

Chandrikaben Kishor Dafda

v.

State of Gujarat & Anr.

(Criminal Appeal No. 3095 of 2026)

01 July 2026

[Sanjay Karol* and Nongmeikapam Kotiswar Singh, JJ.]

Issue for Consideration

Challenge by the appellant to the correctness of the refusal of the High Court to quash the criminal case and the issuance of process by the Magistrate, in connection with the complaint filed against her alleging that in her electoral filing for the position of Councillor in the Municipal elections, she did not disclose the true extent of the property owned by herself and her spouse contrary to the rules; propriety of the cognizance order.

Headnotes[†]

Code of Criminal Procedure, 1973 – s.465 – Gujarat Municipalities Act – Gujarat Municipalities (Conduct of Elections) Amendment Rules 2005 – r.7A – Complaint filed under various provisions of IPC and Representation of People’s Act, 1951, alleging that the appellant in her electoral filing for the position of Councillor in the 2015 Municipal elections did not disclose the true extent of the property owned by herself and her spouse – Magistrate issued summons u/s.125(A), Representation of People’s Act – Appellant sought quashing, rejected by High Court – Challenge to – Plea of the appellant that the Representation of People’s Act 1951 would not apply to the election of a Councillor which would instead be governed by the relevant State legislation:

Held: The error in taking cognizance under the wrong Section is a curable defect so long as the Court that has taken cognizance has the power to take cognizance of the other Sections also – s.465 CrPC would save the incorrect cognizance taken – The taking of cognizance itself, even if it was taken under a singular section and that too was erroneous, for it is a well settled principle of law that cognizance is taken of the offence and not people – If the issue is that a false affidavit has been filed in the electoral

* Author

Chandrikaben Kishor Dafda v. State of Gujarat & Anr.

process, that is an offence against society at large and has to be investigated – Matter remanded to the Magistrate concerned for taking cognizance afresh and proceed as per law – Representation of People's Act, 1951 – s.2(d) – Gujarat Municipalities (Conduct of Elections) Rules, 1994. [Paras 11, 13, 14]

Interpretation of Statutes – Gujarat Municipalities (Conduct of Elections) Amendment Rules 2005 – r.7A – ‘comma’ – Function of:

Held: r.7A was introduced requiring the candidate to file an affidavit declaring/disclosing certain information – A perusal thereof makes clear that the candidate/declarant is to give details of the property held by them, their spouse and their dependents, including what is held by them jointly – It does not say, in any manner whatsoever, that the property held solely by the spouse is not to be mentioned therein – The ‘comma’ employed after ‘myself’ is a listing comma simply separating “myself”, “my spouse” – In the sentence, “That I give hereinbelow the details of the assets (immovable, movable, bank balance, etc.) of myself, my spouse and dependents,” the ‘comma’ after myself “myself,” is used merely to separate items in a list – The word “of” applies equally to “myself”, “my spouse” and “dependents”, and, therefore, the sentence is to be read collectively as referring to the assets of all three categories – The ‘comma’ does not create any separate meaning, distinction, or exclusion; it serves only a grammatical and structural function to identify the first item in the series – Appellant had to have disclosed the properties owned by her spouse too. [Paras 8, 9]

Gujarat Municipalities Act – Representation of People's Act, 1951 – ss.125A, 2(d) – Gujarat Municipalities (Conduct of Elections) Amendment Rules 2005 – Penal Code, 1860 – Since the candidate is required to file an affidavit, the controlling provisions would be under the Penal Code:

Held: The error in taking cognizance under the wrong Section is, in fact a curable defect so long as the Court that has taken cognizance has the power to take cognizance of the other Sections also – The question to be determined then is whether the offence as u/s.125A RPA exist in the equal or similar measure under the GMA – A perusal of GMA reveals that although originally false declarations were penalized as per s.9, particularly 9l of that Section and its manifold parts stood omitted sometimes in the year 1990 – In this scenario,

Supreme Court Reports

since the candidate is required to file an affidavit, then the controlling provisions would be under the Indian Penal Code – Although the private complainant had made a mention of certain provisions under the IPC, the Trial Judge while taking cognizance did so only under the RPA – Appellant contends that this is a jurisdictional error and, therefore, would go to the root of the matter and whereas the State contends s.465 CrPC would save the incorrect cognizance taken – View of the State agreed with. [Paras 11-13]

Case Law Cited

State of Karnataka v. Pastor P. Raju [2006] 4 SCR 269 : (2006) 6 SCC 728; *State of W.B. v. Mohd. Khalid* [1994] Supp. 6 SCR 16 : (1995) 1 SCC 684; *Kallu Nat Alias Mayank Kumar Nagar v. State of U.P. and Anr.*, 2025 INSC 930 : [2025] 8 SCR 611; *Pruthvirajsinh Nodhubha Jadeja v. Jayeshkumar Chhakaddas Shah* (2019) 9 SCC 533; *Pradeep S. Wodeyar v. State of Karnataka* [2021] 11 SCR 985 : (2021) 19 SCC 62; *Santosh De v. Archana Guha* (1994) 2 SCC 420 – referred to.

List of Acts

Representation of Peoples Act 1951; Code of Criminal Procedure, 1973; Gujarat Municipalities Act; Gujarat Municipalities (Conduct of Elections) Rules, 1994; Gujarat Municipalities (Conduct of Elections) Amendment Rules 2005; Penal Code, 1860.

List of Keywords

Propriety of cognizance order; Error in taking cognizance a curable defect; ‘cognizance’ under the Representation of Peoples Act 1951; Rule 7A of Gujarat Municipalities (Conduct of Elections) Amendment Rules 2005; False affidavit filed in election; False declaration; Affidavit disclosing details of property; Property owned by spouse; Municipal elections; “comma”; “myself”, “my spouse”; Matter remanded to Magistrate for taking cognizance afresh.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3095 of 2026

From the Judgment and Order dated 22.08.2025 of the High Court of Gujarat at Ahmedabad in CRLMA No. 8676 of 2018

Chandrikaben Kishor Dafda v. State of Gujarat & Anr.**Appearances for Parties**

Adv. for the Appellant(s):

Namit Saxena.

Adv. for the Respondent(s):

Ms. Swati Ghildiyal, Rishi Yadav, Sumant Datt, Jitendra Kumar Singh, Saurav Kumar, Satya Prakash Narain Tripathi.

Judgment / Order of the Supreme Court**Judgment**

Sanjay Karol, J.

Leave Granted.

THE APPEAL AND ITS BACKGROUND

2. Chandrikaben Kishor Dafda, the appellant questions the correctness of the refusal of the High Court of Gujarat at Ahmedabad to quash Case No.3528 of 2017 and the issuance of process dated 08.11.2017 in CrI.Enquiry 58 of 2017 by the Additional Chief Judicial Magistrate, Gandhidham, in connection with the complaint, filed by one Velji Namori Maheshwari, before the Deputy District Development Officer, Establishment Branch, District Panchayat Office, Bhuj-Kutch. In the said complaint dated 17th February 2016, it has been urged by the complainant that the appellant had not, in her electoral filing for the position of Councillor in the 2015 Municipal elections, disclosed the true extent of the landed property owned by herself and her spouse, which is contrary to the rules and a misuse of public trust.
3. It is revealed from record that although some steps were taken regarding the investigation of the matter, the same was not taken forward beyond a certain point. As such, the complainant repeated his allegations in another representation to the very same Authority on 16th May 2017, before moving a private complaint before the Additional Chief Judicial Magistrate, Gandhidham, who issued summons therein *vide* order dated 8th November 2017, leading to the afore-noticed criminal case. The relevant part of the order reads as hereinbelow:

Supreme Court Reports

“Immovable properties as under are situated in the name of the husband of the accused no.1 and for showing the same, certified copies of the sale deeds are produced.

Sr. No.	Survey No.	Village	Taluka	Mark
1.	151	Ratadiya	Mundra	6/1
2.	26	Radha	Mundra	6/2
3.	241	Gundala	Mundra	6/3
4.	266 Paiki-1	Gundala	Mundra	6/4

The accused no.1 has not mentioned all these properties in the affidavit filed before the Election Officer. It appears that all these properties are standing in the name of Kishorbhai Dafda, husband of the accused no.1 and 7/12 in that regard has been produced on record.

The accused no.1 has stated (agricultural land) Survey No.247, Village-Anjar in the name of her husband in the immovable properties of her husband and house of Plot No.319, Sector-7, Gandhidham has been mentioned and except that, above-mentioned any of the immovable property is not mentioned.

After discussing all the above facts, the accused no.1 of this case has not stated the information which is required to be mentioned as per sub-section-2 of Section 33(A) of the Representation of People's Act in the affidavit produced before the Election Commission and hence, there is breach of Section 33(A) and provision of sentence for that is made under Section 125(A). As per Section 125(A)(III), if any candidate will suppress the particulars necessary in the affidavit, then provision is made to impose sentence up to six months or fine or both. Keeping in view the said fact, it appears that prima facie offence as per Section 125(A) of the said Act has been made out against the accused no.1 of this case.

In this case, when the accused no.1 had filed affidavit, no person from amongst the persons present at that time had raised any objection and hence, it does not appear

Chandrikaben Kishor Dafda v. State of Gujarat & Anr.

that the Election Officer has shown negligence in his duty at the relevant time or has committed breach of any rules and regulations.

Therefore, it does not appear *prima facie* that any offence under the said Act is made out against the accused no.2.

At the end of all the above discussions, *prima facie* offence is appearing against the accused no.1 and hence, I pass the following order:

FINAL ORDER

In this case, the present inquiry is partly allowed and order is passed to register the inquiry in the Criminal Register and order is passed to issue summons as per Section 125(A) of the Representation of People's Act against the accused no.1 Chandrikaben Kishorbhai Dafda on payment of process fee....”

It is to quash the above, that the appellant went before the High Court and the same was rejected in terms of the impugned judgment and order¹ dated 22.08.2025 passed by the learned Single Judge.

4. The reasoning adopted by the High Court *inter alia*, in not quashing the case was that the doors of the High Court had been knocked as soon as the concerned Trial Judge had issued process. It was further observed that the appellant's reason for not mentioning some of the properties in her affidavit on account of the fact that she had entered into agreements to sell, was fallacious since that in itself does not transfer title. Still further, it was observed that the complaint was at a nascent stage and as such it would not be appropriate to quash the same.

SUBMISSIONS OF THE PARTIES

5. We have heard the learned Counsel for the parties. Mr. Namit Saxena, appeared for the appellant and Ms. Swati Ghildiyal, for the State of Gujarat, and Mr. Jitendra Kumar Singh, appeared for the complainant.

¹ R/CRIMINAL MISC.APPLICATION (FOR QUASHING AND SET ASIDE FIR/ORDER NO.8876 OF 2018

Supreme Court Reports

- 5.1 Mr. Namit Saxena, would submit that **(a)** the Representation of Peoples Act 1951² would not be of application to the election of a Councillor which would instead be governed by the relevant State legislation; **(b)** the complaint is barred by limitation in view of Section 468 Code of Criminal Procedure, 1973³; **(c)** Section 469 CrPC postulates the limitation for an offence to begin from the date, when the alleged occurrence thereof comes to the notice of the complainant, and since it is required by the concerned Rules i.e., the Gujarat Municipalities (Conduct of Elections) Amendment Rules 2005⁴ require the dissemination of the affidavit filed by the candidate, hence, the complainant was aware of the same, and so, limitation had to be computed as such; **(d)** 7(A)(1) of the Gujarat Rules mandates that the declaration made by the candidate, must disclose whether the properties are owned by themselves or jointly with their spouse. The said Rule does not require that those properties solely owned by the spouse be mentioned therein.
- 5.2 On behalf of the complainant, it has been submitted, among other aspects, that **(a)** the mention of Section 125A RPA would not vitiate the cognizance taken by the learned Trial Judge, as the same is a curable defect since it is not at the stage of framing of charge; **(b)** the falsity on part of the appellant stands established with reference to her own special leave petition and rejoinder; **(c)** fraud vitiates everything; **(d)** the appellant's conduct of filing a false affidavit before a public authority which is an offence under the Indian Penal Code, under Sections 192, 193 and 196. These offences have the prescribed punishment of seven years and so, Section 468 CrPC has no application on them; and **(e)** Reference has been made to a letter in written submissions, issued by the State Election Commission, which in reference to certain Section of IPC and Articles of the Constitution of India (171G, 177 and Article 243K and 243ZA, respectively), wherein some authorizations and directions had been made. Relevant extract is as below:

2 RPA

3 CrPC

4 Gujarat Rules

Chandrikaben Kishor Dafda v. State of Gujarat & Anr.

**“No.SEC-LB-36(III)-62011-3-Municipal Corporation-C-
State Election Commission, BlockNo.9, 6thfloor, Sardar
Patel Bhavan, Gandhinagar. Date:-28/06/2011**

ORDER**Preface**

During election to local bodies in the state such as Panchayats, Municipalities and Municipal Corporations, a candidate filing nomination paper is required to furnish details of his/her criminal antecedent, assets debt along with his/her family members and his / her educational qualification. This information is required to be supplied by filling an affidavit sworn on oath on stamp paper and the same is required to be submitted to the Returning Officer by the candidateconcerned.

It has been noticed by the State Election Commission from the experience gained through last several elections that the candidates in fray do not take this requirement of furnishing information with due seriousness and with a sense of responsibility. Several instances come to fore where candidates have suppressed or furnished wrong or misleading information stating wrong facts in their affidavits before the Returning Officer. Returning Officers in charge receive several complaints in this regard during the process of election and even after the election. However, they remain helpless without any further authority to take action in this regard. This not only encourages dishonest approach and inclination to conceal the necessary information on part of the candidates, but also more importantly, in ultimate analysis works adverse on the purity of elections and probity of the elected representatives in the minds of voters.

The State Election Commission is concerned about fair and free conduct of the elections in all spheres, and therefore, also wants to ensure purity of the election process including the matter of different kinds of information required to be furnished by the contesting candidates while filing their nominations.

Supreme Court Reports

Section- 171 G of the Indian Penal Code 1860 provides that false statement in connection with an election shall be an offence, where as section 176 read with Section 177 of the Code provides for an offence for omission to give information to public servant by person legally bound to give it. Similarly, relevant provisions in the Bombay Provincial Municipal Corporation Act- 1949 provides for election offences. City Election Officers and Returning Officers are public servants and authorized officers for conducting of elections to local bodies in accordance with relevant provisions of Acts and rules framed their under. Hence, the SEC expects and also directs them to take necessary steps immediately.

Therefore, in exercise of powers of superintendence, direction and control of conduct of all elections and the matters relating thereto as vested in the Commission under Article 243 K read with Article 243 ZA of The Constitution of India, the Commission hereby authorizes and directs the Returning Officers in charge of the elections to Municipal Corporation as under:

1. The State Election Commission hereby authorizes the Returning Officer concerned in-charge of conduct of election or bye-election to a Corporation to file the necessary criminal complaint / FIR in respect of election offences under the Bombay Provincial Municipal Corporation Act-1949 as may be required in the fact and circumstances.
2. It shall be the duty of the Returning Officer to verify,
 - (a) That various kinds of information required to be furnished under relevant law and / or rules by the contesting candidates while submitting nomination paper, are all furnished,
 - (b) That all these information are furnished on affidavit on oath, and
 - (c) That all these information are furnished within time and in the manner required.

Chandrikaben Kishor Dafda v. State of Gujarat & Anr.

3. The Returning Officers are required to examine to correctness of the information furnished by the contesting candidates and further that the Returning Officers may depend upon such reliable source, as may be possible to have recourse to by them, and on their own.
4. The Returning Officers are directed to file necessary complaint under appropriate law before appropriate authority in respect of the cases where it has come to the notice that the candidate concerned has supplied wrong information or has withheld the information or has supplied misleading information and that such candidate is for such reason has reason has committed election related offence under the law applicable.
5. The Returning Officer shall be responsible to file necessary FIR/Complaint immediately after primary inquiry which reports or concludes that candidates has filed wrong affidavit.
6. The Returning Officer shall inform the Secretary, State Election Commission about details including the details of complaints filed by him and shall forward the copies of such complaints, if any; filed by him.
7. The Returning officer shall inform City Election Officer & Collector about these details including the details of complaints filed by him and shall forward to the City Election Officer & Collector the copies of such complaints, if any filed by the him.

By an order of the State Election Commission.

Sd/-
(P.S. Shah)
Secretary,
State Election Commission,
Gandhinagar (p.4)

To:

- City Election Officer & Collector (concerned)

Supreme Court Reports

- Parant Officer/Deputy Collector (concerned)
(Through Collector)
- Mamlatdar (concerned) (Through Collector)
- District Development Officer (concerned)
- Dy. Development Officer (concerned) (Through D.D.O)
- Taluka Development Officer (concerned)
(Through D.D.O)”

(Emphasis supplied)

ANALYSIS AND CONSIDERATION

6. At the outset, the relevant provisions of law must be considered.

6.1 Definitions clause of the RPA:

Section 2

(d) “election” means an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State

Section 277 of the GMA provides for the power to the State Government to make rules. Under this power, over a period of time, rules have been promulgated and amended. The current iteration of the rules is the Gujarat Municipalities (Conduct of Elections) Rules, 1994 as amended in 2005. Rule 7A was introduced thereby requiring the candidate to file an affidavit declaring/disclosing certain information. The relevant extract is hereunder:

GUJARAT GOVERNMENT GAZETTE [PART-A]

Part-IX

(To be filled by the candidate)

(I) That I give hereinbelow the details of the assets (immovable, movable, bank balance etc.) of myself, my spouse and dependents*

A. Details of movable assets.

(Assets in joint name indicating the extent of joint ownership will also have to be given)

Chandrikaben Kishor Dafda v. State of Gujarat & Anr.

Sl. No.	Description	Self	Spouse(s) Name(s)	Dependent-1 Name	Dependent-2 Name	Dependent-3 Etc. Name:
1	2	3	4	5	6	7
(i)	Cash					
(ii)	Deposit in Banks, financial institutions and Non banking financial companies					
(iii)	Bonds, debentures and shares in companies					
(iv)	Other financial Instruments NSS, postal Savings, LIC, Policies, etc.					
(v)	Motor Vehicles (details of make, etc.)					
(vi)	Jewellery (give details of weight and value)					
(vii)	Other assets, such as values of claims/ Interests					

*Dependent means a persons substantially dependents on the income of the candidate.

Note:- Value of Bonds/shares/debentures as per the prevailing market value in Stock Exchange in respect of listed companies and as per books in the case of non listed companies should be given.

B. Details of Immovable assets.....(Note: Properties in joint ownership indicating the extent of Joint ownership will also have to be indicated)

Supreme Court Reports

Sl. No.	Description	Self	Spouse(s) Name(s)	Dependent-1 Name	Dependent-2 Name	Dependent-3 Etc. Name:
1	2	3	4	5	6	7
(i)	Agricultural land-Location(s) Survey number(s) Extent (total measurement) Current market value					
(ii)	Non-Agricultural land-Locations Survey number(s) Extent (total measurement) Current market value					
(iii)	Buildings (commercial and residential) Locations(s) Survey/ Number(s) Extent (total measurement) Current market value					
(iv)	Houses/ Apartments, etc. Locations(s) Survey/ Number(s) Extent (total measurement) Current market value					
(v)	Other parts (such as Interest in property)					

(5) I give hereinbelow the details of my liabilities/overdues to public financial institutions and governments dues.

(Note : Please give separate details for each item

Chandrikaben Kishor Dafda v. State of Gujarat & Anr.

Sl. No.	Description	Name and address of Bank/Financial Institution(s)/ Department	Amount Outstanding as on
(a)(i)	Loans from Banks		
(ii)	Loans from financial institutions		
(iii)	Governments dues (other than income-tax and wealth tax) (No due certificate to be enclosed in case holding or having held any public office)		
(b)(i)	Income Tax including surcharge (Also indicate the assessment year upto which Income Tax return filed. Give also Permanent Account Number (PAN)		
(ii)	Wealth Tax (Also indicate the assessment year upto which wealth tax return filed)		
(iii)	Sales Tax (Only in case of proprietary business)		
(iv)	Property Tax		

(6) My educational qualifications are as under:-

(Give details of School and University education)

(Name of School/University and the year in which the course was completed should also be given)

DEPONENT

VERIFICATION

I, the deponent above named, do hereby verify and declare that the contents of this declaration are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therefrom. Verified at _____ this the _____ days of _____ 200_____

DEPONENT

Place:

Verified before me

Date:

(Signature verifying authority with seal)

By order and in the name of the Governor of Gujarat,

(Sd/-) Illegible

Deputy Secretary to Government

Supreme Court Reports

8. A perusal thereof makes clear that the candidate/declarant is to give details of the property held by them, their spouse and their dependents, including what is held by them jointly. It does not say, in any manner whatsoever, that the property held solely by the spouse is not to be mentioned therein. The ‘*comma*’ employed after ‘*myself*’ is a listing comma simply separating “*myself*”, “*my spouse*”. In the sentence, “*That I give hereinbelow the details of the assets (immovable, movable, bank balance, etc.) of myself, my spouse and dependents,*” the ‘*comma*’ after myself “*myself,*” is used merely to separate items in a list. The word “*of*” applies equally to “*myself*”, “*my spouse*” and “*dependents*”, and, therefore, the sentence is to be read collectively as referring to the assets of all three categories. The ‘*comma*’ does not create any separate meaning, distinction, or exclusion; it serves only a grammatical and structural function to identify the first item in the series.
9. The appellant, in view of the above, had to have disclosed the properties owned by her spouse too.
10. We now turn to the next point, i.e., ‘*cognizance*’ under the RPA. Regarding “*cognizance*”, we may take note of observation made by this Court in the following judgments:

***State of Karnataka v. Pastor P. Raju*⁵**

10. Several provisions in Chapter XIV of the Code of Criminal Procedure use the word “cognizance”. The very first section in the said Chapter viz. Section 190 lays down how cognizance of offences will be taken by a Magistrate. However, the word “cognizance” has not been defined in the Code of Criminal Procedure. The dictionary meaning of the word “cognizance” is — “judicial hearing of a matter”. The meaning of the word has been explained by judicial pronouncements and it has acquired a definite connotation. The earliest decision of this Court on the point is *R.R. Chari v. State of U.P.* [1951 SCC 250 : 1951 SCR 312 : AIR 1951 SC 207 : 1951 Cri LJ 775] wherein it was held : (SCR p. 320)

Chandrikaben Kishor Dafda v. State of Gujarat & Anr.

“... ‘taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence’.”

***State of W.B. v. Mohd. Khalid*⁶:**

“43. ...Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has not been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word ‘cognizance’ indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons.

44. Cognizance is defined in *Wharton’s Law Lexicon* 14th Edn., at page 209. It reads:

“Cognizance (Judicial), knowledge upon which a judge is bound to act without having it proved in evidence: as the public statutes of the realm, the ancient history of the realm, the order and course of proceedings in Parliament, the privileges of the House of Commons, the existence of war with a foreign State, the several seals of the King, the Supreme Court and its jurisdiction, and many other things. A judge is not bound to take cognizance of current events, however notorious, nor of the law of other countries.”

It has, thus, reference to the hearing and determination of the case in connection with an offence. By the impugned judgment the High Court has quashed the orders of

Supreme Court Reports

sanction and the Designated Court taking cognizance in the matter.”

See also, the recent judgment of J. B. Pardiwala J. in ***Kallu Nat Alias Mayank Kumar Nagar v. State Of U.P. And Anr.***⁷ which also discussed ***Khalid*** (supra) for a detailed exposition on this concept.

11. The well-settled position of law is that the error in taking cognizance under the wrong Section is, in fact a curable defect so long as the Court that has taken cognizance has the power to take cognizance of the other Sections also [See: ***Pruthvirajsinh Nodhubha Jadeja v. Jayeshkumar Chhakaddas Shah***⁸]. The question to be determined then is whether the offence as under Section 125A RPA exist in the equal or similar measure under the GMA.
12. A perusal of GMA reveals that although originally false declarations were penalized as per Section 9, particularly 9I of that Section and its manifold parts stood omitted sometimes in the year 1990. In this scenario, since the candidate is required to file an affidavit, as shown above, then, the controlling provisions would be under the Indian Penal Code.
13. It is found that although the private complainant had made a mention of certain provisions under the IPC, the learned Trial Judge while taking cognizance did so only under the RPA. As referred to above, the appellant contends that this is a jurisdictional error and, therefore, would go the root of the matter and whereas the State contends Section 465 CrPC would save the incorrect cognizance taken. We are inclined to agree with the State. For ready reference, the Section is reproduced as under:

“465- Finding or sentence when reversible by reason of error, omission or irregularity- 1. Subject to the provisions hereinbefore contained, on finding sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in

7 2025 INSC 930

8 (2019) 9 SCC 533

Chandrikaben Kishor Dafda v. State of Gujarat & Anr.

any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

2. In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.”

The application of this Section has been discussed by a Bench of three judges in **Pradeep S. Wodeyar v. State of Karnataka, (2021) 19 SCC 62** while referring to an earlier decision of this Court in **Santosh De v. Archana Guha**⁹, held in an appeal arising out of an order passed in quashing petition under Section 482 CrPC as under:

“41. Section 465 stipulates that the order passed by a court of competent jurisdiction shall not be reversed or altered by a court of appeal on account of an irregularity of the proceedings *before trial or any inquiry*. It is settled law that cognizance is pre-trial or inquiry stage. [*Gangula Ashok v. State of A.P.*, (2000) 2 SCC 504 : 2000 SCC (Cri) 488; *Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86, where a Constitution Bench held that trial begins after framing of charge] Therefore, irregularity of a cognizance order is covered by the provision. In order to determine if the provision applies to pre-trial orders like an irregular cognizance order or only applies to orders of conviction or acquittal, it is necessary that we interpret the provision contextually.

...

44. The overarching purpose of Chapter XXXV CrPC, as is evident from a reading of Sections 460 to 466, is to prevent irregularities that do not go to the root of the case from delaying the proceedings. Sections 462-464 lay down specific irregularities which would not vitiate the

Supreme Court Reports

proceedings. Section 465 on the other hand is a broad residuary provision that covers all irregularities that are not covered by the above provisions. This is evident from the initial words of Section 465, namely, "Subject to the provisions hereinabove contained". Therefore, irregular proceedings that are not covered under Sections 461-464 could be covered under Section 465. It is also evident that the theme of "failure of justice", uniformly guides all the provisions in the chapter. There is no indication in Section 465 and in Sections 462-464 that the provisions only apply to orders of conviction or acquittal. All the provisions use the words "finding, sentence or order". Though one of the major causes of judicial delay is the delay caused from the commencement of the trial to its conclusion, there is no denying that delay is also predominantly caused in the pre-trial stage. Every interlocutory order is challenged and is on appeal till the Supreme Court, on grounds of minor irregularities that do not go to the root of the case. The object of Chapter XXXV CrPC is not only to prevent the delay in the conclusion of proceedings after the trial has commenced or concluded, but also to curb the delay at the pre-trial stage. It has been recognised by a multitude of judgments of this Court that the accused often uses delaying tactics to prolong the proceedings and prevent the commencement or conclusion of the trial. [*A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : AIR 1988 SC 1531]

...

48. The test established for determining if there has been a failure of justice for the purpose of Section 465 is whether the irregularity has caused prejudice to the accused. [*Annareddy Sambasiva Reddy v. State of A.P.*, (2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] No straitjacket formula can be applied. However, while determining if there was a failure of justice, the courts could decide with reference to inter alia the stage of challenge, the seriousness of the offence charged, and apparent intention to prolong proceedings. It must be determined if the failure of justice would override the concern of delay in the conclusion of

Chandrikaben Kishor Dafda v. State of Gujarat & Anr.

the proceedings and the objective of the provision to curb the menace of frivolous litigation.”

14. In view of the above, the taking of cognizance itself, even if it was taken under a singular section and that too was erroneous, for it is a well settled principle of law that cognizance is taken of the offence and not people. If the issue is that a false affidavit has been filed in the electoral process, that is an offence against society at large and has to be investigated.

The matter is remanded to the Magistrate concerned for taking cognizance afresh and proceed as per law. It is clarified that we have not expressed any opinion on the merits of the matter and the discussion *supra* is only for the limited purpose of adjudicating the propriety of the cognizance order as made.

The appeal is disposed of in above terms along with pending applications if any.

Result of the case: Appeal disposed of.

[†]Headnotes prepared by: Divya Pandey