

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1833 OF 2012
(Arising out of SLP(Crl.) No. 3699 of 2007)

J.JAYALALITHAA

Appellant

VERSUS

C.KUPPUSAMY & ORS.

Respondents

O R D E R

1. Leave granted.

2. This appeal by special leave is directed against the judgment and order passed by the High Court of Judicature at Madras in Writ Petition No. 12996 of 2002 with W.P.M.P. Nos.17487 of 2002 and 1168 of 2007 dated 13.06.2007.

3. It is essential to briefly outlay the facts that led to this appeal before us. The *lis* relates to the Legislative Assembly Elections held in the year 2001 for the State of Tamil Nadu. The Appellant had proposed to contest as a candidate and filed her nomination forms in 4 Assembly Constituencies viz. Krishnagiri, Andipatti, Bhuvanagiri and Padukottai on 16.04.2001, 18.04.2001, 23.04.2001 and 23.04.2001, respectively. Therein, with each nomination form, she had given a declaration that she had not been and would not be nominated as a candidate at the said elections from more than two Assembly Constituencies. However, she was disqualified to contest the

elections on the ground of her conviction in a criminal case under the Prevention of Corruption Act, 1988.

4. One Shri C. Kuppusamy (the Respondent No.1 herein), Member of Parliament, had approached the High Court under Article 226 of the Constitution of India by way of Public Interest Litigation impleading the Chief Election Commissioner, Chief Electoral Officer and the Returning Officers of Bhuvanagiri, Padukottai, Andipatti and Dharmapuri Assembly Constituencies as Respondent Nos. 1 to 6, respectively. In the aforesaid Writ Petition, he sought for, *inter alia*, a writ or direction to the respondents therein to initiate appropriate action by launching prosecution against the Appellant in accordance with law for the offence alleged to have been committed by her under Section 177 of the Indian Penal Code ("IPC" for short) and to directly control and monitor the same under their powers of the judicial superintendence.

5. Strangely, Respondent No.1 had not impleaded the Appellant in the aforesaid Writ Petition. The Appellant had to implead herself by filing a separate W.P.M.P. No. 1168 of 2007, which was allowed by the High Court and, accordingly, she was impleaded as Respondent No.7 in the writ petition.

6. The Respondent No.1 had submitted that the Appellant, by filing more than 2 nomination forms for candidature in elections, has acted in breach of Section 33(7) (b) of the

Representation of the Peoples Act, 1951 ("the Act" for short) and by making a false declaration at the time of filing of nomination forms before Returning Officers of Bhuvanagiri (the 3rd) and Pudukkottai (the 4th) Assembly Constituencies, is liable to be prosecuted under Section 177 of IPC. He had further submitted, that the representations made by him before the Chief Election Commissioner ("the Commissioner" for short) and the Chief Electoral Officer to initiate criminal action against the Appellant have not yielded any results and no action under the aforesaid statutory provisions was initiated against the Appellant.

7. The Commissioner and the Chief Electoral Officer had jointly opposed the allegation of inaction on their part and had further stated that the Commissioner had conveyed its desire that the matter be examined by the Returning Officers of the 3rd and the 4th Assembly Constituencies in the light of the clarification issued by them. It was further submitted by them that consequent to the aforesaid direction, it was for the said Returning Officers to apply their mind while considering the allegations of false declaration so made or suppression of facts by the Appellant.

8. Respondent No.7 therein, i.e., the Appellant before us, had contended that no offence, as alleged in the Writ Petition, has been committed by her.

9. The High Court, after considering the case of the parties, concluded that the Returning Officers of the 3rd and the 4th Assembly Constituencies were not justified in not initiating appropriate proceedings under the statutory provisions and therefore has directed the Respondent Nos. 1 to 4 therein to initiate appropriate action against the Appellant in accordance with law within a particular time frame. It is this judgment and order of the High Court which is the subject matter of this appeal.

10. We have heard Shri U.U. Lalit, learned senior counsel for the Appellant, Shri Altaf Ahmed, learned senior counsel for Respondent No.1 and Smt. Meenakshi Arora, learned counsel for the Commissioner.

11. At the time of hearing of this appeal, two reports submitted by the Returning Officers of the 3rd and the 4th Assembly Constituencies, dated 10.11.2001 and 14.12.2001 respectively have been brought to our notice. The said reports were submitted in pursuance of the direction issued by the Chief Electoral Officer to the Returning Officers of the 3rd and the 4th Assembly Constituencies in respect of the 4 nomination forms filed by the Appellant. We have carefully perused the said reports. The Returning Officers are of the opinion that the Appellant had produced the 2 nomination forms filed for candidature in Andipatti and Krishnagiri Assembly Constituencies before them at the time of scrutiny and therefore, the case of

suppression of facts at the time of scrutiny could not be made out. It is on the basis of this observation that they discard the necessity of taking any action against the Appellant for giving false declaration.

12. It is also brought to our notice that the said reports were not placed before the High Court. These reports, outlaying the opinion of the Returning Officers, are relevant reports which ought to have been placed, either by the Appellant or by the Respondent No. 1, before the High Court for its consideration and appreciation. In our opinion, had the said reports been placed before the High Court, the High Court would have had the opportunity to delve into the reasons assigned and conclusions reached by the Returning Officers.

13. Further, in our opinion, the High Court, while disposing of the Writ Petition, should have directed the Respondent Nos. 1 to 4 therein to reconsider the matter and then decide whether any prosecution proceeding should be initiated against the Appellant, instead of directing them to initiate action against the Appellant. The decision of initiating any prosecution proceedings must be taken by the authorities in the light of the applicable statutory provisions.

14. In view of the aforesaid discussion, the judgment and order passed by the High Court, requires to be set aside and the matter requires to be remanded to the High Court for fresh

disposal in accordance with law.

15. Accordingly, while allowing this appeal, we set aside the judgment and order passed by the High Court and remand the matter to the High Court for fresh disposal in accordance with law. We also permit the Appellant to produce the reports passed by the Returning Officers dated 10.11.2001 and 14.12.2001. We permit the respondents to file their additional objections, if any, before the High Court.

16. We are informed by the learned senior counsel appearing for the parties that pursuant to the order and direction issued by the High Court, Returning Officers of the 3rd and the 4th Assembly Constituencies have filed a complaint before an appropriate forum. Since we have set aside the judgment and order passed by the High Court, we quash all proceedings initiated by Respondent Nos. 1 to 4 therein.

17. We further clarify that we have not expressed any opinion on the merits or demerits of the case or on the contentions canvassed by both the learned Senior Counsel.

18. Before parting, since the matter is pending before various forums for the last 11 years, we request the High Court to decide the *lis* between the parties as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of this order.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(CHANDRAMAULI KR. PRASAD)

NEW DELHI
NOVEMBER 21, 2012



JUDGMENT