of 2.58 pm etc.

This witness is obviously lying on oath, his deposition is inconsistent, varying by the second, different version each time. A person giving different version of the same incident is not merely uttering falsehood once or the other time, but also committing perjury.

This witness lacks credibility for deposing before the court on oath and requires to be dealt with in accordance with law and being a public servant who has taken oath to depose truth and only truth before this court has been attempting to depose incorrect and false statements which *per se* is not only perjury within the meaning of section 191 of Indian Penal Code but also committing contempt of court.

Therefore, no need or occasion for recording further evidence of this witness and if need be, can be summoned later by the court for questioning. As of now, the witness is discharged.

Witness is directed to remain present in the court hall. Call this matter again at 2.30 pm.

ORDER PASSED IN THE AFTERNOON SESSION:

Further cross-examination of the witness is stopped at this stage to enable the witness to procure relevant necessary, official records throwing light on the developments that had taken place during his functioning as the returning officer in the K R Pura assembly constituency.

As the witness states that the records pertaining to conduct of elections etc. are all now available at the office of the district election officer, Mahadevapura Zone, BBMP, Bangalore, who is *ex officio* holding this post is otherwise functioning as joint commissioner, BBMP at Mahadevapura and as this officer has to part

with records. The witness to be enabled to secure these records and attend court for further cross examination with the records.

Sri Shashikanth, learned counsel for the respondent submits that for such purpose, it is necessary for the election petitioner to make an application listing the documents and records that are required to be summoned and summons may be issued on such applications to the officer who is having the custody of such records.

It is said that procedure is the handmaid of justice and procedure should be given only such importance as is warranted to ensure fair play, equal opportunity and practical possibilities of adhering to the procedure.

An election petition though is a creature of the Representation of People Act 1951 and being a petition at the instance of an aggrieved persons with regard to the validity of the declaration of election result, and for questioning a correctness or otherwise of the declaration of results and may have the characteristics of an adversary litigation, it nevertheless has a flavour of public interest imbedded into it as the conduct of free and fair election is the '*sine qua non*' of any healthy democratic process. Records relating to the conduct of elections in a general election either to an assembly or to the parliament are not private documents but are public documents or records and if any such record can throw light on the manner of conduct of elections in any particular assembly segment, while it is a relevant record, familiarity or ignorance of such a record on the part of the election petitioner cannot come in the way of court scrutinizing the record for being satisfied or even for being apprised about the manner of conduct of election.

It is therefore, hereby ordered and the witness who has appeared before the Court as PW3 today and who had functioned as the returning officer of the K R Pura assembly constituency is hereby directed to contact the district election officer with this order secure

> the relevant records to enable him to depose before this court correctly with precision, unambiguity and then appear with such records before this court on 28.6.2011 as the witness states that he requires at least seven days' time to complete this exercise.
>
> The district election officer who is also the joint commissioner, BBMP, Mahadevapura, is hereby directed to ensure compliance with this order and to hand over such records which are in his custody relating to the conduct of K R Pura assembly election to enable the witness to depose further before this court in a proper and precise manner as the then returning officer of the constituency by identifying the record.
>
> The Registrar General of this Court is directed to ensure a copy of this order is served on the district election officer, Mahadevapura zone, BBMP, Mahadevapura, Bangalore-48.
>
> The witness also be furnished with a copy of this order.
>
> List the petition for further cross-examination of PW3 on 28.6.2011."

10. As per the version of the election petitioner she had met the Returning Officer at 2 pm on 23.04.2008 when certain requirements were indicated due to which she made an effort to secure the same from the ground floor and after about 45 minutes her husband and the supporter came back with the information that they were unable to get the same. She has also stated that at that point she waiting outside the room where the Returning Officer was seated. If that version of the election

petitioner herself is kept in view, it is not the case of the election petitioner herself that at 2 pm when she had come, she had met the Returning Officer and insisted for receiving the nomination paper even without the details to be filled in column 2B. On the other hand, if the case that she made efforts to get the details of the proposers due to which some time lapsed and then she presented the nomination paper without the details and if the time spent in that regard as stated by her is about 45 minutes which is a rough estimate and not precise, the version of the appellant that he had met the election petitioner around 3.00 pm to 3.15 pm on that day is a probable version. This is more so when the fact remains that the appellant was taking note of the nomination papers presented by another independent candidate Smt. Ambujakshi. If in that context he has stated that the election petitioner had met him between 3.00 pm and 3.15 pm, it could only mean that it was after the process of receiving the nomination paper of Smt. Ambujakshi. In fact, it is in her own deposition the election petitioner has stated that when she was unable to get the details and

realising the time factor that it was the last day for filing nomination papers, she submitted her nomination papers by 15.00 hours (i.e. 3 pm) before the Returning Officer. Even in that situation, if the learned Judge were to come to a conclusion that the election petitioner having already entered the office of the Returning Officer prior to the closing hours for receipt of the nomination papers at 3.00 pm and in that context due to the guidelines the nomination papers were to be received, notwithstanding the same being incomplete, it could be an aspect on the question of improper rejection. But certainly, the same could not have been made the basis to conclude that the appellant was not truthful.

11. The extracted portion of the earlier order dated 15.06.2011 indicates an observation made by the learned Judge to indicate that he has gone back on the version wherein he had stated that the last nomination paper was received at 2.58 pm but later mentioned it was after 3.00 pm and on being cautioned by the court he goes back to the earlier version of 2.58 pm etc. On this aspect also we do not see any deliberate falsehood uttered by the

appellant, much less is there any inconsistency. The statement made by the appellant was that he received the nomination paper of Smt. Ambujakshi i.e. the last candidate at 2.58 pm and it had taken him about 7-8 minutes to go through the papers, after which she had to take an oath as stated in para-40 of his further cross-examination. If that be the position, the statement would mean that the last nomination paper of Smt. Ambujakshi was presented at 2.58 pm and when the process was over it was past 3.00 pm. Only after that he had met the election petitioner that is between 3 pm and 3.15 pm. Even with regard to the statement that he had met the General Observer on three occasions and later stated it was on two occasions are to be noted in the context that the evidence was being tendered after more than three years and all inconsequential events cannot be recalled with precision. The further evidence of the appellant is referred in para 81 to 87 of the order, but learned Judge has not pointed out any deliberate or intentional falsehood arising therefrom. Mere reference to inconsistent statements alone is not sufficient to take

action unless a definite finding is given that they are irreconcilable; one is opposed to the other so as to make one of them deliberately false.

12. Therefore, as noticed from the evidence recorded, the appellant had stated that the nomination papers had not been presented to him before the closing hours and had sought to justify his action. He had also stated about the procedure followed in all cases and the presence of observers in his office. On the other hand, the election petitioner had contended that she had made an attempt to submit the nomination paper which was not received by the appellant who was the Returning Officer. When he had received 18 nomination papers on that day there was no particular reason to refuse the election petitioner's nomination, nor has motive been suggested or established. The learned Judge has no doubt accepted the version put forth by the election petitioner. That by itself does not indicate that appellant had uttered falsehood intentionally and deliberately before the court so as to initiate action under Section 193 Indian Penal Code. The proceedings of the day in the office of the

Returning Officer, namely, the appellant was video-recorded and the same was marked as Exhibit P21 to P24 in the proceedings. The learned Judge did not choose to refer to the same to come to a definite conclusion as to whether the election petitioner had actually met the Returning Officer, if so, the actual time and in that context a finding was not recorded that the depiction in the video-recording is quite contrary to the statement of the Returning Officer so as to indicate that he had uttered deliberate falsehood.

13. Apart from the factual aspect noted above relating to the evidence tendered in the instant case, it is not a case where the appellant was a party-respondent to the election petition where his written version was available. On the other hand, he was examined as a witness by the election petitioner as PW3. No doubt the learned Judge has chosen to call him as a court witness by interrupting the cross-examination and posing questions to him. Be that as it may, it was also not a situation where the petitioner had filed an application under Section 340 of Criminal Procedure Code, 1973 seeking action. If that

was the case the appellant would have had an opportunity to file his version in reply to the application. That apart, the learned Judge also had not put the appellant on notice on the allegation of committing perjury and provided him an opportunity nor has the learned Judge come to the conclusion that one of the versions is deliberate or intentional falsehood and that therefore, action is necessary to be taken against him. On the other hand, the learned Judge during the course of passing the final order has made certain observations and directed that the Registrar General shall file a complaint.

14. It is apposite to refer to the decision of this Court in the case of ***KTMS Mohammad and Another vs. Union of India, 1992*** 3 SCC 178 wherein it is observed as hereunder: -

> "37. The mere fact that a deponent has made contradictory statements at two different stages in a judicial proceeding is not by itself always sufficient to justify a prosecution for perjury under Section 193 IPC but it must be established that the deponent has intentionally given a false statement in any stage of the 'judicial proceeding' or fabricated false evidence for

> the purpose of being used in any stage of the judicial proceeding. Further, such a prosecution for perjury should be taken only if it is expedient in the interest of justice."

Further, in the case of ***Amarsang Nathaji vs. Hardik Harshadbhai Patel & Ors., 2017*** 1 SCC 113 relied on by the learned counsel for the appellant, this Court on referring to the case of KTMS Mohammad vs. Union of India (supra) has held as hereunder: -

> "6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as "IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340 (1) CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. The court must be satisfied that such an inquiry is required in the interests of

justice and appropriate in the facts of the case."

15. The respondent-election petitioner has referred to the decisions in the case of ***Mahavir Singh and Ors. vs. Naresh Chandra & Anr.*** (AIR 2001 SC 134) and the case of ***Jagan Nath vs. Jaswant Singh & Ors.*** (AIR 1954 SC 210) in her written submission. We however, do not find any assistance from the same as they are not relevant.

16. In the light of the above stated facts, we are of the opinion that notwithstanding the conclusion reached by the learned Judge on the aspect of improper rejection of the nomination paper, the correctness of which was not required to be gone into for the reasons stated supra, the manner in which the learned Judge has concluded that the appellant in C.A. No.6171/2012 was inconsistent in his statements in the course of his evidence tendered by him as PW3 is not justified. Further the conclusion reached that he is to be prosecuted, without the findings being recorded regarding deliberate or intentional

falsehood cannot be sustained. Hence the direction issued to the Registrar General of the High Court to initiate the proceedings by lodging a criminal complaint also cannot be sustained in the facts and circumstances arising in this case.

17. As noted from the decision in the case of ***Amarsang Nathaji*** (supra) and the position of law which is well established is that even in a case where the Court comes to the conclusion on the aspect of intentional false evidence, still the Court has to form an opinion whether it is expedient in the interest of justice to initiate an inquiry into the offences of false evidence, having regard to the overall factual matrix as well as the probable consequences of such prosecution. The Court must be satisfied that such an inquiry is required in the interest of justice and is appropriate in the facts of the case. In that backdrop, insofar as the observation made by the learned Judge of the election tribunal relating to the need for maintaining purity of the election process which is the heart and soul of democracy and in that situation the

role of the Returning Officer being pivotal, we fully concur with the same. However, it is also to be noted, merely because of that position the Returning Officer in the instant case need not be exposed to prosecution.

18. Firstly, from the evidence as tendered, we did not see reason to permit the prosecution since in our opinion there is no intentional falsehood uttered. The other relevant facts also indicate that the factual matrix herein does not indicate that it is expedient in the interest of justice to initiate an inquiry and expose the appellant to criminal prosecution. On this aspect it is to be noted that the instant case is not a case where the nomination paper which was complete in all respect was filed and it had been improperly rejected in the scrutiny stage. The allegation of the election petitioner is that the Returning Officer had refused to receive the nomination paper, which the learned Judge in the ultimate analysis has accepted and termed the same as an improper rejection. Even that be so, to indicate that the non-acceptance alleged by the election petitioner was a deliberate action by the Returning Officer with a specific purpose, it has

neither been pleaded nor proved in the course of the proceedings so as to penalise the appellant to face yet another proceeding. The Assembly Constituency concerned is a vast constituency which had nearly four lakh voters on the electoral rolls. The election petitioner had not placed material to indicate that she had contested in any earlier election or had wide support base in the election concerned and it is in that view she had been shut out from the contest. Further there is no allegation that the Returning Officer was acting at the instance or behest of any other candidate who was feeling threatened by the participation of the election petitioner in the election process.

19. On the other hand, the election petitioner, as per her own case was seeking to present the nomination paper which was incomplete and even in that circumstance, she had come to the office of the Returning Officer only at 2.00 pm on the last day for filing nomination which was to close at 3.00 pm. Thereafter she made attempts to complete the formalities in filling up the nomination paper and having failed had still

presented the nomination paper since according to her the needful could have been done within 24 hours. In such a case it cannot be said that the Returning Officer with an ulterior motive had declined to receive the nomination paper and to cover up his folly was seeking to tender false evidence before the Court and thereby to justify his illegal action. In fact, the appellant had received the other nomination papers submitted to him on the last day even as late as 2.58 pm. It is also the consistent view of this Court that the success of a candidate who has won at an election should not be lightly interfered with. In any event it ought not to have been made the basis to initiate prosecution by terming the appellant as unreliable witness. Further, we notice that the appellant was aged 59 years as on 15.06.2011 while recording his deposition and a decade has passed by and now would be 69 years. As pointed out by the learned counsel for the appellant, the appellant has retired from service about eight years back. For all these reasons also, we find that any proceeding against the

appellant is also not expedient apart from not being justified.

In the result, the following order: -

(i) Civil Appeal No. 4821/2012 is disposed of as infructuous.

(ii) Civil Appeal No. 6171/2012 is allowed. Consequently, the direction contained in para 175 of the impugned order to the Registrar General of the High Court to register the complaint against the appellant, the then Returning Officer before the competent court for proceeding in accordance with law for the purpose of provisions of Section 193 of the Indian Penal Code is set aside.

(iii) Parties to bear their own costs.

(iv) Pending applications, if any, shall stand disposed of.

.....CJI
(N.V. RAMANA)

.....J.
(A.S. BOPANNA)

.....J.
(HRISHIKESH ROY)

New Delhi,
August 03, 2021