

**Devarajan Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Jun-20-2012

**Reported in :** 2012(3)KLT149; 2012(3)KHC60; 2012(3)KLJ241

**Judge :** S.S. Satheesachandran

**Appeal No. :** Crl.M.C.NO.1978 of 2012 (B)

**Appellant :** Devarajan

**Respondent :** State of Kerala

**Judgement :**

Petitioner is the accused in C.C.No.502/2009 on the file of the Judicial First Class Magistrate, Malappuram. He filed a nomination paper to contest the election to the last Lok Sabha Election from Ponnani constituency. An affidavit was also sworn to and produced with his nomination paper as mandated by Section 33A of the Representation of Peoples Act, 1951 (for short R.P. Act). That affidavit contained a false averment and the Form 2A filed with nomination contained false statement, suppression of his previous conviction in a criminal case, was the basis of a complaint from the returning officer, on which a crime was registered for the offence punishable under Section 125A of the R.P Act. After investigation of the crime Annexure A2 report was filed indicting the petitioner for the aforesaid offence. Petitioner has filed the above petition under Section 482 of the Code of Criminal Procedure (for short the 'Code') to quash the criminal proceedings

against him contending that he was not a candidate though he had submitted a nomination to contest the election and, therefore, no offence as imputed can be taken cognizance against him on the basis of report filed by the police.

2. Learned counsel for the petitioner adverting to the definition of candidate under Section 79 (b) of the R.P. Act submits that to be a candidate he has to be a person who has been or claims to have been duly nominated as a candidate at any election. When his nomination paper filed has been rejected, whatever be the reason thereof, according to the learned counsel, he cannot be considered as a candidate and, thus, liable to be prosecuted for the offence under Section 125A of the R.P. Act as proceeded in the present case. Learned counsel for petitioner relied on Sheo Kumar and another Vs. V.G. Oak and others [A.I.R 1953 ALL 633] and Joseph Vs. Block Development Officer [AIR 1990 Kerala 131] in support of the proposition canvassed of. Learned Director General of Prosecution inviting attention to Section 33 A and also the Conduct of Election Rules, particularly Form 2A prescribed for filing nomination paper, submitted that there is no merit in the challenge raised by the petitioner that he is not a candidate and not liable to be proceeded for the offence. Once a person files a nomination paper, and it is proposed by another as well, as required by the Rules, then such a person has to be treated as a candidate so far as any false statement made by him with respect to the affidavit which is mandatorily required to be filed with such nomination paper, is the submission of the Director General of Prosecution.

3. Section 79 (b) of R.P. Act defines a candidate thus : "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election. That definition of candidate as spelt out by the opening words of that section has application only with respect to election disputes which may arise in the conduct of election, which are covered under part VI and VII of the above Act. The definition of 'Candidate' given thereunder cannot have a sweeping effect over the provisions in other Chapters under the R.P. Act wherein the term candidate is used, more particularly over the filing of nomination, scrutiny, rejection etc. If we go by part V of the R.P. Act which deals with the conduct of elections it is emphatically made clear that any person who is filing a nomination paper for contesting the election is treated as a candidate. Section 32 of the R.P. Act

contemplates nomination of candidate for election. Section 33 also makes it clear how a candidate who wishes to contest the election shall file his nomination paper. 33 A of the R.P. Act is a salutary provision introduced in the statute by amendment pursuant to the judgment rendered by the Apex Court in Peoples Union for Civil Liberties (PUCL) V. Union of India, AIR 2003 SC 2363, which, among other directions mandated disclosure of the past criminal record of a candidate who contest the election. When that be so, it is futile to contend with reference to the definition of candidate as given under Part VI of the R.P. Act which has application only in relation to election disputes dealt with under part VI and VII of the R.P. Act to assail Annexure A2 report imputing the commission of an offence under Section 125A of the Act. The decision cited by the counsel Sheo Kumar and anothers case by the Allahabad High Court, and Joseph's case by this court, both of them rendered interpreting the term 'Candidate' in relation to election disputes raised in election petition, have no application in considering whether prosecution proceedings would lie against a person for making false averment in his affidavit and false statement in the form required to be filed with his nomination to contest an election. Challenge raised by the petitioner against Annexure A2 report is wholly unsustainable.

Crl.M.C. is dismissed.

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