

(2019) 04 MAN CK 0023

In the Manipur High Court

Case No : Miscellaneous Cases (Election Petition) No. 32 Of 2018 In Election
Petition No. 9 Of 2017

Nahakpam Indrajit Singh And Others

APPELLANT

Vs

Md. Amin Shah And Others

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 87, Order 6 Rule 16
Unlawful Activities (Prevention) Act, 1967 — Section 38, 39, 40
Indian Penal Code, 1860 — Section 120B, 384

Citation : (2019) 04 MAN CK 0023

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : M. Devananda, S. Biswajit

Final Decision : Dismissed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri M. Devananda, learned counsel appearing for the applicant/respondent No. 1 and Shri S. Biswajit, learned counsel appearing for respondent No. 1/petitioner.

[2] This is application filed by the applicant/respondent No. 1 praying for striking out para 4.5 of the election petition on the ground that it is totally unfounded and baseless and in other words, the averments made in para 4.5 thereof are unnecessary and misleading in the mind of the general public. Since no reply thereto has been filed on behalf of respondent No. 1/petitioner, the averments made in the application shall be deemed to have been admitted by him and therefore, it has been submitted by the learned counsel appearing for the applicant/respondent No. 1 that the said para 4.5 of the election petition is required to be struck out in terms of the provisions of Order 6 Rule 16 of CPC.

[3] On the other hand, it has been submitted by the learned counsel appearing

for respondent No. 1/petitioner that no reply is required to be filed in the matter and the purpose and intention of filing the application is to delay the proceedings of the election petition as is evident the facts and circumstances of the present case. It has further been submitted by him that the election petition was filed on 24/04/2017 to which a written statement was filed on 10/07/2017 and the replication thereto was filed on 24/08/2017.

The application being MC(EI.Pet.) No.35 of 2017 raising the maintainability of the election petition which was filed on 20/9/2017 by the applicant/ respondent No.1, has already been disposed of and moreover, the application filed by the respondent No.1/ petitioner praying for permission to file replication has also been disposed of. The instant application was filed on 26/10/2018 more than a year from the date of filing the written statement.

[4] The para 4.5 of the election petition which is sought to be struck out from the election petition read as under:

"4.5 That, recently, it is found that one FIR case being FIR No. 77 (3) 2013 City P.S. under section 38, 39, 40 UA (P) Act and 384/120-B IPC is pending against the respondent no. 1 in City Police Station, Imphal and in connection with the FIR Case, the respondent No. 1 was arrested by the police of City Police Station and produced before the Ld. Chief Judicial Magistrate/Imphal West and remanded to police custody. The respondent No. 1 deliberately concealed the pendency of the FIR case in the Affidavit filed along with nomination paper before the Returning officer of 4-Kshetrigao Assembly Constituency. The respondent no. 1 filled up the Affidavit in column No. 1 (1) (a) of para No. 5 as

"Not applicable" and the respondent no. 1 filled up the column no. (1) (b), (c), (d), (e) and (f) of para no. 5 as "N.A".

The respondent No. 1 has failed to furnish the detail information about the FIR case being FIR No. 77 (3) 2013 City P.S. under section 38, 39, 40 UA (P) Act and 384/120-B IPC but the R.O. o 4-Kshetrigao A.C. had accepted the nomination paper of the respondent no. 1 improperly. The petitioner has filed an application to the Superintendent of Police, Imphal West District, Manipur for directing the O.C. City P.S. to issue a certified copy of the said FIR case. However, the copy of the said FIR Case has not been received by the petitioner till date."

[5] On perusal of the said para 4.5 of the election petition, it is seen that the allegation made therein against the applicant/respondent No.1 is that although the case under FIR No.77 (3) 2013, City PS. under Section 38, 39, 40 UA (P) Act and 384/120-B IPC is pending, the same has not been reflected in the affidavit filed by him along with the nomination paper. While denying the allegation, it has been stated by the applicant/respondent No.1 in his written statement that although the said case was registered against him, the same has been closed vide order dated 19-04-2014 passed by the learned CJM, Imphal-west prior to the filing of the election petition. Therefore, this para 4.5 of the election petitioner is no longer required to be maintained in it.

[6] The contention of Shri S. Biswajit Meitei, the learned counsel appearing for the respondent No.1/ petitioner appears to be correct to some extent. It is not in dispute that the election petition was filed on 24/04/2017 to which a written statement was filed on 10/07/2017 and the replication thereto was filed on 24/08/2017. At the time filing the written statement, the applicant/ respondent No.1 knew that according to him, the para 4.5 of the election petition was unnecessary and irrelevant but he had chosen not to file the instant application at the right time. The application being raising the maintainability of the election petition which was filed on 20/9/2017 by the applicant/ respondent No.1, had been disposed of and even the application filed by the respondent No.1/ petitioner praying for permission to file replication had also been disposed of. The instant application was filed on 26/10/2018 more than a year from the date of filing the written statement. These circumstances clearly show that the filing of the instant application was an after-thought and has been filed only to delay the trial of the election petition. After the pleadings are complete as aforesaid, it has become the bounden duty of this court to frame issues and that there is no need of striking out para 4.5 at this moment. This point can be raised by the counsel appearing for the applicant/respondent No.1 at the time of framing the issues and while framing the issues, if this court happens to be of the view that no issue need be framed on the allegation made in para 4.5 and in fact, no issue is framed, the grievance of the applicant/ respondent No.1 will no longer exist and that the question of striking out para 4.5 will not arise at all. Therefore, the applicant is devoid of any merit and is liable to be rejected.

[7] The prayer for deletion/ striking down para 4.5 of the election petition has been made in terms of the provisions of Order 6 Rule 16 CPC. It is also not in dispute that Order 6 Rule 16 provides that the court may at any stage of the proceedings order to be struck out or amended any matter in any pleading on any of the grounds mentioned therein. The power conferred under the rules is discretionary one. It may be The Peoples Representation Act, 1951 is a self contained code. Section 87 specifically provides that subject to the provisions of Act and of any rules made thereunder, every petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the CPC to the trial of suits. On perusal of Section 87, the intention of the legislature is very clear and if all the provisions of the CPC are intended to be applied to election trial, there was no need of using the expression "as nearly as may be" and it could have been stated straight way that the election petition be tried under the provisions of CPC. Be that as it may, in view of the facts and circumstances as stated hereinabove, in order to avoid further delay in the trial, this court is not inclined to allow the application so that the trial can go on uninterruptedly. Thus, it can be safely held that the instant application is devoid of any merit.

[8] In view of the above, the instant application being M.C.(El. Pet.) No.32 of 2018 is dismissed with no order as to costs.