

(2019) 10 SC CK 0002

In the Supreme Court Of India

Case No : Criminal Appeal Nos. 1515, 1516 Of 2019

Satish Ukey

APPELLANT

Vs

Devendra Gangadharrao Fadnavis And Anr

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Representation Of The People Act, 1951 — Section 33A, 33A(i), 33A(1), 33A(1)(i), 33A(1)(ii), 33A(I)(i), 33A(2), 33B, 125A
Indian Penal Code, 1860 — Section 34, 177, 218, 420, 467, 468, 471, 500
Representation Of The People (Third Amendment) Act, 2002 — Section 2
Code Of Criminal Procedure, 1973 — Section 195

Citation : AIR 2019 SC 5101 : (2019) 9 SCC 1 : (2019) 10 JT 334 : (2019) 13 Scale 247 : (2019) 3 SCC(Cri) 489 : (2019) 4 MLJ(Cri) 574 : (2019) 4 RCR(Civil) 809

Hon'ble Judges : Ranjan Gogoi, CJ;Deepak Gupta, J;Aniruddha Bose, J

Bench : Full Bench

Advocate : Balraj Dewan

Final Decision : Allowed

Judgement

Ranjan Gogoi, CJ

1. Leave granted.

2. The appellant- Satish Ukey is a practicing Advocate of the Bombay High Court. The first respondent is an elected member of the Maharashtra State Legislative Assembly and is presently holding the post of Chief Minister of the State of Maharashtra.

3. The appellant had filed a criminal complaint before the learned Judicial Magistrate First Class, Nagpur for registration of a case against the first respondent under Section 125-A of the Representation of the People Act, 1951 (hereinafter referred to as "the 1951 Act"). The learned Judicial Magistrate First Class, Nagpur by order dated 7th September, 2015 dismissed the complaint. In Revision, the learned Sessions Judge, Nagpur remanded the matter to the

learned trial Court for a de novo consideration. Aggrieved, the first respondent moved the High Court and the High Court having set aside the order of the learned Sessions Judge by its judgment and order dated 3rd May, 2018, the present appeals have been filed.

4. The complaint filed by the appellant contains an allegation that in the affidavit in Form-26, prescribed by the Conduct of Election Rules, 1961 (hereinafter referred to as "the 1961 Rules"), which had accompanied the nomination papers of the first respondent details of two cases in which cognizance was taken i.e. (i) Summary Case No.231 of 1996 (under Section 500 of IPC) before the Judicial Magistrate First Class, Nagpur; and (ii) Regular Criminal Case No.343 of 2003 (Old No.125 of 1998) (under Sections 468, 471, 218, 467, 420 and 34 of IPC) before the Court of Judicial Magistrate First Class, Nagpur have not been mentioned by the first respondent despite knowledge of the same. Consequently, according to the appellant - complainant, an infraction of the provisions of Section 125-A has been committed for which the first respondent is liable to be prosecuted in a court of competent jurisdiction.

On the very same allegations the appellant had challenged the election of the first respondent before the High Court by instituting Election Petition No.1 of 2014 which has been dismissed by the High Court by its order dated 19th August, 2015.

5. To determine the correctness of the stand taken by the appellant - complainant and the legality of the impugned order of the High Court holding that the complaint is liable to be dismissed, the Court would be required to consider the provisions of Sections 33-A and 125-A of the 1951 Act, Rule 4A of the 1961 Rules read with Form-26 prescribed under the said Rules. Several letters of the Election Commission of India to the Chief Electoral Officers of all the States and the Union Territories issued in this regard would also require a close look.

6. Before setting out the relevant provisions of the law enumerated above, a brief prologue on the judicial precedents that had led to the insertion of Sections 33-A and 125-A in the 1951 Act and the provisions of Rule 4-A of the 1961 Rules read with Form-26 is considered necessary.

7. In *Union of India (UOI) and Ors. v. Association for Democratic Reforms and Ors.* (2002) 5 SCC 294 this Court while examining the issue of the Voters right to know relevant particulars of the contesting candidates before they are called upon to cast their votes had made the following observations :

"22. For health of democracy and fair election, whether the disclosure of assets by a candidate, his/her qualification and particulars regarding involvement in criminal cases are necessary for informing voters, may be illiterate, so that they can decide intelligently, whom to vote? In our opinion, the decision of even illiterate voter, if properly educated and informed about the contesting candidate, would be based on his own relevant criteria of selecting a candidate. In

democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens -- voters. In a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. He has choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his representative. Voter has to decide whether he should cast vote in favour of a candidate who is involved in criminal case. For maintaining purity of elections and healthy democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided--its result, if pending-- whether charge is framed or cognizance is taken by the Court? There is no necessity of suppressing the relevant facts from the voters.

[underlining is ours]"

Further, this Court issued the following directions to the Election Commission (para 48, pg. 322):

"48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:-

(1) Whether the candidate is convicted/acquitted/ discharged of any criminal offence in the past-if any, whether he is punished with imprisonment or fine?

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof.

[underlining is ours]"

8. Consequent to the above and the directions issued in Association for Democratic Reforms (Supra), Section 33-A was inserted into the 1951 Act vide the 'Representation of the People (Third Amendment) Act, 2002' (Section 2 of the Act 72 of 2002).

9. The new Section 33-A, which is the bone of contention in the present case, deals with the 'Right to Information' and reads as under:

"33A. Right to information.-(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether -

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section(2), or covered in sub-section (3), of section 8 and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

[underlining is ours]"

It is pertinent to note here that Section 33-A(1), as worded and drafted, required furnishing of the information of cases where (i) the person filing the nomination has been convicted; and (ii) where charges have been framed against the person filing the nomination but excluded cases where cognizance had been taken. This was despite the order of this Court, noticed above, to the effect that details of case(s) of which cognizance has been taken should also be furnished.

10. The aforesaid discrepancy was addressed by this Court, in the case of People's Union for civil Liberties (PUCL) and Ors. v. Union of India (UOI) and Ors (2003) 4 SCC 399. In the said case, this Court had examined the import of Sections 33-A and 33-B of the 1951 Act [as inserted in the 1951 Act through the amendment in 2002 (Supra)] vis-à-vis the directions issued by this Court in the case of Association for Democratic Reforms (Supra) and held as under (opinion of M.B. Shah, J. is quoted. The opinion of P. Venkatarama Reddi and D.M. Dharmadhikari, JJ. on the point is one of concurrence):

Section 33-B was also added through the 2002 Amendment. It stated that notwithstanding anything contained in any judgment of any Court, or any instruction issued by the Election Commission, no candidate shall be liable to disclose information not required by the Act or rules made thereunder.

Section 33-B was declared unconstitutional in People's Union of Civil Liberties v. Union of India and Ors. ((2003) 4 SCC 399) as violating the fundamental right of citizens to know the antecedents of candidates contesting in the elections, which right was held to be an essential facet of freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution which could only be validly limited through the restrictions conforming with Article. 19(2) of the Constitution of India.

"114. I shall now discuss the specifics of the problem. With a view to promote the right to information, this Court gave certain directives to the Election Commission which, as I have already clarified, were ad hoc in nature. The Election Commission was directed to call for details from the contesting candidates broadly on three points, namely, (i) criminal record, (ii) assets and liabilities, and (iii) educational qualification. The Third Amendment to the RP Act which was preceded by an ordinance provided for disclosure of information. How far the Third Amendment to the Representation of the People Act, 2002 safeguards the right of information which is a part of the guaranteed right under Article 19(1)(a), is the question to be considered now with specific reference to each of the three points spelt out in the judgment of this Court in Assn. for Democratic Reforms case.

115. As regards the first aspect, namely, criminal record, the directives in Assn. for Democratic Reforms case are twofold: (SCC p. 322, para 48)

"(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past - if any, whether he is punished with imprisonment or fine.

(2) Prior to six months of filing of nomination, whether the candidate is an accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law."

As regards the second directive, Parliament has substantially proceeded on the same lines and made it obligatory for the candidate to furnish information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the competent court. However, the case in which cognizance has been taken but charge has not been framed is not covered by clause (i) of Section 33-A(I). Parliament having taken the right step of compelling disclosure of the pendency of cases relating to major offences, there is no good reason why it failed to provide for the disclosure of the cases of the same nature of which cognizance has been taken by the Court. It is common knowledge that on account of a variety of reasons such as the delaying tactics of one or the other accused and inadequacies of the prosecuting machinery, framing of formal charges gets delayed considerably, especially in serious cases where committal procedure has to be gone through. On that account, the voter/citizen shall not be denied information regarding cognizance taken by the Court of an offence punishable with imprisonment for two years or more. The citizen's right to information, when once it is recognized to be part of the fundamental right under Article 19(1)(a), cannot be truncated in the manner in which it has been done. Clause (i) of Section 33-A(I) therefore falls short of the avowed goal to effectuate the right of information on a vital aspect. Cases in which cognizance has been taken should therefore be comprehended within the area of information accessible to the voters/citizens, in addition to what is provided for in clause (i) of Section 33-A.

[underlining is ours]"

Further, the Court held:

"123. Finally, the summary of my conclusions:

(1)

(2)

(3) The directives given by this Court in *Union of India v. Assn. for Democratic Reforms* were intended to operate only till the law was made by the legislature and in that sense "pro tempore" in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight and substantial departure therefrom cannot be countenanced.

...

(6) The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure.

[underlining is ours]"

Eventually, the following direction was issued by the Court to the Election Commission of India:

"123 (9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken...."

11. Section 125-A of the 1951 Act [Inserted by Section 5 of the Representation of the People (Third Amendment) Act, 2002' (Act 72 of 2002)] reads as under:

"Section 125-A. Penalty for filing false affidavit, etc.- A candidate who himself or through his proposer, with intent to be elected in an election,-

(i) fails to furnish information relating to sub-section (1) of section 33-A; or

(ii) gives false information which he knows or has reason to believe to be false; or

(iii) conceals any information,

in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33-A, as the case may be, shall, notwithstanding anything contained in any other law

for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both"

12. Whether the provisions of Section 125-A of the 1951 Act would be applicable in the present case, as claimed by the appellant - complainant, to make the first respondent liable in law, would require the Court to decide on the true meaning and purport of the following phrases found in Section 125-A of the 1951 Act.

(a) fails to furnish information relating to sub-section (1) of Section 33-A;

(b) conceals any information;

(c) in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33-A.

13. To find out the true meaning and purport of the aforesaid phrases, the crucial question that has to be answered is whether the word 'information' as mentioned in Section 33-A of the 1951 Act means only such information as mentioned in clause (i) and (ii) of Section 33-A(1) or whether along with the said information a candidate is also required to furnish such other information as required under the Act or the Rules made thereunder. The consequential question that would arise is whether in the affidavit required to be filed under sub-section (2) of Section 33-A information is to be given as required in terms of the affidavit which is prescribed by Form-26 of the 1961 Rules or such information is confined to what is required to be submitted under Section 33-A (1) (i) and (ii). It is at this stage that Rule 4-A of the 1961 Rules would require to be noticed. Rule 4-A which was inserted by S.O.935(E), dated 3.9.2002 with effect from 3.9.2002 is in the following terms.

"4-A. Form of affidavit to be filed at the time of delivering nomination paper.- The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section

(1) of Section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26."

14. Form 26 is the prescribed form of affidavit to be filed by a candidate along with his nomination papers as required under Section 33-A (2) of the 1951 Act. The said affidavit in the prescribed form reads as hereunder:

" [FORM 26

(See Rule 4-A)

Please affix your recent

passport size photograph

here

Affidavit to be filed by the candidate along with nomination paper before the returning officer for election to (name of the House)

from.....constituency (Name of the constituency)

PART A

I , **son/daughter/wife
of.....

Aged.....years, resident
of (mention full postal address), a
candidate at the above election, do hereby solemnly affirm and state on oath as
under-

(1) I am a candidate set up by.....(**name of the political party)/
**am contesting as an Independent candidate.

(**Strike out whichever is not applicable)

(2) My name is enrolled in(Name of the
constituency and the State), at Serial No.in Part No.

[(3) My contact telephone number(s) is/are..... and my E-mail
ID (if any) is

[(4) Details of Permanent Account Number (PAN) and status of filing of income
tax return:

Sl. No.

Names

PAN

The financial year for which the last income-tax return has been filed.

Total income shown in income tax return (in Rupees)

1.

Self

2

Spouse

3.

4.

Dependent-1

Dependent-2

5.

Dependent-3

5. I am/am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which a charge(s) has/have been framed by the court(s) of competent jurisdiction.

If the deponent is accused of any such offence(s) he shall furnish the following information-

(i) The following case(s) is/are pending against me in which charges have been framed by the court for an offence punishable with imprisonment for two years or more-

(a)

Case/First Information Report No./Nos. together with complete details of concerned Police Station/District/State

(b)

Section(s) of the concerned Act(s) and short description of the offence(s) for which charged

(c)

Name of the Court, Case No. and date of Order taking cognizance:

(d)

Court(s) which framed the charge(s)

(e)

Date(s) on which the charge(s) was/were framed

(f)

Whether all or any of the proceeding(s) have been stayed by any Court(s) of competent jurisdiction

(ii) The following case(s) is/are pending against me in which cognizance has been taken by the Court(other than the cases mentioned in item (i) above.

(a)

Name of the Court, Case No. and date of order taking cognizance:

(b)

The details of cases where the Court has taken cognizance, section (s) of the Act(s) and description of the offence(s) for which cognizance taken

(c)

Details of Appeal(s)/Application(s) for revision (if any) filed against the above order(s)

(6) I have been/have not been convicted of an offences(s) other than any offence(s) referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of Section 8 of the Representation of the People Act, 1951 (43 of 1951) and sentenced to imprisonment for one year or more.

If the deponent is convicted and punished as aforesaid, he shall furnish the following information:

In the following cases, I have been convicted and sentenced to imprisonment by a court of law:-

(a)

The details of cases, Section(s) of the concerned Act (s) and description of the offence(s) for which convicted.

(b)

Name of the court(s), Case No. and date(s) of order(s)

(c)

Punishment imposed.

(d)

Whether any appeal was/has been filed against the conviction order. If so, details and the present status of the appeal.

(7) That I give hereinbelow the details of the assets (movable and immovable etc.) of myself, my spouse and all dependents:

A. Details of movable assets:

Note:1. Assets in joint name indicating the extent of joint ownership will also have to be given

Note:2. In case of deposit/investment, the details including serial number, amount, date of deposit, the scheme, name of the Bank/Institution and Branch are to be given.

Note:3. Value of Bonds/Share Debentures as per current market value in Stock exchange in respect of listed companies and as per books in case of non-listed companies should be given.

Note:4. Dependent here has the same meaning as assigned in Explanation (v) under Section 75-A of the Representation of the People Act, 1951.

Note:5: Details including amount is to be given separately in respect of each investment.

Sl. No.

Description

Self

Spouse

Dependent-1

Dependent-2

Dependent3

(i)

Cash in hand

(ii)

Details of deposit in Bank accounts (FDRs, Term Deposits and all other types of deposits including saving accounts), Deposits with Financial Institutions, NonBanking Financial Companies and Cooperative societies and the amount in each such deposit

(iii)

Details of investment in Bonds, debentures/shares and units in companies/ Mutual funds and others and the amount

(iv)

Details of investment in NSS, Postal Saving, Insurance policies and investment in any Financial instruments in Post Office or Insurance Company and the amount

(v)

Personal loans/advance given to any person or entity including firm, company, Trust etc., and other receivables from debtors and the amount

(vi)

Motor Vehicles/Aircrafts/Yachts/Ships (Details of Make, registration number etc. year of purchase and amount)

(vii)

Jewellery, bullion and valuable thing(s) (give details of weight and value)

(viii)

Any other assets such as value of claims/interest

(ix)

Gross Total Value

Sl. No.

Description

Self

Spouse

Dependent-1

Dependent-2

Dependent3

(i)

Agricultural Land Location(s) Survey number(s) Area (total measurement in acres)

Whether inherited property (Yes or No)

Date of Purchase in case of selfacquired property

Cost of Land (in case of purchase) at the time of purchase

Any investment on the land by way of development, construction etc.

Approximate current market value

(ii)

Non-Agricultural Land:

Location(s)

Survey number(s)

Area (total measurement in sq. ft.) Whether inherited property (Yes or No)

Date of Purchase in case of selfacquired property

Cost of Land (in case of purchase) at the time of purchase

Any investment on the land by way of development, construction etc.

(iii)

Approximate current market value

Commercial Buildings (including apartments)

-Location(s)

-Survey number(s)

Area (total measurement in sq.ft.)

Built-up Area (total measurement in sq.ft.)

Whether inherited property (Yes or No) Date of purchase in case of selfacquired

property

Cost of property (in case of purchase) at the time of purchase

Any investment on the property by way of development, construction etc.

Approximate current market value

(iv)

Residential Buildings (including apartments):

-Location(s)

-Survey number(s)

Area (total measurement in sq.ft.)

Built-up area (total measurement in sq.ft.)

Whether inherited property (Yes or No)

Date of purchase in case of selfacquired property

Cost of property (in case of purchase) at the time of purchase

Any investment on the land by way of development, construction etc.

Appropriate current market value

(v)

Others (such as interest in property)

(vi)

Total of current market value of (i) to (v) above

(8) I give herein below the details of liabilities/dues to public financial institutions and government- (Note.-Please give separate details of name of bank, institutions, entity or individual and amount before each item)

Sl. No.

Description

Self

Spouse

Dependent-1

Dependent-2

Dependent3

(i)

Loan or dues to Bank/financial institution(s) Name of the Bank or financial institution, Amount outstanding, Nature of Loan

Loan or dues to any other individuals/entity other than mentioned above Name(s), Amount outstanding, nature of loan

Any other liability

Grand total of liabilities

(ii)

Government Dues Dues to departments dealing with government accommodation

Dues to department dealing with supply of water

Dues to department dealing with supply of electricity

Dues to department dealing with supply of telephones/mobiles

Dues to department dealing with government transport (including aircrafts and helicopters)

Income Tax dues

Wealth tax dues

Service tax dues

Municipal/Property tax dues

Sales tax dues

Any other dues

(iii)

Grand total of all Government dues

(iv)

Whether any other liabilities are in dispute, if so, mention the amount involved and the authority before which it is pending

(9) Details of profession or occupation:

(a) Self

(b) Spouse

(10) My educational qualification is as under-

(Give details of highest School/University education mentioning the full form of the certificate/diploma/degree course, name of the School/College/University and the year in which the course was completed.) PART B (11) Abstract of the details

given in (1) to (10) of Part A:

1.

2.

Name of the candidate

Full postal address

Sh./Smt./Kum

3.

Number and name of the constituency and State

4.

Name of the political party which set up the candidate (otherwise write 'Independent')

5.

(I) Total number of pending cases where charges have been framed by the court for offences punishable with imprisonment for two years or more

(ii) Total number of pending cases where the court(s) have taken cognizance (other than the cases mentioned in item (i) above

6.

Total number of cases in which convicted and sentenced to imprisonment for one year or more except for offences referred to in sub-sections(1), (2) or (3) of Section 8 of Representation of the People Act, 1951.

7.

PAN of

Year for which last income tax return filed

Total income shown

(a) Candidate

(b) Spouse

(d) Dependents]

8.

[Details of Assets and Liabilities in rupees]

Description

Self

Spouse

Dependent-I

Dependent-II

Dependent-III

A.

Movable Assets (Total Value)

B

Immovable Asset

I.

Purchase Price of self-acquired immovable property

II.

Development/Construction cost of immovable property after purchase (if applicable)

III.

Approximate Current market price of-

(a) self-acquired assets (Total Value)

(b) inherited assets (Total Value)

9.

Liabilities

(i)

Government dues (Total)

(ii)

Loans from Bank, Financial Institutions and others (Total)

10.

Liabilities that are under dispute

(i)

Government dues (Total)

(ii)

Loans from Bank, Financial Institutions and others (Total)

11.

Highest educational qualification:

(Give details of highest School/University education mentioning the full form of the certificate/diploma/degree course, name of the School/College/University and the year in which the course was completed.)

VERIFICATION

I, the deponent, abovenamed, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom. I further declare that-

(a) there is no case of conviction or pending case against me other than those mentioned in Items 5 and 6 of Part A and B above;

(b) I, my spouse, or my dependents do not have any asset or liability, other than those mentioned in Items 7 and 8 of Part A and Items 8, 9 and 10 of Part B above.

Verified _____ at.....this _____ the.....day
of.....

DEPONENT

Note: 1. Affidavit should be filed latest by 3.00 PM on the last day of filing nominations.

Note: 2. Affidavit should be sworn before an Oath Commissioner or Magistrate of the First Class or before a Notary Public.

Note: 3. All column should be filled up and no column to be left blank. If there is no information to furnish in respect of any item, either "Nil" or "Not applicable", as the case may be, should be mentioned.

Note: 4. The Affidavit should be either typed or written legibly and neatly."

15. It may be noticed here that Form-26 was substituted by S.O. 1732 (E) dated 1.8.2012 with effect from 1.8.2012.

16. A bare perusal of Form-26 makes it abundantly clear that, for offences punishable with imprisonment for two years or more, while entry (5) (i) mandates disclosure of information by the contesting candidate regarding the case(s) that is/are pending against him in which charges have been framed by the Court; entry (5)(ii) mandates disclosure of information by the contesting candidate regarding cases that are pending against him in which cognizance has been taken by the Court.

Entry 5(ii) specifically mentions that the candidate is required to provide information of the case(s) pending in which cognizance has been taken. This is in addition to the information he is required to provide against the column in Entry

5(i) as the words 'Other than the cases mentioned in item (i) above' are specifically used in Entry 5 (ii).

17. The above can leave no element of doubt that, subsequent to the substitution of Form 26 in 2012, the new Form 26 (as in vogue at the time of the elections in 2014), mandates the disclosure of information by the contesting candidate of not only case(s) in which charges have been framed but also case(s) in which cognizance has been taken by the Court.

18. The position is made further clear by the letters written by the Election Commission of India to the Chief Electoral Officer of all the States and the Union Territories. A reading of the said letters would go to show that a contesting candidate is mandated to furnish information concerning the cases in which a Competent Court has taken cognizance along with the cases in which charges have been framed. The said letters also make it clear that the affidavit mentioned in Section 33-A(2) of the 1951 Act is prescribed in Form-26 and that any false declaration or concealment of information in the said affidavit will attract the provisions of Section 125-A of the 1951 Act. The letters in this regard are dated 24.8.2012, 26.9.2012 and 26.4.2014, relevant portions of which are extracted below:

(i) Letter dt. 24-08-2012:

"1. Sub:- Affidavit to be filed by candidates with their nomination paper-modification of format-regarding.

The candidates at elections to the Parliament and the State Legislatures hitherto were required to file two affidavits: one, in Form-26 appended to Conduct of Elections Rules, 1961 and the other, in the Form prescribed by the Commission, vide its Order No. 3/ER/2003 dt. 27-03-2003, as subsequently modified by the letter of even number dt. 25-02-2011. In the affidavits, the candidates are required to declare information about their criminal background, if any, assets, liabilities and educational qualifications.

2. On a proposal moved by the Commission for amalgamating the two affidavits into one format, the Govt. has amended Form 26 so as to include in it all the information that was sought in the two separate affidavits. The Ministry of Law and Justice have notified the revised format 26 in the Gazette of India on 01-08-2012. A copy of the said notification dated 1st August, 2012 is enclosed herewith.

3. In view of the amendment to Form-26, all candidates shall, hereafter, file only one affidavit in the revised Form 26 notified on 01-08-2012 (at elections to the Parliament and State Legislatures). The requirements to be followed while filing the affidavit have been mentioned in the notes given at the end of the format.....

...

5. You are requested to furnish a copy of this letter along with the copy of the

enclosed notification to every political party (including registered unrecognized parties) having headquarters in your State/UT, including the State Units of recognized National and State political parties." [Emphasis is ours]."

(ii). Letter dt. 26-09-2012:

"Sub: Affidavit to be filed by the candidates with their nomination paper-regarding:

...

2. Item 5 of Part A and Part B of the revised Form 26 relates to information regarding criminal antecedents to be furnished by the candidates. It is clarified that in item (5)(ii) of the said Part A & Part B of Form-26, the details of all pending cases in which cognizance has been taken by the Court, irrespective of the quantum of punishment or framing of charges will have to be disclosed by the candidate. This may be brought to the notice of all candidates when they file their nomination at all future general/bye-elections in the State..."

(iii) Letter dt. 26-04-2014:

"Sub: Filing of false affidavit in Form-26.reg.

Sir/Madam,

You are aware that the format of affidavit in Form-26 appended to the Conduct of Election Rules, 1961, was amended with effect from 01-08-2012. Now the candidates are required to make declarations about assets and liabilities including that of spouse and dependants, candidate's criminal antecedents and educational qualifications, in the affidavit in Form 26. The concealing of information in the affidavit in Form 26 will attract the provisions of Section 125A. Under Section 125A, furnishing of any false information or concealing of information in the affidavit in Form 26 is an electoral offence punishable with imprisonment upto six months, or with fine or both.

2. Prior to amendment to Form 26 in August 2012, the affidavit regarding declaration about assets, liabilities, criminal antecedents and educational qualification was given in the format prescribed by the Commission. In the case of complaints about false statement in the said affidavit, the Commission, vide its circular letter No. 3/ER/2004, dated 2/6/2004, had clarified that if complaints were filed before the Returning Officer raising the issue of false declaration in the affidavit and if the RO was prima facie satisfied about the merits of the complaint, then the RO was to file a complaint before the competent Court under Section 177 of IPC read with Section 195 of Cr.P.C.

3. Now that the affidavit is in Form 26 under Section 33A of the R.P. Act, 1951, making false declaration/concealing of information in the affidavit would be covered under Section 125A of the Act. Under Section 125A, there is no stipulation that complaints under the Section have to be made by the public servant concerned (in this case the R.O.). Therefore, it would be open to any

aggrieved person to move petition before the appropriate Court of competent jurisdiction with petition for action under Section 125A in the case of any false declaration or concealing of information in the affidavit in Form 26.

[underlining is ours]"

19. A cumulative reading of Section 33-A of the 1951 Act and Rule 4-A of the 1961 Rules and Form-26 along with the letters dated 24.8.2012, 26.9.2012 and 26.4.2014, in our considered view, make it amply clear that the information to be furnished under Section 33-A of the 1951 Act includes not only information mentioned in clauses (i) and (ii) of Section 33-A(1), but also information, that the candidate is required to furnish, under the Act or the Rules made thereunder and such information should be furnished in Form 26, which includes information concerning cases in which a competent Court has taken cognizance (Entry 5(ii) of Form 26). This is apart from and in addition to cases in which charges have been framed for an offence punishable with imprisonment for two years or more or cases in which conviction has been recorded and sentence of imprisonment for a period of one year or more has been imposed (Entries 5(i) and 6 of Form 26 respectively).

20. In the light of the view that we have taken and in view of the clear averment made in the complaint to the effect that the First Respondent had knowledge of the two cases against him which had not been mentioned in the affidavit filed by the First Respondent alongwith his nomination papers, we unhesitatingly arrive at the conclusion that the order of the learned trial Court upheld by the High Court by the impugned judgment and order dated 3rd May, 2018 is legally not tenable and the same deserves to be set aside which we hereby do. The complaint of the appellant will be considered afresh by the learned trial Court from the stage where it was interdicted by the order dated 30.5.2016.

21. Our view as above is in consonance with a similar view expressed by this Court in paragraph 75 of the report in Krishnamoorthy v. Sivakumar and others (2015) 3 SCC 467. Para 75 of the report in Krishnamoorthy (supra) reads as under:

"75. On a perusal of the aforesaid format, it is clear as crystal that the details of certain categories of the offences in respect of which cognizance has been taken or charges have been framed must be given/furnished. This Rule is in consonance with Section 33-A of the 1951 Act. Section 33(1) envisages that information has to be given in accordance with the Rules. This is in addition to the information to be provided as per Sections 33(1)(i) and (ii). The affidavit that is required to be filed by the candidate stipulates mentioning of cases pending against the candidate in which charges have been framed by the Court for the offences punishable with imprisonment for two years or more and also the cases which are pending against him in which cognizance has been taken by the court other than the cases which have been mentioned in clause (5)(i) of Form 26. Apart from the aforesaid, clause (6) of Form 26 deals with conviction.

22. Consequently and in the light of the above, the appeals are allowed. The order of the High Court dated 3rd May, 2018 is set aside. All pending applications including the application for intervention/impleadment are disposed of.