AFR

Court No. - 87

Case :- MATTERS UNDER ARTICLE 227 No. - 723 of 2022

Petitioner :- Khurshidurehman S. Rehman
Respondent :- State Of U P And Another
Counsel for Petitioner :- Jai Prakash Prasad
Counsel for Respondent :- G.A.

Hon'ble Dinesh Pathak,J.

1. Heard Sri Jai Prakash Prasad, learned counsel for the petitioner, Sri Manish Goyal, Senior Advocate (Additional Advocate General) assisted by Sri AK Sand, Advocate appearing for the State and perused the record.

2. In view of the peculiar facts and circumstances of the present case, this Court proceeds to decide the present matter finally at admission stage itself without calling for the respective affidavits of the parties with the consent of the counsel concerned.

3. The petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India challenging the order passed by the trial court as well as the revisional court rejecting an application filed under Section 156 (3) CrPC.

4. The facts culled out from the pleadings of the petitioner are that the present petitioner has moved an application under Section 156 (3) CrPC with an allegation that Bhartiya Janta Party headed by the respondent No. 2 (opposite party No. 1 in the original application) had wooed the voters with several promises but failed to fulfil the promises as made in the Election Manifesto-2014, which was promulgated by Bhartiya Janta Party in the parliamentary election conducted in the year 2014. Therefore, he has committed crime of fraud, cheating, criminal breach of trust, dishonesty, defamation, deceiving and falls allurement. The aforesaid application was rejected by the trial court (Additional Chief Judicial Magistrate, Aligarh) vide its order dated 1.10.2020. Feeling aggrieved

and dissatisfied with the order passed by the trial court, the applicant (petitioner herein) has preferred a revision dated 12.10.2020 being criminal revision No. 141 of 2020. Aforesaid revision was dismissed affirming the order passed by the trial court.

5. It is submitted by the learned counsel for the petitioner that both the courts below have illegally rejected an application under Section 156 (3) CrPC without applying their mind and without properly appreciating the allegations made against the respondent No. 2 and the document on record. Non fulfilment of promises as made in the Election Manifesto-2014 makes out a clear cut criminal case against the respondent No. 2, who is liable to be summoned and tried under different sections of IPC. Learned counsel for the petitioner submitted that in a similar matter Hon'ble Supreme Court has issued notices to the other side in Writ Petition (Civil) No. (s). 688/2019, which is still pending for consideration. Fact regarding pendency of the aforesaid matter was brought to the knowledge of the revisional court through paragraph No. 5 of the memo of the revision but the same has not been considered by the revisional court while deciding the revision on merits.

6. Per contra, learned senior counsel has contended that on the face of an application, no cognizable offence is made out against the respondent No. 2 to be tried by the court below. It is further contended that non-fulfilling promise, if any, as averred in the Election Manifesto-2014 does not make out any cognizable offence against the persons who have promulgated the election manifesto. It has further been contended that non-fulfilling the conditions as averred in the election manifesto does not come within the ambit of any law, and therefore, it cannot be enforced under any legislation. Trial court as well as revisional court has rightly rejected an application after going through the contents of the application and evidence adduced on behalf of the petitioner. In support of his contention,

learned senior advocate has cited the case of **Vivek Kumar Mishra Vs. Union of India Cabinet Secretary and others reported in 2019 SCC OnLine All 5139, Mithlesh Kumar Pandey Vs. Election Commission of India and others reported in 2014 SCC Online Del 4771, V.P. Ammavasai Vs. Chief Election Commissioner, Election Commissioner of India and others reported in 2019 SCC OnLine Mad 5623 and Prof. Ramchandra G. Kapse Vs. Haribanshramakbal Singh reported in (1991) 1 Supreme Court Cases 206.**

7. Carefully considered the rival submission advanced by the learned counsel for the parties and perused the record on board.

8. The present petitioner has invoked the authority of Magistrate by moving an application under Section 156 (3) CrPC which authorises Magistrate empowered under Section 190 of the CrPC to pass an order for investigation into any cognizable offence by an officer in charge of a police station. Section 156 comes within Chapter XII captioned as 'Information to the police and their power to investigate'. Under sub-section (1) of Section 156, the power of a police officer to investigate a cognizable case, which a court with jurisdiction over the local area within the limits of such station would have power to enquire into or try under Chapter XIII, is untrammelled in the sense that it does not require an order of Magistrate. Issuing any direction to investigate the matter under Section 156 (3) CrPC is a pre-cognizance stage, that too, in matters where a case of cognizable offence is made out by the applicant. Invoking the power of Magistrate under Section 156 (3) in a casual manner, without producing sufficient details and material for commission of cognizable offence, is not justifiable in the eye of law. Magistrate, before whom an application has been moved for issuing a direction for investigation under under Section 156 (3) CrPC, is only required to examine the matter and to apply his judicious mind to reach a, prima facie, conclusion as to whether

the case for investigation is made out, for commission of cognizable offence, or not.

9. In the matter in hand, alleged betrayal of promises as made in Election Manifesto-2014 has been tried to be shown as cognizable offence and the learned Magistrate has been expected to issue a direction for investigation qua said commission of cognizable offences.

10. Before discussing the merits of the application under Section 156 (3) CrPC moved by the present petitioner, the scope of Section 156 (3) is required to be considered. Dealing with the scope of Section 156 (3) CrPC, Hon'ble Supreme Court in the matter of **Anil Kumar and others Vs. MK Aiyappa and others, reported in (2013) 10 Supreme Court Cases** 705, has expounded in paragraph 11 that the application of mind by the Magistrate should be reflected in the order passed under Section 156 (3) CrPC, which is quoted below:

> *"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case (2008) 2 SCC (Cri) 692 examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."*

11. In the case of **Priyanka Srivastava and another Vs. State of Uttar Pradesh and others, reported in (2015) 6 Supreme Court Cases 287,** Hon'ble Supreme Court has considered several decisions of the Apex Court and concluded that a principled and really grieved citizen with

clean hands must have free access to invoke the powers under Section 156(3) CrPC. It is not the police taking steps at the stage of Section 154 CrPC. For ready reference, the relevant paragraphs of the said judgment is quoted hereinbelow:

> *"21. Dealing with the nature of power exercised by the Magistrate under Section 156(3) of the CrPC, a three-Judge Bench in Devarapalli Lakshminarayana Reddy and others v. V. Narayana Reddy and others[2], had to express thus: (SCC p. 258, para 17)*
>
> > *"17. ....It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or chargesheet under Section 173."*
>
> *23. In Dilawar Singh v. State of Delhi, this Court ruled thus: (SCC p. 647, para 18)*
>
> > *"18. ...11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."*
>
> *24. In CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd.[5], the Court while dealing with the power of Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure. And again: (Madhao v. State of Maharashtra, [(2013) 5 SCC 615], SCC pp. 620-21, para 18)*

> *"When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3)."*

25. Recently, in Ramdev Food Products Private Limited v. State of Gujarat, while dealing with the exercise of power under Section 156(3) CrPC by the learned Magistrate, a three-Judge Bench has held that: (SCC p. 456, para 22)

> *"22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.*
>
> *22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed."*

27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also

there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same."

12. Full Bench of this Court, in the matter of **Jagannath Verma Vs. State of UP and another [2014(8) ADJ 439 (FB)]** has expounded, after considering the judgment passed by Constitutional Bench of Supreme Court in Lalita Kumari Vs. Government of Uttar Pradesh, (2014) 2 SCC 1, that though the registration of an FIR on the receipt of information relating to the commission of cognizable offence is mandatory, yet there may be instance where a preliminary enquiry is required. The relevant paragraph No. 13 of the judgment in **Jagannath Verma (supra)** is reproduced hereinbelow:

"The decision of the Constitution Bench in Lalita Kumari holds that though the registration of an FIR on receipt of information relating to the commission of a cognizable offence is mandatory, yet there may be instances where a preliminary enquiry is required. In that context, the observation of the Supreme Court are as follows:

"120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry."

The power which is conferred upon the magistrate to order an investigation under Section 156 (3) is before taking cognizance of an offence. Section 156 (3) provides that any magistrate empowered under Section 190 may order such an investigation into any cognizable case by an officer in charge of a police station."

13. Now the question would be as to whether the contents of the application under Section 156(3) CrPC, moved by the petitioner, discloses a cognizable offence for forwarding of the complaint to the police for investigation under Section 156 (3) CrPC. Definition of cognizable offence is enunciated under Section 2 (c) of the CrPC, which is reproduced hereinbelow:

"(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;"

14. At this juncture, in my opinion, it would not be befitting to elaborate the scope and nature of cognizable offence, which itself spell out from the definition as given above. In a complaint under Section 156(3) CrPC, the petitioner has made an allegation of committing a crime of criminal

breach of trust, dishonesty, deceiving, defamation and false allurement on the ground that Bhartiya Janta Party led by respondent No. 2 has failed to fulfil his promise as enunciated in its Election Manifesto-2014. Voters are allured to cast vote in favour of the party by magical promises.

15. Paramount question for consideration in the present petition lies in a narrow compass as to whether non-fulfilment of any promise as made in the Election Manifesto-2014 amounts to commission of cognizable offence in the eye of law. On a pointed query, learned counsel for petitioner has failed to demonstrate any penal provision for betrayal of a party concerned from the promises as made in the Election Manifesto-2014. To discuss the nature and scope of election manifesto promulgated by political parties, Hon'ble Supreme Court in the case of **S. Subramaniam Balaji Vs. The Government of Tamil Nadu and others, (2013) 9 SCC 659** has expounded that the manifesto of political parties is a statement of its policy. Promises made in the manifesto cannot be treated to be corrupt practice as is denoted under Section 123 in The Representation of the People Act, 1951. No penal provision has been provided considering the non-fulfilment of the promises as made in the election manifesto as a crime. Though under The Representation of the People Act, 1951, there is a provision for registering the political parties but there is no specific provision for the cancellation of their registration on any ground including the alleged false promise as made in the election manifesto. Hon'ble Supreme Court in case of **S. Subramaniam Balaji (supra)** has laid down that i) the provisions of The Representation of the People Act, 1951 place no fetter on the power of political party to make promises in the election manifesto, and, ii) that it is not for the Courts to legislate as to what kind of promises can or cannot be made in the election manifesto, applies on all force.

16. In the case of **Mithlesh Kumar Pandey Vs. Election Commission of India and others, (2014) 6 AIR Del R 139,** Division Bench of Hon'ble

Delhi High Court has discussed the post poll alliances of the political parties and their manifesto released. It was argued before the Hon'ble Court that the manifesto released by political party forms the basis of party's election campaign since it compiles in one document the policies of the party; the party explicitly seeks the votes of electorate on the basis of statements and promise made in the manifesto; the manifesto of a political party is analogous to making 'offer' as understood in the law of contract, which contract is complete on the acceptance of the 'offer', that is to say, at the time when the voters vote for that political party and the party ultimately comes to power or makes the Government, therefore, the political party should not be permitted to carry out acts which are in blatant disregard and breach of their own manifestos. The relevant paragraph No. 3, 8 and 9 of the aforesaid judgment is quoted below:

> *"3. We, at the outset, invited attention of the petitioner appearing in person to the judgment of Justice R.C. Lahoti (as his Lordship then was) of this Court in ANZ Grindlays Bank Pie v. Commissioner, MCD 1995 II AD (Delhi) 573 where, dealing with an argument of promissory estoppel and legitimate expectations on the basis of election manifesto, it was held that election manifesto of a political party howsoever boldly and widely promulgated and publicised, can never constitute promissory estoppel or provide foundation for legitimate expectations. It was further held that it is common knowledge that political parties hold out high promises to the voters expecting to be returned to power but it is not necessary that they must be voted in by the electorate; the political parties may commit to the voters that they would enact or repeal certain laws but they may not succeed in doing so for reasons more than one and they know well this truth while making such promises and the electorate to which such promises are made also knows it. It was further held that neither the plea of promissory estoppel nor the plea of legitimate expectations can be founded thereon.*
>
> *8. Reference in this regard may also be made to what Lord Denning, sitting in the House of Lords observed in Bromley London Borough Council Vs. Greater London Council 1982 (1) All England Law Reports 129. It was said:-*
>
> > *"A manifesto issued by a political party - in order to get votes - is not to be taken as gospel. It is not to be regarded as a bond, signed, sealed and delivered. It may contain - and often does contain - promises or proposals that are quite unworkable or impossible of attainment. Very few of the electorate read the manifesto in full. A goodly number only know of it from what they read in the newspapers or hear on television. Many know nothing whatever of what it*

contains. When they come to the polling booth, none of them vote for the manifesto. Certainly not for every promise or proposal in it. Some may by influenced by one proposal. Others by another. Many are not influenced by it at all. They vote for a party and not for a manifesto. I have no doubt that in this case many ratepayers voted for the Labour Party even though, on this one item alone, it was against their interests. And vice versa. It seems to me that no party can or should claim a mandate and commitment for any one item in a long manifesto. When the party gets into power, it should consider any proposal or promise afresh - on its merits - without any feeling of being obliged to honour it or being committed to it. It should then consider what is best to do in the circumstances of the case and to do it if it is practicable and fair."

The same view was followed by the High Court of Justice Queen's Bench Division Administrative Court in R (Island Farm Development Ltd.) Vs. Bridgend County Borough Council [2006] EWHC 2189 (Admin).”

“9. In view of the aforesaid legal position, post-poll alliances cannot be declared as illegal on the ground of being contrary to the manifesto of the political parties entering into the alliance and it is not within the domain of this Court to legislate or issue a direction therefore, making the manifesto a legally binding document on the political party issuing the same.”

17. Learned Senior Advocate has cited the case of **VP Ammavasai Vs. Chief Election Commissioner, Election Commissioner of India and others, reported in 2019 SCC OnLine Mad 5623,** wherein Division Bench of Hon’ble Madras High Court has expressed his view that the poll manifesto does not have any statutory backing. Hence, it is not enforceable in the eyes of law. Relevant paragraphs No. 12 and 13 are reproduced hereinbelow:

“12. Thus from the line of judgments of the Hon'ble Supreme Court in S.Subramaniam Balaji's case, duly followed by High Courts of Delhi, Rajasthan, Allahabad and this Court, it could been seen that there is consistency that election manifesto made by a political party or by an individual candidate, in its true construction would not mean, corrupt practice by the individual candidate or the party, as the case may be, and that apart, there is no provision in the Representation of Peoples Act, prohibiting an individual candidate from resorting to promises, which could be construed as corrupt practice, within the meaning of Section 123 of the Representation of the Peoples Act, 1951.

13. Clause 18.4 of the Model Code of Conduct enclosed in the typed set of papers filed by the petitioner also indicates that the Delhi High Court in Mithilesh Kumar Pandey v. Union of India, reported in 2014 SCC Online Del.4771 : AIR 2015 (MOC 103) 45, held that there is no provision in law,

which makes promises made by political parties in their election manifestos enforceable against them."

18. Learned Senior Advocate has also invited the attention of the Court towards the judgment dated 26.4.2019 passed by the Division Bench of this Court in the case of **Vivek Kumar Mishra Vs. Union of India, Cabinet Secretary and others, reported in 2019 SCC OnLine All 5139.** Aforesaid petition was filed for cancellation of the registration of the political parties and for issuing a direction of appropriate nature that unless and until the proper accountability in dealing with election manifesto for translating them into action is fixed and accounted for participation of the erring political party in any election may be debarred and their election symbol may be forfeited. Dealing with the issue of non-fulfilment of the promise as made in the election manifesto, Hon'ble Division Bench dismissed the petition with observation that manifesto of political parties is a written statement declaring policy, the intention, motive or views of the said party, however, such declaration cannot have any binding effect or implemented through court of law. The relevant paragraphs No. 7, 8, 11, 12 and 14 are quoted hereinbelow:

7. The manifesto of a political party issued at the time of general election is a written statement declaring publicly the intentions, motives or views of the said party, what it hopes and vows to do if it is elected and forms the government in future. Such a hope and vow of a party can not have any binding effect or implemented through court of law and it can also not be de-registered for not fulfilling it even if some people or class of people are alleged to have been allured by it as admittedly it has no legal sanctity. The people, through their votes in the next election, can show their resentment.

"8. Lord Denning in regard to election manifesto has observed in Brobley London Borough Council Vs. Greater London Council 1982 (1) 129 All England Law Reports, as under:-

> *"A manifesto issued by a political party, in order to get votes, is not to be taken as gospel. It is not to be regarded as a bond, signed, sealed and delivered. It may contain, and often does contain, promises or proposals that are quite unworkable or impossible of attainment. Very few of the electorate read the manifesto in full. A Goodly number only know of it from what they read in the newspapers or hear on television. Many know nothing whatever of what it contains. When they come to the polling booth, none of them vote for the manifesto. Certainly not for every promise*

or proposal in it. Some may be influenced by one proposal. Others by another. Many are not influenced by it at all. They vote for a party and not for a manifesto. I have no doubt that in this case many ratepayers voted for the Labour Party even though, on this one item alone, it was against their interests. And vice Versa. It seems to me that no party can or should claim a mandate and commitment for any one item in a long manifesto. When the party gets into power, it should consider any proposal or promise afresh, on its merits, without any feeling of being obliged to honour it or being committed to it. It should then consider what is best to do in the circumstances of the case and to do it if it is practicable and fair."

11. Therefore, since there is no legislation in this regard so no action can be taken for not fulfilling the promises and commitments made in a manifesto of a political party and reading down of the provision also does not arise. Therefore the contention of the learned counsel for the petitioner on the basis of observation of Lord Denning (Supra) is misconceived and repelled.

12. So far as the allegation of criminal liability in the form of fraud, cheating and criminal breach of trust are concerned, this Court is doubtful of having fulfilling the ingredients of the said offences. Even otherwise non fulfillment of the promise, made in a manifesto which has no legal sanctity, can not be a ground for criminal prosecution. However if any body is aggrieved, he may avail appropriate remedy available under criminal law.

14. The promises in the election manifesto can also not be read into Section 123 for declaring it to be a corrupt practice because the allegation of the corrupt practice can be levelled for an act against the candidate or his agent or by any other person with the consent of a candidate or his election agent which can not include the political party. The Hon'ble Apex Court in the case of S. Subramaniam Balaji Vs. State of Tamilnadu and Others; (2013) 9 SCC 659 has held as under in paragraph 84.1:-

"84.1. After examining and considering the parameters laid in Section 123 of RP Act, we arrived at a conclusion that the promises in the election manifesto cannot be read into Section 123 for declaring it to be a corrupt practice. Thus, promises in the election manifesto do not constitute as a corrupt practice under the prevailing law. A reference to a decision of this Court will be timely. In Prof. Ramachandra g. Kapse Vs. Haribansh Ramakbal Singh (1996) 1 SCC 206 this Court held that:-

"21. ... Ex facie contents of a manifesto, by itself, cannot be a corrupt practice committed by a candidate of that party."

19. In a recent judgment of Madras High Court in a case of **M. Chandramohan Vs. The Secretary, Ministry of Parliamentary Affairs**

and others (WP (MD) No. 18733 of 2020) decided on **31.3.2021**, the Division Bench of Madras High Court has discussed the issues of freebies offered in the election manifesto to allure the voters to cast votes in their favour. Considering the dictum of Hon'ble Supreme Court in the case of **S. Subramaniam Balaji (supra)**, Hon'ble Division Bench has laid down that no doubt the statutes provided in The Representation of Peoples Act, 1951 does not penalises the political parties indulging in the corrupt practice as clearly distinguished in the above judgment. The Representation of Peoples Act, 1951 was passed immediately after our country was made a republic in the year 1950 and the policy maker of that time did not foresee that the political parties would stoop down to the level of indulgence in corrupt practice in the name of election manifesto and that is the reason why they did not include the political parties under Section 123 of the Representation of Peoples Act, 1951, even though the candidates or his/her agents are included.

20. So far as the submission made by the learned counsel for the petitioners with respect to the pendency of the writ petition No. (s). 688/2019 is concerned, this Court has no authority to discuss the merits of the said case or impede the proceeding of the present petition, keeping in view the pendency of the aforesaid matter.

21. It is, thus, clear that the election manifesto promulgated by any political party is a statement of their policy, view, promises and vow during the election, which is not the binding force and the same cannot be implemented through the courts of law. Even there is no penal provision under any statute to bring the political parties within the clutches of enforcement authorities, in case, they fail to fulfil their promises as made in the election manifesto.

22. Learned counsel for the petitioner failed to substantiate his submissions in assailing the orders impugned, as to how cognizable offence is made out in the present matter for the purposes of issuing a direction for investigation as enunciated under Section 156 (3) CrPC. Even in a provision as embodied under Section 123 of The Representation of Peoples Act, 1951 only a candidate or his/her agents has been brought under law for adopting a corrupt practices of election but the aforesaid provision is not made applicable on any political party as a whole.

23. Learned Magistrate as well as the revisional court has discussed the contents of the application under Section 156 (3) CrPC moved by the present petitioner in detail and very consciously came to to conclusion that on the face of record, no case is made out for the purposes of investigating the cognizable offence. Record also reveals that the petitioner has casually invoked the authority of the Magistrate and the application under Section 156 (3) CrPC has been filed in a routine manner without taking any responsibility whatsoever only to harass the respondent No. 2. The application/complaint does not, prima facie, disclose any commission of cognizable offence.

24. After perusal of the judgment passed by the courts below, it cannot be said that they have decided the matter in a cursory manner without applying their judicial mind. Non-occurrence of any cognizable offence is also one of the paramount condition which averted the courts below from issuing a direction for investigation in exercise of powers under Sections 156 (3) CrPC.

25. In this conspectus as above, I do not find any substance in the present writ petition. No justifiable ground has been made out warranting indulgence of this Court in exercise of its supervisory jurisdiction under

Article 227 of the Constitution of Indian to interfere in the impugned orders. There is no illegality, perversity and ambiguity in the impugned orders. The present writ petition, being devoid of merits and misconceived, is dismissed with no order as to the costs.

Order Date:- 2.3.2022
vinay