

Sl. No. 391

105

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashok Road, New Delhi-110 001

No. 509/CC-EO/2009/RCC 988 to 1022/242 243 Dated: 12th May, 2014

1022 to 1056

To

1. The Secretary to the Govt. of India,
Ministry of Home Affairs,
NDCC Building-II
Jai Singh Road
New Delhi
2. The Secretary to the Govt. of India,
Ministry of Law and Justice,
Legislative Department,
New Delhi.
3. The Chief Secretaries of
all States / Union Territories

Sub:- Initiating of action for violation of election laws-regarding.

Reference:-

1. 509/CC-EO/2009/RCC dated 10th August, 2009 addressed to the Chief Secretaries of all States/ Union Territories.
2. 509/CC-EO/2009/RCC dated 22nd February 2011 addressed to the Chief Secretaries of all States / Union Territories.
3. 509/CC-EO/2009/RCC dated 22nd February 2011 addressed to the Secretary to the Govt. of India , Ministry of Home Affairs, New Delhi and The Secretary to the Govt. of India, Ministry of Law and Justice, Legislative Department, New Delhi.
4. 4/2012/SDR dated 17th September, 2012 addressed to the Chief Secretaries of all States/ Union Territories.

Sir/ Madam,

The Commission has issued the above referred instructions from time to time for guidance and compliance of all authorities concerned in the context of checking electoral offences during elections. Whenever any instance of violation of any provisions in the RP Act 1950, RP Act 1951 and IPC related to elections comes to the notice of the authorities concerned action is initiated against the persons considered to be guilty of such offences by filing complaints before the competent court in the case of non-cognizable offence, and by getting FIR registered in the case of cognizable offence. The Commission has directed that

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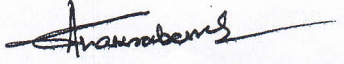
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all such cases of violation of law, electoral offence corrupt practices etc. should not be withdrawn and those should be pursued to their logical conclusion.

The Commission has decided to re-circulate the relevant standing instructions to ensure that the constitutional mandate given to the Election Commission under Article 324 of the Constitution to ensure free and fair election is fully discharged.

Kindly acknowledge receipt and furnish a copy of the letter by which these instructions is circulated to all concerned authorities by you.

Yours faithfully,


(Ashish Chakraborty)
Secretary

Copy to the Chief Electoral Officer of all States and Union Territories.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001.

No. 509/CC-EO/2009/RCC/531-600

Dated : 10th August, 2009

To

The Chief Secretaries
of all States/ Union Territories.

Sub: Cases filed against individuals during election period -need to pursue the cases to their logical conclusion.

Sir/Madam,

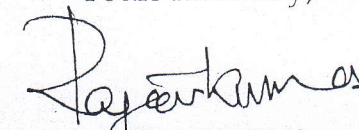
During the period of election, the election officials and the Police detect several incidents of violation of law, electoral offences, corrupt practices, etc. committed by the candidates or by their supporters. These violations and malpractices have serious adverse implications in the conduct of free and fair elections, a mandate given to the Commission under Article 324 of the Constitution. Therefore, cases/complaints/FIRs are filed/registered promptly against persons found indulging in electoral offences and other violations of the law by the aforesaid authorities who are all on deputation to the Commission under the law during the relevant period. Prosecution of these cases before the courts of law understandably takes time. However, irrespective of the time lag, the proper and meticulous prosecution of the cases initiated during the election period and taking them to their logical conclusion is important for ensuring free and fair election which is the corner-stone of our democracy. This, in addition to serving the interest of administration of justice, also acts as a deterrent for future, thereby helping the cause of conduct of free and fair elections.

The Commission has observed that in many cases, after the elections are over, the State Governments seek unilateral withdrawal of the cases filed/registered during the election period in which the Election Commission is vitally concerned. This happens generally when the accused happens to be a leader or supporter of the ruling formation party. Even cases involving serious offences like bribery which have serious implication in the context of fair elections and free exercise of franchise by the electors, are sought to be withdrawn at times. The withdrawal of such cases is totally against public interest and also sends a wrong signal that miscreants may indulge in any electoral malpractices and offences at elections with impunity as those cases may be withdrawn later. In each case where the Central Government has sought the Commission's views on the proposals referred to the Centre by the State governments in terms of Section 321 of the Cr PC, for withdrawal of cases on offences related to elections, the Commission has taken the consistent stand that the cases should not be withdrawn, and they should be pursued vigorously to their logical conclusions by the Hon'ble Court. A copy of the Office Memorandum dated 06.05.2009 issued by the M/o Law & Justice, Govt. of India, on one such communication from the Commission, is enclosed for reference.

Having considered the issue, and the tendency on the part of the State Governments to seek withdrawal of cases, the Commission has directed under Article 324 of the Constitution that cases/complaints/FIRs filed/registered during the period of elections including any pending cases, for offences related to elections, whether offences under the IPC, the Representation of the People Act, or any other law, should not be withdrawn, and all such cases should be pursued and taken to their logical conclusion.

Please acknowledge receipt of this letter.

Yours faithfully,


(R. K. SRIVASTAVA)
SECRETARY

Copy to the Chief Electoral Officers of all States/UTs.

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Government of India
Ministry of Law and Justice
Legislative Department

New Delhi dated the 6th May, 2009

OFFICE MEMORANDUM

Subject:- Proposal for permission of the Central Government under section 321 of Cr. P.C. 1973 for withdrawal from prosecution of case registered in Bhandara Police Station (District Bhandara, State of Maharashtra) FIR Nos. 172/04 and 178/04 against Shri Nana Panchbudde for violation of provisions of the Maharashtra Prevention of Defacement of Property Act, 1955 and the Representation of the People Act, 1951 – regarding.

The undersigned is directed to refer to the Ministry of Home Affairs O.M. No.F-4/2/2009-JUDL.CELL dated the 23rd March, 2009 on the subject cited above.

2. The Election Commission of India is of the view that the cases relating to electoral offences should not be withdrawn and those should be perused to their logical end. The Commission has further stated that considering the nature of the offence in the case in hand, this case may also be prosecuted to its logical conclusion for appropriate orders of the Court.

3. The Department of Legal Affairs has opined that "the power to withdraw from prosecution should be exercised in the light of Public Prosecutor's own judgment and not at the dictation of some other authority, however high. This power is not an absolute power; it can be exercised only with the consent of the Court. The curb thus placed on the power is to ensure that it is not abused, that is to say, not exercised for improper reasons or to save improper acts. The Court gives its consent in the exercise of its judicial discretion and before granting consent, it must be satisfied that the grounds stated for the withdrawal are proper grounds, grounds which if true, would make the withdrawal in furtherance of rather than hindrance to the object of the law. The ultimate guiding consideration must be the interest of the administration of justice."

4. In view of the above, this Department cannot accede with the proposal for withdrawal from prosecution.

5. This issues with the approval of Hon'ble MLJ.

(R. Sreenivas)
Deputy Legislative Counsel
Tel. No. 23389142
Fax No.23382733

Ministry of Home Affairs
[Kind Attn.: Shri Mohinder Singh, Director (Judicial)]
Jaisalmer House, Mansingh Road,
New Delhi – 110 001.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 509/CC-EO/2009/RCC

251-285 (C Secy) Dated : 22nd February, 2011

To

286-320

The Chief Secretaries
of all States/Union Territories.

Sub: Cases filed against individuals during election period –withdrawal of cases – regarding.

Sir/Madam,

I am directed to invite your attention to the Commission's letter of even number dated 10th August, 2009 (copy enclosed) on the subject cited, whereby the Commission had directed under Article 324 of the Constitution of India that cases/complaints/FIRs filed/ registered during the period of elections including any pending cases, for offences related to elections, whether offences under the IPC, the RP Act or any other law, should not be withdrawn, and all such cases should be pursued and taken to their logical conclusion.

The Commission issued the above mentioned direction under Article 324 as the State Government of Karnataka took a unilateral decision to withdraw some of the cases filed during the last general election to Karnataka Legislative Assembly in 2008 and directed the public prosecutor to file applications for withdrawal of those cases before the relevant courts.

The District Election Officer concerned, at the instance of the Commission, had filed memo in each case, seeking permission of the Trial Court to submit arguments opposing the withdrawal. The Trial Court held that the petitioner-informant who filed the cases has '*locus standi*' to oppose the application for withdrawal of the criminal cases filed by the State Govt. In the Revision Petition filed by the State of Karnataka challenging the order of the Trial Court, the Sessions Court held that the complainant has '*no locus standi*' to oppose application for withdrawal of criminal cases when filed by the public prosecutor. Thereupon, Criminal Petitions were filed in the Hon'ble High

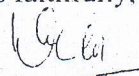
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Court of Karnataka, Dharwad Bench, challenging the decision of the Revisional Court. The Hon'ble High Court vide its common order dated 8th September 2010 has allowed the Criminal Petitions and set aside the common order passed by the Sessions Court, Bellary. In its judgment, the High Court has held that the Trial Court shall receive from the petitioner- informant (in this case the DEO), objections against the application seeking withdrawal of cases, hear his arguments, consider the documents produced by him, and then dispose of the applications.

A copy of the judgment of the Hon'ble High Court is forwarded herewith with the request that the same may be brought to the notice of all Departments of the State Govt. for their information, reference and guidance in future.

Kindly acknowledge receipt.

Yours faithfully,


(K.F. Wilfred)
Secretary

Copy to the Chief Electoral Officers of all States and Union Territories, alongwith copy of the judgment.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 509/CC-EO/2009/RCC) 776-777

Dated : 22nd February, 2011

To

1. The Secretary to the Govt. of India,
Ministry of Home Affairs,
Jaisalmer House, Mansingh Road,
New Delhi-110 011.

[Kind attention : Shri J.L. Chugh, Director(Judl.)]

2. The Secretary to the Govt. of India,
Ministry of Law and Justice,
Legislative Department,
Shastri Bhavan, New Delhi.

[Kind attention : Sh. R. Sreenivas, Dy. Legislative Counsel]

Sub: Cases filed against individuals during election period – withdrawal of cases – regarding.

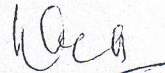
Sir,

I am directed to forward herewith a copy of the Order dated 8th September, 2010 passed by the Hon'ble Karnataka High Court in Criminal Petition Nos.8070-8074 of 2010 for your information, reference and record. It may be noted that in this judgment, the Hon'ble High Court has held that the petitioner- informant (in this case, the District Election Officer) has locus standi to oppose application proposing withdrawal of cases filed by the Public Prosecutor under Section 321 of Cr PC. The cases in question pertained to offences in connection with elections. The Hon'ble High Court has held that the Trial Court shall receive from the petitioner – objector, objections against the application for withdrawal of cases, hear his arguments, consider the documents produced by him and then dispose of the application. This may be seen in the context of the opinion tendered by the Ministry of Law and Justice, Legislative Department's O.M dated 6th May, 2009, on the issues raised in the Ministry of Home Affairs O.M. No.F-4/2/2009-JUDL.CELL dated 23rd March, 2009.

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2. It is requested that the judgment may be brought to the notice of such authorities as considered necessary, including the State Governments.
3. Kindly acknowledge receipt.

Yours faithfully,



(K.F. Wilfred)
Secretary

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Government of India
Ministry of Law and Justice
Legislative Department

New Delhi dated the 6th May, 2009

OFFICE MEMORANDUM

Subject:- Proposal for permission of the Central Government under section 321 of Cr. P.C. 1973 for withdrawal from prosecution of case registered in Bhandara Police Station (District Bhandara, State of Maharashtra) FIR Nos. 172/04 and 178/04 against Shri Nana Panchbude for violation of provisions of the Maharashtra Prevention of Defacement of Property Act, 1955 and the Representation of the People Act, 1951 – regarding.

The undersigned is directed to refer to the Ministry of Home Affairs O.M. No.F-4/2/2009-JUDL.CELL dated the 23rd March, 2009 on the subject cited above.

2. The Election Commission of India is of the view that the cases relating to electoral offences should not be withdrawn and those should be perused to their logical end. The Commission has further stated that considering the nature of the offence in the case in hand, this case may also be prosecuted to its logical conclusion for appropriate orders of the Court.
3. The Department of Legal Affairs has opined that “the power to withdraw from prosecution should be exercised in the light of Public Prosecutor’s own judgment and not at the dictation of some other authority, however high. This power is not an absolute power; it can be exercised only with the consent of the Court. The curb thus placed on the power is to ensure that it is not abused, that is to say, not exercised for improper reasons or to save improper acts. The Court gives its consent in the exercise of its judicial discretion and before granting consent, it must be satisfied that the grounds stated for the withdrawal are proper grounds, grounds which if true, would make the withdrawal in furtherance of rather than hindrance to the object of the law. The ultimate guiding consideration must be the interest of the administration of justice.”
4. In view of the above, this Department cannot accede with the proposal for withdrawal from prosecution.
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Ministry of Home Affairs
[Kind Attn.: Shri Mohinder Singh, Director (Judicial)]
Jaisalmer House, Mansingh Road,
New Delhi – 110 001.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

F.NO. 4/2012-SDR | 943-977

Dated:- 17th September, 2012

To,

The Chief Electoral Officers of
all States/ Union Territories

Sub: Clarification on initiating action against a person violating election laws-
regarding.

Sir/ Madam,

There are provisions in the RP Act 1950, RP Act 1951 and Indian Penal Code etc. dealing with offences in regard to making false declaration in connection with inclusion or exclusion of any entry in or from an electoral roll for electoral offences in connection with elections and for breach of official duty by officers/ persons involved in connection with preparation of electoral rolls and for conduct of elections. Any violation of these provisions is punishable under the relevant legal provisions. For this the election authorities (EROs, ROs, and DEOs etc.) have to initiate action against the persons found guilty of such offences by filing complaints before the competent Court in the case of non-cognizable offence, and by getting FIR registered in the case of a cognizable offence.

It has come to the notice of the Commission that due to inordinate delay in initiating action by the election authorities for violation of election laws, the competent Courts sometimes refuse to entertain the criminal proceedings when filed after the period of limitation prescribed under section 468 read with section 469 of the CrPC. (extract enclosed)

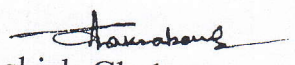
In some cases, referring such cases to other authorities for advice has led to delay in initiating action. In order to avoid such procedural delays, the Commission hereby directs all election authorities that whenever they consider the necessity, or

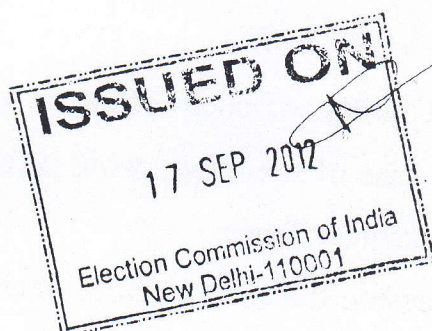
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are directed by the Commission, to initiate any criminal proceedings in any manner. The election authority concerned should directly move the competent court, in the case of non-cognizable offences and the concerned police authorities in case of cognizable offences without approaching/ moving through the Directorate of Prosecution or any other such authority.

The above direction of the Commission shall be brought to the notice of all election authorities for their information and necessary action, whenever required.

Kindly acknowledge receipt.

Yours faithfully,


(Ashish Chakraborty)
Secretary



Extracts from Code of Criminal Procedure, 1973

CHAPTER XXXVI : LIMITATION FOR TAKING COGNIZANCE OF CERTAIN OFFENCES

467. Definitions:-For the purposes of this chapter unless the context otherwise requires, "period of limitation" means the period specified in Section 468 for taking cognizance of an offence.

468. Bar to taking cognizance after lapse of the period of limitation:-(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be :-

- (a) six months, if the offence is punishable with fine only;
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
- (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

469. Commencement of the period of limitation:- (1) The period of limitation, in relation to an offender, shall commence -

- (a) on the date of the offence; or
- (b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which offence comes to the knowledge of such person or to any police officer, whichever is earlier; or
- (c) where it is not known by whom the offence committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.