

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Election Appeal No.178 of 2024

Date

Order with signature of Judge

For hearing of main case

Date of hearing and order: 08.1.2024

Ms. Sadia Ghouri, advocate for the appellant
Mr. G.M Bhuto Assistant Attorney General along with
Mr. Sarmad Sarwar Assistant Director (Law) Election Commission of
Pakistan

ORDER

Adnan-ul-KarimMemon-J Appellant Muhammad Irfan through instant election appeal has called into question the order dated 30.12.2023 passed by the Returning Officer, PS-98 Karachi East-II, whereby it is alleged that the objections were received from Mr. Muhammad Nasir Khan son of Mr. Abdul Shakoor, holding CNIC No.42501-8080584-7 resident of PS-98 who complained that the appellant is involved in anti-state activities and attached copies of FIR No.795/2023 registered at PS Zaman Town and FIR No.15/2023 registered at PS Azizabad, hence, the nomination paper of the appellant was rejected in terms of Sub-section 9(c) of Section 62 of the Elections Act, 2017.

At the very outset, the learned counsel for the appellant submits that before filing this appeal the appellant approached to concerned Court i.e. VI-Judicial Magistrate Central at Karachi, and obtained a copy of FIR No.15/2023 registered at PS Azizabad under Section 153-A PPC in which name of the appellant is not mentioned, but the same was registered against unknown persons. Learned counsel further submits that so far as FIR No.795/2023 registered at PS Zaman Town is concerned, which is pending before the Court of Law but the respondent No.1 did not consider summary inquiry that such FIR has been disposed of by the Court of X-Civil Judge and Judicial Magistrate Karachi East in Criminal Case No.926/2023 vide order dated 07.12.2023. He, therefore, prayed for setting aside the impugned order. The question involved in the matter is whether the reasons assigned by the Returning Officer are substantial or curable under the law.

The learned Assistant Attorney General assisted by the learned law officer representing the Election Commission of Pakistan has opposed this appeal.

I have heard the learned counsel for the parties and perused the record with their assistance.

The question involved in the present appeal is whether the rejection of the nomination papers of the appellant is justified under the election law. Whether the defect as pointed out by the learned Law Officer substantial or curable?

The involvement of a candidate in a criminal case is not sufficient to restrain him from contesting the election until and unless he has been convicted in the said criminal case. Mere involvement in any F.I.R cannot form the basis of passing judgment on the character of a person, qualification / dis-qualification referred to Articles 62 & 63 of the Constitution of Islamic Republic of Pakistan, 1973, cannot be proven or disproven by reference to an F.I.R alone.

As regards the non-disclosure of the criminal case by the appellant, as stated above, the initial burden was upon the respondents to prove the petitioner's knowledge about the pendency of said criminal case; however, the respondents have failed to prove the same. Admittedly, the petitioner was not convicted of the said crime and he would only stand to gain if he did not mention in his nomination form about the criminal case in which he had been convicted which may have entailed his disqualification. Thereby, even if the petitioner had disclosed this information regarding the pendency of a criminal case in his nomination papers before the Returning Officer, he would not have been declared disqualified from contesting the election. In the case of MURAD BUX v. KARIM BUX & others [2016 SCMR 2042] wherein the Supreme Court of Pakistan has observed as under:

“As against this if non-disclosure about the pendency of a criminal case has been made, for which the petitioner has offered a reasonably plausible explanation, then the affidavit could not be considered as a false or incorrect declaration. It is well settled that the provision of disqualification of a candidate is to be strictly construed. In the case at hand, the disqualification of the petitioner is not an issue. The only issue is the non-disclosure of pending criminal cases in the affidavit before the Returning Officer and whether such non-disclosure would be construed as concealment of material particulars. We in the backdrop of these facts are of the considered view that nondisclosure of a fact which otherwise, if disclosed, could not debar the petitioner from contesting the election, cannot be made a ground to preclude the petitioner from contesting the election”.

A similar view was taken by the Supreme Court in the case of SHEIKH MUHAMMAD AKRAM v. ABDUL GHAFUOR [2016 SCMR page 733], wherein it has been held as under:

“10. Admittedly, the appellant did not disclose that the said criminal case was pending against him in his nomination papers. The said case against the appellant was one of rash and, according to the complainant of the case, the complainant had been injured. The offense for which the appellant was charged carried a maximum prison term of two years. The complainant of the case, however, resiled from his complaint and the appellant secured his acquittal. Would the non-disclosure of this case (lodged u/s 337-F read with Section 279 PPC) be fatal to the candidate of the appellant?”

11. It may however be mentioned that a candidate is not disqualified to contest elections merely because a criminal case is pending against him. Non-disclosure of a pending case cannot be equated with the non-disclosure of a criminal case in which a person has been convicted and one which may entail his disqualification”.

Because of the dictum laid down in the case laws cited supra as well as the plausible explanation furnished by the appellant about the non-disclosure of a case against him, I have no hesitation to hold that findings given by the Returning Officer in this regard are unjustified and not sustainable under the law.

The result of the above discussion is that this appeal is allowed. The order dated 30.12.2023 passed by the Returning Officer, PS-98 Karachi East-II, whereby the nomination papers of the appellant were rejected is set aside. Consequently, the nomination papers filed by the appellant for election from PS-98 Karachi East-II are hereby restored and the appellant is allowed to contest the said election

JUDGE