

Sridhara Kumar Vs. K. Ramachandrappa and ors.

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Court : Karnataka

Decided On : Jan-06-1988

Reported in : AIR1988Kant215; 1988(1)KarLJ393

Judge : P.P. Bopanna, J.

Acts : [Constitution of India](#) - Article 21; [Indian Penal Code \(IPC\), 1860](#) - Sections 229, 304, 337 and 338; [Representation of the People Act, 1951](#) - Sections 80 and 87

Appeal No. : Writ Petn. No. 17916 of 1987

Appellant : Sridhara Kumar

Respondent : K. Ramachandrappa and ors.

Advocate for Def. : B.G. Nayak, Adv. and ;B.T. Somayaji, High Court Govt. Pleader

Advocate for Pet/Ap. : U.L. Narayana Rao, Adv.

Judgement :

ORDER

1. The petitioner has questioned the correctness of the order made by the Election Tribunal i.e., the learned Munsiff, Davanagere in Election Misc. No. 65/87 rejecting the application filed by the petitioner to stay the proceedings pending on its file on

the ground that the continuation of the proceedings in the election petition would seriously prejudice his defence in the pending criminal cases under the provisions of Ss. 229, 337, 338 and 304A IPC on the file of the Sessions Court of Chitradurga.

2. The petitioner was the 2nd respondent before the Election Tribunal. In his application before the Election Tribunal he has stated that the issues framed in the election petition would seriously prejudice his defence in that the Election Tribunal had framed issues touching his alleged conduct as to whether he and his supporters had formed themselves into an unlawful assembly and whether this fact prevented the members from casting their votes in accordance with their conscience; and whether the entire election proceedings are vitiated by the criminal acts done by respondents 2 to 4 and their supporters. So, these two issues indicate that the Election Tribunal will have to go into question whether the petitioner and other respondents before the Election Tribunal had formed themselves into an Unlawful assembly and whether they had committed certain other criminal acts and thereby vitiated the entire election proceedings. The criminal acts attributed to the petitioner, as already noticed, come within the scope of certain offences allegedly committed under the relevant provisions of the Penal Code. These alleged criminal acts are of a serious in nature and if the petitioner is convicted under any of the Sections of I.P.C. mentioned above, he is, likely to be sentenced to imprisonment and that is the reason, the petitioner made an Application before the Election Tribunal, with a prayer to stay the proceedings till the cases Pending against him before the learned Sessions Judge, Chitradurga are disposed of.

3. The Election Tribunal rejected his application on the ground that his plea is totally devoid of merit; that the nature and scope of proceedings in this case and the connected criminal matters are totally different and they do not overlap each other; that the law requires that the petition should be disposed of at the earliest preferably within six months and such being the case there could be no justification to defer the recording of evidence in this case. He also came to the conclusion that the petitioner had made the application with a view, to protract the proceedings and for these reasons, he rejected the application.

4. One more ground that found favour with him is the analogy of the Motor Vehicle cases pending before the Motor Vehicles Accidents Claims Tribunal during the pendency of criminal cases against the drivers or the owners of the vehicles involved in such cases. The law on this point is well settled by the Supreme Court in 'Its two decisions rendered in - (i) Delhi Cloth & General Mills Ltd v. Kushal Bhan, : (1960)ILLJ520SC , (ii) Tata Oil Mills Co. Ltd. v. Workmen, : (1964)ILLJ113SC . In the earlier decision of the Supreme Court it has ruled that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the employee in the criminal case since his defence may not be prejudiced. But on the facts of the case, the Supreme Court found the case to be of a simple nature and so did not fault the course adopted by the enquiry officer. This decision was followed by the Supreme Court in Tata Oil Mills' case. In that case also, on facts the Supreme Court found that there was no need to stay the proceedings in the domestic enquiry in view of the fact that the criminal case was not of a serious, nature. But that is not the situation in this case. The petitioner is admittedly charged with offences under Ss. 279, 337, 338 and 304 I.P.C. The Sessions Court will have to go into these offences in the usual course by recording the prosecution evidence and after considering the defence of the petitioner before it. If the petitioner were to be examined by the Election Tribunal in regard to the trial of the two issues framed by it, the petitioner has to disclose his defence before the Election Tribunal in regard to the aforesaid two issues. Such disclosure before the Election Tribunal would inevitably prejudice the defence before the Criminal Court since any lacuna in his defence before the Election Tribunal could be made use of by the prosecution to build the case against him before the Sessions Court. That is what is meant by the expression by the words prejudicial to the defence of the accused' in the judgments of the Supreme Court in Delhi Cloth Mills and Tata Oil Mills.

5. However, it is contended by the learned Counsel for the contesting respondent that the finding of the Election Tribunal on the alleged criminal acts committed by the petitioner is not binding on the criminal court and therefore, there is no need for the Election Tribunal to stay the proceedings till the disposal of the criminal cases against the petitioner in the Sessions Court. As noticed earlier, the test to be

applied in a case of this nature is not the binding effect of the order of the Election Tribunal on the criminal court, but the test is the plausible prejudice to the defence of the accused in the criminal case.

6. For this reason, the petitioner must succeed in this writ petition.

7. Another contention advanced by the learned Counsel for the contesting respondent is that the petitioner cannot take advantage of his criminal acts and keep the election petition pending till the criminal cases are disposed of finally against him by the Criminal Court and the law having enjoined the Tribunal to dispose of the election petition within 6 months, that law must be given effect to and therefore, the election Tribunal was justified in rejecting the application for stay of the proceedings.

8. This contention overlooks the fundamental principles in our jurisprudence. The life and liberty of a citizen has to be fully protected against the statutory rights of other persons like the right to hold an elective office. The rights under Art. 21 of the Constitution cannot be bartered away for the right to hold an elective office and therefore, such an argument does not require any serious consideration by this Court.

9. No case decided under the Election Law is brought to my notice despite the fact that the learned Counsel for the contesting respondent had taken adjournments with a view to assist the Court by citing authorities under the Election Law. However, the principle applicable to domestic enquiries, would be equally applicable to Election Disputes.

10. Accordingly, this petition is allowed, the impugned order of the election Tribunal is set aside and the proceedings of the Election Tribunal are stayed till the criminal cases against the petitioner are disposed of by the Sessions Judge, Chitradurga. The undertaking of the petitioner that he would not protract the proceedings before the Criminal Court by taking unnecessary adjournments is recorded.

11. Petition allowed.

