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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 8120/2023, CRL.M.A. 30235/2023 (stay)

SUNITA KEJRIWAL

..... Petitioner

Through: Ms. Rebecca M. John, Senior Advocate with Mr. Bhavook Chauhan, Mr. Rishikesh Kumar, Mr. Irshad and Mr. Nilanjan Dev, Advocates.

versus

STATE (NCT OF DELHI) AND ANR.

..... Respondents

Through: Mr. Sanjay Lao, Standing Counsel (Crl.) along with Mr. Laksh Khanna, APP for the State.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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06.11.2023

CRL.M.A. 30236/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CRL.M.C. 8120/2023 & CRL.M.A. 30235/2023 (stay)

3. The present petition has been filed seeking quashing of the order dated 29th August, 2023 passed by the learned Metropolitan Magistrate (MM), Central, Tis Hazari Court, Delhi, whereby summons have been issued to the petitioner for the offence under Section 31 of the Representation of the People Act, 1950 (hereinafter "RP Act, 1950") in a complaint filed by the respondent no.2 under Section 200 of the Code of



Criminal Procedure, 1973.

4. Senior Counsel appearing on behalf of the petitioner has taken this Court through Sections 17 and 31 of the RP Act, 1950 to submit that an offence is made out under Section 31 of the RP Act, 1950 only if a false declaration is made by a person.

5. For ease of convenience, Sections 17 and 31 of the RP Act, 1950 are set out below:

“17. No person to be registered in more than one constituency. – No person shall be entitled to be registered in the electoral roll for more than one constituency.

xxx

xxx

xxx

31. Making false declaration. – If any person makes in connection with -

(a) the preparation, revision or connection of an electoral roll, or

(b) the inclusion or exclusion of any entry in or from an electoral roll,

a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.”

6. It is submitted that in the present case, nothing has been placed on record by the complainant/respondent no.2 to show that a false declaration has been made by the petitioner. Further, the task of deletion of the name of the petitioner from the electoral roll of the previous constituency has to be undertaken by the electoral registration officer in terms of Section 23 of the RP Act, 1950 and failure on their behalf does not make the petitioner liable



under the RP Act, 1950. Hence, it is submitted that summons have been issued without proper application of mind. It is also submitted that the present complaint is barred by limitation.

7. Issue notice.

8. Notice is accepted by the learned APP appearing on behalf of the State.

9. Notice be issued to the respondent no.2 through all permissible modes.

10. On a *prima facie* view, the impugned order proceeds only on the basis that the name of the petitioner appears in the electoral rolls at two different constituencies. However, it does not go into whether a false declaration has been made or not.

11. In view of the above, there shall be a stay on the operation of the impugned order dated 29th August, 2023 till the next date of hearing.

12. List on 1st February, 2024.

AMIT BANSAL, J.

NOVEMBER 6, 2023

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