

24-11-2023

Complt.,- M.H.,  
For Orders.

**ORDER ON ISSUANCE OF PROCESS**

01. This complaint is filed by the complainant under section 200 of Code of Criminal Procedure (In short Cr.P.C.) for offence under Section 171-G, 193, 197, 198, 199, 200, 202 and 203 of IPC and Section 125-A of the Representation of People Act, 1951 (In Short R.P. Act) and try the Accused for the said offences in accordance with law in the interest of justice and equity.

02. In the complaint, it is stated that the Accused filed his nomination along with Affidavit on 19-04-2023 as BJP Candidate for 74-Hubballi - Dharwad West Assembly Constituency. In the said Affidavit, the Accused has not given information about the pending case against him, which is

registered as CC.No.1669/2016 pending on the file of the Prl.Civil Judge and JMFC Court, Bellary. The said case is registered for the offences alleged under Section 143, 147, 323, 324 and 109 R/w Section 149 of IPC, in which, this Accused is arrayed as Accused No.1 and the complainant herein is also the complainant in the above referred CC.No.1669/2016. It is also stated that when, the charge sheet was filed on 02-01-2016, the I.O had dropped the name of this Accused and others in the Charge Sheet and filed Charge Sheet against some persons who are not at all connected with the crime. As such, on 26-04-2018 in the evidence, this complainant had stated the names of this Accused and others. Accordingly, Lrd. APP moved an application under Section 319 Cr.P.C, on 13-02-2020 to include this Accused and others and thereby notice was issued to them and they have appeared through their counsel and filed objection on 16-09-2022. It is stated that now, the said Application is pending consideration before the Prl. Civil Judge and JMFC Court, Bellary. It is alleged that at Column No.5 of Form No.26 submitted to the Election Officer, the Accused has not mentioned about CC. No.1669/2016 and thereby the Accused has given false evidence to the Election Officer, Dharwad and thereby he has committed the offence under

Section 193 of IPC. It is alleged that at Column No.7, the Accused has not mentioned about immovable properties bearing S.No.151/3 measuring 02 Acre 35 Guntas and S.No.151/6 measurement 38 Guntas, both situated at Hitnal Village of Koppal Taluk, which are standing in his name as per the RTC. It is alleged that the Accused has not mentioned about the immovable properties standing in the name of his wife. The Accused has sworn the said Affidavit in front of the Notary at Dharwad, inspite of knowing that he is swearing a False Affidavit.

03. By a detailed Order dated:30-09-2023, this Court took cognizance of the offence under Section 125-A of the R.P. Act only, against the Accused. This Court declined to take cognizance of the alleged offences under Section 171-G, 193, 197, 198, 199, 200, 202 and 203 of IPC as per order dated 30-09-2023. Thereafter, the Sworn Statement of the complainant was recorded as provided under section 200 Cr.P.C., as CW-1 and he also examined one witness as CW-2 and got marked 27 documents as per Ex.C.01 to Ex.C.27.

04. Heard the counsel for the complainant.

05. On perusal of the complaint averments, Sworn Statement of the complainant, his witness and also the documents produced, the point that would arise for determination are:

Point No.1: Whether the complainant has made out sufficient grounds for proceeding against the Accused for the offence under Section 125-A of the R.P.Act, by issuing summons against him?

Point No.2: What order?

06. The above points are answered as under:

Point No.1: In the Affirmative,

Point No.2: As per the final order for the following:

### **REASONS**

07. **Point No.1:** As already stated, the complainant has alleged the commission of the offence under Section 125-A of the R.P. Act. On going through the complaint averments and the Sworn Statement of the complainant and his witness and documents, prima-facie, it goes to show that the Accused has sworn an False Affidavit and presented the same before the Election Officer. The complainant in his Sworn Statement reiterated the complaint averments.

08. In support of the said Sworn Statement, the complainant has produced 27 documents i.e., copies of application dated:10-08-2023 filed by the complainant to the Assistant Electoral Officer/ Returning Officer, 74-Hubballi - Dharwad West Vidhana Sabha Election-2023, which is marked as Ex.C.01, Nomination Paper dated:19-04-2023 filed by the accused along with Form No.26-Affidavit, which is marked as Ex.C.02, Certificate of Election dated:13-05-2023, which is marked as Ex.C.03, the complaint dated:09-05-2023 filed by the complainant to the Returning Officer, 74-Hubballi - Dharwad West, Vidhana Sabha Constituency, Dharwad and has given endorsement which is marked as Ex.C.04, the Second Complaint dated:27-06-2023 filed by the complainant to the Returning Officer, 74-Hubballi - Dharwad West, Vidhana Sabha Constituency, Dharwad and has given endorsement which is marked as Ex.C.05, the complaint, two receipts and acknowledgment filed before the Chief Electoral Officer dated:27-06-2023, which are marked as Ex.C.06 and 07, the endorsement dated:30-06-2023 is given by the Assistant Electoral Officer, Dharwad, which is marked as Ex.C.08, the complaint letter dated:03-07-2023 to the Chief Electoral Officer, Bangalore sent by registered post and registered postal receipt,

which are marked as Ex.C.09 and 10, the complaint letter dated:07-07-2023 sent by registered post to the S.P., Dhardwad and Sub Urban Police Station, registered postal receipt and acknowledgments, which are marked as Ex.C.11 to 16, the endorsement dated:26-07-2023 is given by the Upnagar Police Station, Dharwad, which is marked as Ex.C.17, the certified true copies of FIR in Cr.No.74/2015, complaint and charge sheet dated:02-01-2016, which are marked as Ex.C.18 to 20, certified true copies of Evidence of Complainant, Application dated:13-02-2020 under section 319 of Cr.P.C., filed by the APP, Order Sheet, Vakalath and Objection dated:16-09-2022 in CC.No.1669/2016 which are marked as Ex.C.21 to 25, RTC Extracts, Aadhar Identity Card and Election Identity Card which are marked as Ex.C.26 and 27.

09. On going through the contents of the said documents, it is found that they prima-facie support the version of the complainant. Moreover, the complainant has examined one witness on his behalf as CW-2. He has also deposed in the lines of the Sworn Statement of the complainant.

10. On going through the complaint averments, Sworn Statement of the complainant

and his witness and the documents produced, at this stage, this court is of the opinion that the complaint discloses the ingredients of the offence alleged to have been committed by the Accused and that the material brought on record, as a result of inquiry under section 200 of Cr.P.C., prima-facie constitutes valid evidence which, if believed and un-rebutted at the trial would result in conviction.

11. It is well settled principle of law that before ordering for issuance of process against the Accused, the Court has to decide whether prima-facie case is made out or not on the basis of the materials placed before it. Before exercising power under section 204 Cr.P.C., it is the duty of the court to see that, whether the complainant has made out sufficient grounds for issuance of process. In the decision reported in - **AIR 2010 S.C. 2261” (Shivjee Sing -Vs- Narendra Tiwari)**, the Hon’ble Supreme Court held that - *“the expression “sufficient ground” used in section 203, 204 and 209 of Cr.P.C., means satisfaction that, a prima-facie case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction”*.

12. In another decision reported in **AIR 2014 S.C. 957 (Fiona Shrikhande -Vs- State of**

**Maharashtra)**, it is observed that - “at the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima-facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate of esquire into a detailed discussion on the merits or demerits of the case”.

13. Thus, in the light of the rulings referred supra, on an overall appreciation of the facts of the case, material placed before the court and also law applicable, this Court is of the considered opinion that the complainant has made out sufficient grounds for proceeding against the Accused for the offence under Section 125-A of the R.P. Act and thereby made out grounds for issuance of summons for attendance of the Accused before this court. In the result, I answer Point No.1 in the AFFIRMATIVE.

14. **Point No.2:-** For the reasons assigned and the findings given on Point No.1, I proceed to pass the following:

### **ORDER**

Office to register Criminal Case against the Accused for the offence under Section 125-A of the Representation of People Act, 1951 in Register

No.III and issue summons to the Accused, if Sub-Section.3 and 4 of Section 204 of Cr.P.C. is complied Rtb by : 20-12-2023.

(PREETH. J)

XLII Addl. C.M.M.,

(Spl. Court for trial of cases filed against sitting as well as former MPs/MLAs, triable by the Magistrate in the State of Karnataka)