

(2015) 08 KAR CK 0201

In the Karnataka High Court

Case No : Criminal Petition No. 200675 of 2015

Ajay Singh

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Representation of the People Act, 1951 — Section 123, 123(5), 133, 25, 29

Citation : (2015) 08 KAR CK 0201

Hon'ble Judges : A.V. Chandrashekara, J

Bench : Single Bench

**Advocate : Sharada R. Patil, for the Appellant; Prakash Yeli, Addl. SPP,
Advocates for the Respondent**

Final Decision : Allowed

Judgement

A.V. Chandrashekara, J—Petitioner is accused No. 1 in Crime No. 173/2010, on the file of Farhatabad police station, Kalaburagi district, for the offence punishable under Section 133 of Representation of People Act, 1951.

2. Entire investigation is completed and charge sheet has been filed against this petitioner and another accused, for the offence punishable under Section 133 of R.P. Act, 1951, mainly on the ground that they had hired three vehicle for canvas without obtaining permission from the concerned authorities under the R.P. Act.

3. The learned Additional SPP Sri. Prakash Yeli had been requested to file the entire copy of the charge sheet and accordingly, the Investigation Officer has produced the copy of the charge sheet prepared by him.

4. Section 133 of R.P. Act is extracted as follows:

"133. Penalty for illegal hiring or procuring of conveyance at elections - If any person is guilty of any such corrupt practice as is specified in clause (5) of Section 123 at or in connection with an election, he shall be punishable with imprisonment which may extend to three months and with fine."

5. Section 123(5) of the R.P. Act, 1951 is relevant, which is re-produced as below:

"(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person, [with the consent or of a candidate or his election agent] [or the use of such vehicle or vessel for the free conveyance] of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under Section 25 or a place fixed under sub-Section(1) of Section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation - In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicle or otherwise."

6. On going through the entire charge sheet produced by the Additional SPP as provided to him by the Investigating Officer, it is seen that a copy of the FIR registered in Crime No. 173/2010 together with the FIR lodged by the PSI are produced. The copies of the bond executed by the accused are also made available. There is absolutely no material to connect this petitioner/accused with the alleged offence.

7. What is held in the charge sheet is that this petitioner was a candidate from Indian National Congress Party, contesting the legislative assembly election of Karnataka from Jewargi constituency and accused No. 2 had allegedly hired three vehicles to canvas on behalf, of this petitioner. Except this allegation as found in the charge sheet, no materials are forthcoming against this petitioner. It is relevant to consider the decision of the Hon"ble Patna High Court rendered in the case of Rejendra Prasad Singh Vs. State of Bihar in Criminal Miscellaneous No. 1397/1999 dated 21.04.2010 and it held as follows:

"it is necessary for the prosecution to allege that hiring of vehicle or vessel was by a candidate or his agent or by any other person with the consent of a candidate or his election agent and the corrupt practice, which was the essence of the offence, would be attracted only if the vehicle engaged by a candidate was found carrying voters contrary to provisions of the Representation of Peoples Act. In that case it was held, in identical situation that there was no material showing

allegation or evidence that the vehicle was bearing used for carrying voters attracting definition of corrupt practice. It was further held that if the supporters of a candidate without consent of a candidate indulged in corrupt practice it cannot attract Section 123(5) of the R.P. Act."

8. After going through the records and the decision referred to in the above case, the entire proceedings will have to be quashed by invoking inherent power under Section 482 of Cr.P.C. Even if the entire materials reconsidered to be true, no case is made out to proceed further against this petitioner.

Accordingly, petition is allowed. The proceedings initiated by the II Additional JMFC Court, Kalaburagi in C.C. No. 1044/2011 are quashed.