2026 INSC 868

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2026
(Arising out of SLP (Crl.) No. 3549 of 2016)

THE STATE OF KARNATAKA & ANR. ... APPELLANT(S)

VERSUS

PRATHIK PARASRAMPURIA ... RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

This judgment is divided into the following parts**:**

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Reason:

> **"The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."**
>
> Warren, CJ in Reynolds v. Sims[1]

Leave Granted.

INTRODUCTION

1. Voting in elections happens generally once every five years. This one day is the culmination of a long process that begins with the announcement of the dates by the competent authority, publication of manifestos by the competing political parties, advocating for their positions and against the positions of the others in rallies, press conferences, television advertisements, and so much more. For the most part, the citizen is only at the receiving end of this information and campaign across various forms. Their voice is heard only on election day when the result of the votes cast by them is counted and notified. It is their one vote for every person that demonstrates the support expressed for a particular set of policies put forward. If it is that this one chance at expression is itself tainted, it would not be an understatement to say that the

[1] 377 U.S. 533, 1964

very essence of democracy, which is a rule of the people, by the people and for the people, is compromised. To put it simply, the choice exercised by the people once influenced by external factors is no longer a choice of their own. It is somebody else's choice being thrust upon them.

2. These external factors can take many shapes and forms. Almost all of these forms, much like anything else in this world except for probably peace and contentment, require money. The law on its own does not permit any external factors to be thrust upon an individual's choice. Obviously then, methods that fly under the radar in exerting influence have to be adopted. Ill-gotten, undeclared money is one of the primary forms used. It is this which is called 'black money'.

PREVIOUS ORDERS

3. By order dated 5th September, 2017, this Court observed that in certain constituencies including the one in which the Respondent was a candidate, some untoward means and methods were used. As such, notice was issued to the Election Commission of India[2]. The order is extracted as under:

[2] EC

"Issue notice returnable within eight weeks to the Election Commission of India and Union of India.

During the 2014 Lok Sabha bye-elections for Bellary constituency, the respondent's residence and business complex were raided by the flying squad established by Election Commission of India for controlling the distribution of cash, gifts, liquor, free food etc in order to maintain the integrity of the election. The raid was on the basis of an anonymous message alleging that the respondent had horded a large amount of counterfeit currency which was to be used for bribing the voters. One laptop, cheque books and loose cheque-leaves, a pen drive and Rs. 20,48,355/- in cash were seized during the raid. An FIR was registered, being Crime No: 0107 of 2014, on 11.04.2014, under Sections 171 E and 188 of IPC, on the allegation that the respondent was in possession of money to be used to pay the voters at the time of the election. The respondent, filed a petition for quashing of the complaint before the High Court of Judicature of Karnataka.

The High Court by an order dated 12.02.2015, quashed the FIR on the ground that there was no averment in the complaint as to whom the accused intended to bribe and the mode which he had planned to adopt. Aggrieved by the judgment of the High Court, the State of Karnataka has filed a special leave petition.

Having heard parties and on perusing the material available on record, we are of the opinion that though wide powers are vested in the Election Commission under Article 324(1) of the Constitution, they are regulated by statutory provisions as are enacted by the Parliament. We are informed that numerous criminal cases relating to crimes committed during elections are not being pursued effectively as the prosecution is completely left for the State machinery. Although learned counsel appearing on behalf of the respondent drew our attention towards certain guidelines formulated by the Election Commission of India concerning flying squads, it would be appropriate that the Election Commission places before this Court all the guidelines framed in this regard concerning the procedures to be followed by the flying squads, or similar authorities with respect to search, seizure and prosecution of other criminal matters involving elections."

4. All State Governments and Union Territories were made party to these proceedings in terms of order dated 5th April 2019. It reads as under:

> "Learned counsel appearing for the Election Commission of India submits that he does not have the statistics about the cases of prosecution, particularly the information as regards to raids conducted and seizure of money by them during the last parliamentary elections.
> Mr. R. Balasubramanian, learned senior counsel appearing for the Union of India submits that he will get necessary information from the Finance Department.
> It is stated by the learned counsel appearing for the Election Commission and also other learned counsel that the criminal cases initiated during the course of elections are pursued by the respective State Governments. We, therefore, feel it appropriate to issue notice to all the State Governments including Union Territories with a view to ascertain the views and information from respective State Governments/Union Territories.
> Accordingly, we issue notice to all the State Governments and Union Territories to file their affidavits and appear through respective counsel on Thursday, the 25th April, 2019.
> List on 25th April, 2019."

On one of the occasions that the matter was listed, one of the Learned Senior Counsel appearing for the parties made a suggestion to the Court that guidelines should be framed to ensure a fair election process and to prevent the use of black money. On 26th November, 2025, we appointed Mr. Gaurav Aggarwal, Senior Counsel, and Dr. Swapnil Tripathi, Counsel, as *Amici Curiae* to assist the Court.

DEMOCRACY, RULE OF LAW & ELECTIONS

5. Democracy, as is well understood, is the rule of the people, by the people, and for the people. Its origins are believed to be in the ancient city of Athens in Greece, and today it has become the most common form of Governance. What began in Athens, however, was a form quite distinct from what we understand 'democracy' to be today. There, the people, to put it simply, participated in the decision-making processes themselves. When the idea travelled from Greece to Rome, the scenario changed. The people no longer took direct part but instead elected representatives who took decisions for them. It is this form that carried to the present day, *albeit* after a long retreat. The resurgence began many centuries later with the Magna Carta of 1215. Ever since, there has been slow, incremental progress in various pockets around the world, which would eventually lay the seed of the democratic movement. John Locke's Treatises of Government, Rousseau's social contract, and Montesquieu's separation of powers are ideas fundamental to how democracy has been shaped into the present day. Starting with the Glorious Revolution of 1689, followed by the American Revolution in 1776 and then by the French Revolution in 1789, eventually leading to

a number of turns towards democracy in the 20th Century with the breakdown of the world's imperial powers. With the advent of democracy in most parts of the world, two of its hallmarks- the rule of law and the electoral process acquire prime importance. The rule of law, the constituents of which are supremacy of law, equality before law and predominance of legal spirit, an idea that is familiar to almost everyone today, basically means that any action by the State and its bodies must possess a backing of legality and reasonableness. This has been recognized as part of the basic structure of the Constitution in ***Raj Narain supra.*** Recently, this Court in ***Directions in the Matter of Demolition of Structures, In re***[3]***,*** extensively discussed the principles of the rule of law in the following words:

> "**21.** The rule of law has also been described as "an umbrella concept for a number of legal and institutional instruments to protect citizens against the power of the State" [Adriaan Bedner, "An Elementary Approach to the Rule of Law", (2010) 2.1 Hague Journal on the Rule of Law, pp. 48-74.] . Moreover, "rule of law is integral to and necessary for democracy and good governance", because "attempts to democratise without a functional legal system in place have resulted in social disorder" [Randall Peerenboom, "Human Rights and Rule of Law: What's the Relationship?", (2004) 36 Geo J Int'l L 809.]
> **24.** In this respect, we may refer to the work of various scholars in the field. Thus, "for the rule of law to measure up to the requirements of a legitimate constitutional democracy, it must be more than the rule of law in the narrow sense" [Michel Rosenfeld, "The Rule of Law and the Legitimacy of Constitutional

[3] (2025) 5 SCC 1

> Democracy", (2000) 74 S Cal L Rev 1307.] . In the modern constitutional framework, "the rule of law would seem to need democratic accountability, procedural fairness, and even perhaps substantive grounding" [*Ibid.*] , such as in the provisions of the Constitution. In other words, "the rule of law means the regulative role of certain institutions and their associated legal and judicial practices" [John Rawls, Samuel Freeman (Eds.), *Collected Papers* (Harvard University Press, 2021).] . It has been beautifully observed:
>
> > "That is the law. And no Spartan, subject or citizen, man or woman, slave or king, is above the law. Where-ever law ends, tyranny begins" [*Id*, p. 306.]."

6. The second aspect is elections by which citizens of a nation make their voices heard and make choices so as to decide who will lead the country. **Arijit Pasayat J.,** in his dissenting opinion from the majority in the Constitution Bench in ***Rameshwar Prasad (6) v. Union of India*[4]*,*** had said:

> "**257.** Therefore, the well-recognised position in law is that purity in the electoral process and the conduct of the elected representatives cannot be isolated from the constitutional requirements. "Democracy" and "free and fair election" are inseparable twins. There is almost an inseverable umbilical cord joining them. In a democracy the little man—voter has overwhelming importance and cannot be hijacked from the course of free and fair elections. His freedom to elect a candidate of his choice is the foundation of a free and fair election. But after getting elected, if the elected candidate deviates from the course of fairness and purity and becomes a "purchasable commodity" he not only betrays the electorate, but also pollutes the pure stream of democracy."

[4] (2006) 2 SCC 1

7. The election is the only time that a common person who otherwise has no connection to governance structures, can make a direct impact. Since this has a straight forward implication for their immediate future, the importance of this exercise of choice between a large field of candidates in some countries and, in others, only two cannot be overstated. Any external factors that may influence this exercise of choice have the ability to compromise the very essence of democracy, since the choice made by the individual is not free and unencumbered but instead clouded by gratification, monetary or otherwise, or by promises sometimes genuine, other times misleading.

8. As demonstrated, the three ideas of democracy, the rule of law, and the electoral processes are inextricably linked to one another. If one aspect of any of these three parts is compromised, it impacts the entirety of the three ideas and their execution. Black money in the electoral process i.e. the issue with which we are herein concerned, is one such aspect that compromises democracy, rule of law and the electoral process itself.

9. What has been discussed in the previous section of this judgment has also been recognised and acknowledged as indispensable, on various pages of the country's judicial history.

9.1 In ***Indira Nehru Gandhi v. Raj Narain***[5]**,** H.R Khanna J., in his concurring opinion, observed:

> "**198.** This Court in the case of *Kesavananda Bharati* held by majority that the power of amendment of the Constitution contained in Article 368 does not permit altering the basic structure of the Constitution. All the seven Judges who constituted the majority were also agreed that democratic set-up was part of the basic structure of the Constitution. Democracy postulates that there should be periodical elections, so that people may be in a position either to re-elect the old representatives or, if they so choose, to change the representatives and elect in their place other representatives. Democracy further contemplates that the elections should be free and fair, so that the voters may be in a position to vote for candidates of their choice. Democracy can indeed function only upon the faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and form and are not mere rituals calculated to generate illusion of defence to mass opinion. Free and fair elections require that the candidates and their agents should not resort to unfair means or malpractices as may impinge upon the process of free and fair elections…."
>
> (emphasis supplied)

9.2 K.K Mathew J., in the same judgment said thus:

> "**268.** The concept of democracy as visualised by the Constitution presupposes the representation of the people in Parliament and State Legislatures by the method of election. And, before an election machinery can be brought into operation, there are three requisites which require to be attended to, namely, (*1*) there should be a set of laws and rules making provisions with respect to all matters relating to, or in connection with, elections, and it should be decided as to how these laws and rules are to be made; (*2*) there should be an executive charged with the duty of securing the due conduct of elections; and (*3*) there should be a judicial tribunal to deal with disputes arising out of or in connection with elections. Articles 327 and 328 deal with the first of these requisites, Article 324 with the

[5] 1975 Supp SCC 1 (Constitution Bench)

second and Article 329 with the third requisite (see *N.P. Ponnuswami* v. *Returning Officer, Namakkal Constituency* [(1952) 1 SCC 94 : AIR 1952 SC 64 : 1952 SCR 218, 229 : 1 ELR 133])."

9.3 D. Y Chandrachud J (as he then was) in ***State (NCT of Delhi) v. Union of India***[6]**,** held as follows**:**

"**466.** … The functioning of institutions must establish a constitutional balance which facilitates cooperative governance. Governance in cooperation is both a hallmark and a necessity of our constitutional structure. Our Constitution distributes legislative and executive powers between political entities. Distribution of power between institutions which are the creation of the Constitution is a significant effort to ensure that the values of participation and representation which constitute the foundation of democracy permeate to all levels of governance. The federal structure for governance which is a part of the basic structure recognises the importance of fulfilling regional aspirations as a means of strengthening unity. The Constitution has adopted some but may be not all elements of a federal polity and the Union Government has an important role in the affairs of the nation."

9.4 The majority in ***Anoop Baranwal v. Union of India [Election Commission Appointments]***[7], has observed thus:

"**124.** Unlike demands of a formal democracy, the hallmark of a substantive democracy and if we may say so, a liberal democracy must be borne in mind. Democracy is inextricably intertwined with power to the people. The ballot, is more potent than the most powerful gun. Democracy facilitates a peaceful revolution at the hands of the common man if elections are held in a free and fair manner. Elections can be conflated with a non-violent coup capable of unseating the most seemingly powerful governing parties, if they do not perform to fulfil the aspirations of the governed. Democracy is meaningful only if the sublime goals enshrined in the Preamble to the Constitution receive the undivided attention of the rulers,

[6] (2018) 8 SCC 501 (Constitution Bench)
[7] (2023) 6 SCC 161 (Constitution Bench)

> namely, social, political and economic justice. The concepts of liberty, equality and fraternity must not be strange bedfellows to the ruling class. Secularism, a basic feature of the Constitution must inform all actions of the State, and therefore, cannot be spurned but must be observed in letter and spirit. Democracy can be achieved only when the governing dispensation sincerely endeavours to observe the fundamental rights in letter and spirit. Democracy also, needless to say, would become fragile and may collapse, if only lip service is paid to the rule of law.
>
> **125.** We cannot be oblivious to the fact that the Founding Fathers have contemplated that not only must India aspire for a democratic form of government and life but it is their unambiguous aim that India must be a Democratic Republic. The conventional definition of a "Republic" is that it is a body Polity, in which, the Head of State is elected. However, the republican character of our democracy also means that the majority abides by the Constitution ensuring rights granted under it and also pursues goals enshrined in it. A brute majority generated by a democratic process must conform to constitutional safeguards and the demands of constitutional morality. A Democratic Republic contemplates that majoritarian forces which may be compatible with a democracy, must be counterbalanced by protection accorded to those not in the majority. When we speak about the minority, the expression is not to be conflated with or limited to linguistic or religious minorities. These are aspects which again underly the need for an independent Election Commission."

SCOPE AND ROLE OF ELECTION COMMISSION

10. Well, given that the elections are indispensable to democracy, it only stands to reason that the Constituent Assembly would have conceived of a body that would be tasked with undertaking the election process. After all, those who are up for elections themselves cannot be responsible for conducting the elections itself. If that is so, the election would be rendered illusory. Article

324 of the Indian Constitution, which vests the superintendence, direction and control of elections in the Election Commission, reads as under:

> "324. Superintendence, direction and control of elections to be vested in an Election Commission.—(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).
> (2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.
> (3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.
> (4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).
> (5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:
> Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:
> Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office

except on the recommendation of the Chief Election Commissioner.
(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1)."

10.1 As far as the function of the EC goes, Article 324(1) says that this body shall be responsible for "superintendence, direction and control" of elections, preparation of electoral rolls, etc. It obviously has myriad functions, including maintaining the integrity of the election process and controlling the distribution of inducements like cash, liquor and free food. [See: ***Mohinder Singh Gill v. Chief Election Commr***.[8]]

10.2 Powers, wide though they may be, are not plenary in nature. The powers under this Article apply only to those areas that are unoccupied by legislation. [See: ***A.C. Jose v. Sivan Pillai***[9]]

10.3 One of the responsibilities is the allocation of election symbols and the adjudication of any dispute which may

[8] (1978) 1 SCC 405
[9] (1984) 2 SCC 656

arise inter se competing claimants for the same symbol. [See: ***Sadiq Ali v. Election Commission of India***[10]]

10.4 The Commission also provides advice to the Governor or the President as the case may be upon the disqualification of a member of either of the Houses in the Centre or the State, as the case may be. [See: ***Election Commission of India v. Subramaniam Swamy***[11]]

10.5 Enforcement of the Model Code of Conduct (MCC) during election time is also a primary responsibility. [See: ***S. Subramaniam Balaji v. State of T.N.***[12]]

11. The factors discussed by us above are only illustrative. In ***Union of India v. Assn. for Democratic Reforms***[13]**,** a three-judge Bench summarised the constitutional position *qua* the EC in the following terms:

> **"46.** To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:
> 1. The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word "elections" is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.
> 2. The limitation on plenary character of power is when Parliament or State Legislature has made a valid law

[10] (1972) 4 SCC 664
[11] (1996) 4 SCC 104
[12] (2013) 9 SCC 659
[13] (2002) 5 SCC 294

relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. The Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions, the Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya Lal Omar case* [(1985) 4 SCC 628] the Court construed the expression "superintendence, direction and control" in Article 324(1) and held that a direction may mean an order issued to a particular individual or a precept which many may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.

3. The word "elections" includes the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the process of choosing a candidate. Fair election contemplates disclosure by the candidate of his past including the assets held by him so as to give a proper choice to the candidate according to his thinking and opinion. As stated earlier, in *Common Cause case* [(1996) 2 SCC 752] the Court dealt with a contention that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election. If on an affidavit a candidate is required to disclose the assets held by him at the time of election, the voter can decide whether he could be re-elected even in case where he has collected tons of money.

Presuming, as contended by the learned Senior Counsel Mr Ashwani Kumar, that this condition may not be much effective for breaking a vicious circle which has polluted the basic democracy in the country as the amount would be unaccounted. Maybe true, still this would have its own effect as a step-in-aid and voters may not elect law-breakers as law-makers and some flowers of democracy may blossom.

4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in

the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

5. The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant on Civil and Political Rights, which is as under:

"(*1*) Everyone shall have the right to hold opinions without interference.

(*2*) Everyone shall have the right to freedom of expression; *this right shall include freedom to seek, receive and impart information and ideas of all kinds*, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

6. On cumulative reading of a plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142of the Constitution to issue necessary directions to the executive to subserve public interest.

7. Under our Constitution, Article 19(1)(*a*) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, **voter speaks out or expresses by casting vote**. For this purpose, information about the candidate to be selected is a must. Voter's (little man — citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. **The little man may think over before making his choice of electing law-breakers as law-makers**."

(Emphasis supplied)

BLACK MONEY: A RECOGNIZED ISSUE

12. It flows from the above that controlling the use of black money in the electoral process is one of the responsibilities of the

EC. The issue of this tainted money circulating and polluting this most cherished process of democracy is not a recent phenomenon and has been recognized time and time again. We may illustrate the same as under:

12.1 As far back as 1975, this Court in ***Kanwar Lal Gupta v. Amar Nath Chawla***[14], while dealing with a challenge to the election to the Lok Sabha of a particular candidate in the 1971 Elections, filed by the unsuccessful candidate, made observations of essence through **P.N Bhagwati J.**, as follows:

> "…The object of the provision limiting the expenditure is twofold. In the first place, it should be open to any individual or any political party, howsoever small, to be able to contest an election on a footing of equality with any other individual or political party, howsoever rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength. It can hardly be disputed that the way elections are held in our country, money is bound to play an important part in the successful prosecution of an election campaign. … The availability of large funds does ordinarily tend to increase the number of votes a candidate will receive. If therefore, one political party or individual has larger resources available to it than another individual or political party, the former would certainly, under the present system of conducting elections, have an advantage over the latter in the electoral process. The former would have a significantly greater opportunity for the propagation of its programme while the latter may not be able to make even an effective presentation of its views. The availability of disproportionately larger resources is also likely to lend itself to misuse or abuse for securing to the political party or individual possessed of such resources, undue

[14] (1975) 3 SCC 646

advantage over other political parties or individuals. Douglas points out in his book called *Ethics in Government* at p. 72, "If one party ever attains overwhelming superiority in money, newspaper support, and (Government) patronage, it will be almost impossible, barring an economic collapse, for it ever to be defeated". This produces anti-democratic effects in that a political party or individual backed by the affluent and wealthy would be able to secure a greater representation than a political party or individual who is without any links with affluence or wealth. This would result in serious discrimination between one political party or individual and another on the basis of money power and that in its turn would mean that "some voters are denied an 'equal' voice and some candidates are denied an 'equal chance' ". It is elementary that each and every citizen has an inalienable right to full and effective participation in the political process of the Legislatures and this requires that each citizen should have equally effective voice in the election of the members of the Legislatures. That is the basic requirement of the Constitution. This equal effective voice — equal opportunity of participation in the electoral process — would be denied if affluence and wealth are to tilt the scales in favour of one political party or individual as against another. The democratic process can function efficiently and effectively for the benefit of the common good and reach out the benefits of self-government to the common man only if it brings about a participatory democracy in which every man, howsoever lowly or humble he may be, should be able to participate on a footing of equality with others. Individuals with grievances, men and women with ideas and vision, are the sources of any society's power to improve itself. Government by consent means that such individuals must eventually be able to find groups that will work with them and must be able to *make their voices heard* in these groups and no group should be insulated from competition and criticism. It is only by the maintenance of such conditions that democracy can thrive and prosper and this can be ensured only by limiting the expenditure which may be incurred in connection with elections, so that, as far as possible, no one single political party or individual can have unfair advantage over the other by reason of its larger resources and the resources available for being utilised in the electoral process are within reasonable bounds and not unduly disparate and the electoral contest becomes evenly matched. Then alone the small man will come into his own and will be able to secure proper representation in our legislative bodies."

(Emphasis supplied)

12.2 Goswami Committee On Electoral Reforms, 1990:

> "1.6 The role of money and muscle powers at elections deflecting seriously the well accepted democratic values and ethos and corrupting the process; rapid criminalisation of politics greatly encouraging evils of booth capturing, rigging, violence etc.; misuse of official machinery, i.e. official media and ministerial; increasing menace of participation of non-serious candidates; form the core of our electoral problems. Urgent corrective measures are the need of the hour lest the system itself should collapse."

12.3 President's Address, Hon. K.R Narayanan, to the Joint Session of Parliament in 1998

> "One of the causes of corruption and corrosion of values in our polity, as well as criminalisation of politics, stems from flaws in the electoral process. To ensure free, fair and fearless elections and to prevent the use of money and muscle power, Government will introduce a comprehensive Electoral Reformss Bill for which considerable ground work has already been done."

12.4 Vohra Committee,1993:

> "3.2 An organised crime Syndicate/Mafia generally commences its activities by indulging in petty crime at the local level, mostly relating to illicit distillation/gambling/organised satta and prostitution in the larger towns. In port towns, their activities involve smuggling and sale of imported goods and progressively graduate to narcotics and drug trafficking. In the bigger cities, the main source of income relates to real estate – forcibly occupying lands/buildings, procuring such properties at cheap rates by forcing out the existing occupants/tenants etc. Over time, the money power thus acquired is used for building up contacts with bureaucrats and politicians and expansion of activities with impunity. The money power is used to develop a network of

> muscle-power which is also used by the politicians during elections.
>
> …
>
> 6.2 (ii) The big smuggling Syndicates, having international linkages, have spread into and infected the various economic and financial activities, including havala transactions, circulation of black money and operations of a vicious parallel economy causing serious damage to the economic fibre of the country. These Syndicates have acquired substantial financial and muscle power and social respectability and have successfully corrupted the government machinery at all levels and wield enough influence to make the task of Investigating and Prosecuting agencies extremely difficult; even the members of the Judicial system have not escaped the embrace of the Mafia."
>
> (Emphasis supplied)

12.5 This Court in ***Ashok Shankarrao Chavan v. Madhavrao Kinhalkar***[15]**,** also made some important observations which we extract as under:

> **"66.** In recent times, when elections are being held it is widely reported in the press and media that money power plays a very vital role. Going by such reports and if it is true then it is highly unfortunate that many of the voters are prepared to sell their votes for a few hundred rupees. In fact, taking advantage of the weakness of the voters, exploitation to the maximum level is being carried out by those who aspire to become either Member of Parliament or State Legislature. We are pained to state that the sanctity of the status as a Member of the Legislatures, either Parliament or State Legislature is not being seriously weighed even by those who sponsor their candidature. It is a hard reality that if one is prepared to expend money to unimaginable limits only then can he be preferred to be nominated as a candidate for such membership, as against the credentials of genuine and deserving candidates. If such practices are to be simply ignored and a laudable object with which the Act has been brought into the statute

[15] (2014) 7 SCC 99

book as early as in the year 1950 and later on by the Act of 1951, wherein by virtue of the constitutional provision under Article 324 an authority in the status of the Election Commission is created in order to supervise and control the elections, it must be stated that such an authority who is in ultimate control in the matter of holding of the elections should be held to be invested with the widest power of its kind specified in the Act. Therefore, when it comes to the question of interpretation of the extent of such power to be exercised by the said authority, we are convinced that the Court should have a very liberal approach in interpreting the nature of power and jurisdiction vested with the said authority, namely, the Election Commission. This view of ours is more so apt in the present day context, wherein money power virtually controls the whole field of election and that people are taken for a ride by such unscrupulous elements who want to gain the status of a Member of Parliament or the State Legislature by hook or by crook."

12.6 In 2015, the Law Commission of India under the Chairmanship of AP Shah, CJ published 255th Report focusing on electoral reforms :

"2.4 It is now well established that money plays a big role in politics, whether in the conduct, or campaigning, for elections. The Election Commission of India (hereinafter "ECI"), in its guidelines issued on 29th August 2014, recognised that "concerns have been expressed in various quarters that money power is disturbing the level playing field and vitiating the purity of elections." What gives rise to these concerns about the role of big money in politics? These are not mere theoretical debates but are actual problems afflicting the electoral process in India. Money, often from illegitimate sources, results in "undisguised bullying" when it is used (both authorised and unauthorised) to buy muscle power, weapons, or to unduly influence voters through liquor, cash, gifts. Currency notes come first in containers, then in truckloads, moving to wholesale/small retail forms, and finally to suitcases and in people's pockets…"

12.7 Union Budget 2017 presented by Mr. Arun Jaitley, Finance Minister:

> "India is the world's largest democracy. Political parties are an essential ingredient of a multi-party Parliamentary democracy. Even 70 years after Independence, the country has not been able to evolve a transparent method of funding political parties which is vital to the system of free and fair elections. ..."

13. As demonstrated, this issue has been taken note of consistently by both Judicial and Executive authority. As such, the suggestion made by the learned senior counsel appearing for the Election Commission as recorded in the proceedings of 10.05.2019, that some guidelines should be laid down to prevent the use of black money in the electoral process, is well-founded and justified.

THE POSITION OF THE ELECTION COMMISSION

14. We had enquired from the EC regarding the steps that it has undertaken in furtherance of curbing this ill practice. Voluminous affidavits have been filed, placing on record the Standard Operating Procedures (SOPs) for flying squads, reporting of election expenditure, etc. Also, brought on record was information regarding efforts made to check the spread of such practices in the

election cycles. It would be appropriate to reproduce that part of the relevant affidavit as under:

> "A short summary of the data compiled by the Election Commission is provided hereinunder for the sake of convenience:
>
> a. During the 2019 Lok Sabha Elections, substantial seizures were made and a large number of FIRs were registered with largest numbers in the following states:

S. No.	Name of State	No. of FIR registered
1	Gujarat	35,144
2	Uttar Pradesh	19,209
3	Maharashtra	18,928
4	West Bengal	17,493
5	Rajasthan	8,652
6	Telangana	8,550
7	Andhra Pradesh	6,489
8	Tamil Nadu	5,106
9	Karnataka	4,609
10	Punjab	4,869

> b. Similarly, during the 2024 Lok Sabha Elections, a significant increase in enforcement action was reported with largest numbers in the following states:

S. No.	Name of State	No of FIR registered
1	Gujarat	52,820
2	Maharashtra	29,545
3	West Bengal	27,461
4	Uttar Pradesh	23,645
5	Telangana	23,087
6	Rajasthan	12,476
7	Karnataka	7,588

S. No.	Name of State	No of FIR registered
8	Tamil Nadu	5,948
9	Andhra Pradesh	5,043

c. Furthermore, in respect of the Legislative Assembly Elections conducted between 2019 and 2025, a considerable volume of seizures and FIR registrations was reported with largest numbers in the following states:

S. No.	Name of State	Assembly Election Year	No. of FIRs registered
1	Telangana	2023	33,496
2	Gujarat	2022	30,253
3	Maharashtra	2024	26,302
4	West Bengal	2021	25,061
5	Uttar Pradesh	2022	20,994
6	Maharashtra	2019	12,464
7	Rajasthan	2023	12,204
8	Tamil Nadu	2021	10,756
9	Karnataka	2023	8,440
10	Punjab	2022	3,834
11	Kerala	2021	3,087

Thereafter, in the Supplementary Affidavit, the outcome of these cases, as on 15th November 2025, is as under:

S. No.	Category	Total
1	Total number of FIRs filed	144,030
2	Total cases under investigation	1,348
3	Total closure reports filed	26,990
4	Total convicted	37,215
5	Total pending trial	44,387

S. No.	Category	Total
6	Total acquittals	36,312

Key Observations:

- Conviction Rate: 25.8% (37,215 convictions out of 144,030 FIRs)
- Closure Rate: 18.7% (26,990 closure reports out of 144,030 FIRs)
- Pendency: 30.8% (44,387 cases still pending trial even after 5+ years)

II. Lok Sabha General Elections 2024

13. That during the General Elections for the Lok Sabha held in 2024, a total of 387,430 FIRs were filed. The status of investigations and trials in these cases is as under:

S. No.	Category	Total
1	Total number of FIRs filed	387,430
2	Total cases under investigation	7,930
3	Total closure reports filed	76,987
4	Total convicted	166,044
5	Total pending trial	106,841
6	Total acquittals	24,950

Key Observations:

- Conviction Rate: 42.9% (166,044 convictions out of 387,430 FIRs) – showing significant improvement
- Closure Rate: 19.9% (76,987 closure reports)
- Swift Action: Despite being recent elections, conviction rate has improved substantially

III. State Legislative Assembly Elections (2019–2025)

14. That during the General Elections for the Legislative Assemblies held between 2019-2025, a total of **201,894 FIRs** were filed. The status of investigations and trials in these cases is as under:

S. No.	Category	Total
1	Total number of FIRs filed	201,894
2	Total cases under investigation	4,665
3	Total closure reports filed	53,126
4	Total convicted	40,155
5	Total pending trial	79,148
6	Total acquittals	25,980

"

In the supplementary affidavit, the Election Commission has highlighted an issue of considerable importance. It is submitted that, given prosecution of offences during election periods is the responsibility of the State Governments, and unilateral withdrawal of cases upon change in the dispensation within the State is a problematic reality. The Election Commission's own position on this issue must also be noted:

"ANNEXURE-C/3

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.P.C., 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,
Sd/-
(R. K. SRIVASTAVA)
SECRETARY
Copy to the Chief Electoral Officers of all States/UTs."

The same position was repeatedly reiterated.[16]

Also brought on record is the opinion rendered in this regard by the Department of Legal Affairs, Government of India dated 6th June 2009. The said opinion is as below:

"ANNEXURE-C/1

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

[16] Pages 113-115 of Supp Aff and 116-118 as well.

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.

Sd/-
(**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."

AMICUS' SUGGESTIONS AND OUR ANALYSIS

15. It is in light of the above position that we must now turn our attention to the suggestions made by the learned amici curiae. Suggestions have primarily been made under six heads:

i. Seizure of cash and other valuables

ii. Release of cash

iii. Real-time tracking

iv. Registration of FIR

v. Effective investigation and prosecution

vi. Withdrawal of cases

16. Dr. Swapnil Tripathi, learned *amicus curiae* had been requested by this Court by order dated 19.12.2025 to submit a note on 'Global Practices in Election Matters'. The following is a summary of the note so submitted :-

(a) The comparative analysis carried out takes into account four factors i.e., ***(i)*** established democracies with historical and constitutional links to India and whose practices have been frequently relied on in the past; ***(ii)*** neighbouring jurisdictions; ***(iii)*** jurisdictions that have encountered similar issues as raised in the present *lis*; ***(iv)*** jurisdictions that have vested

within the concerned bodies, comparatively stronger powers, that may be relevant to India;

(b) The use of money and other material benefits to influence voters is somewhat a universal phenomenon and States have put into place different measures to address electoral inducements. A table has been annexed depicting provisions similar to Sections 171(b) and 171(e) of IPC (Sections 170 and 173 of the BNS 2023) with 16 jurisdictions viz., Australia, Bangladesh, Brazil, Canada, Indonesia etc.;

(c) Reference has been made to Article 25(b) of the International Convention on Civil and Political Rights, 1966, Article 7(3), 15(a), 30(1) & (2) of the United Nations Convention on Corruption 2003, among others;

(d) Across jurisdictions, three approaches to monitoring and enforcing compliance with election laws are most commonplace – ***(a)*** offences committed during election time are addressed under general criminal law that too mostly after the election has concluded; ***(b)*** ad hoc or temporary institutional responses; and ***(c)*** dedicated and structured election-period enforcement mechanisms, which may take the shape of specialised teams institutional frameworks aimed at

preventing and detecting electoral offences contemporaneously;

(e) It is acknowledged that the approaches referred to *supra* are not mutually exclusive and instead many jurisdictions combine features of all the three approaches to constitute a mechanism that fits their requirements.

(f) The next aspect which the note focusses on the procedure in place with respect to withdrawal of prosecution since that is one of the primary concerns highlighted by the Election Commission. It is noted that judicial oversight at the stage of withdrawal or discontinuance exists across a number of jurisdictions, however the degree of oversight varies. A chart has been provided which is extracted as under:-

Sl.No.	**Jurisdiction**	**Authority Responsible**	**Role of the EC/Equivalent Body**
1.	Australia	Commonwealth Director of Public Prosecutions	None
2.	Bangladesh	Public Prosecutor	None
3.	Brazil	Electoral Prosecutor (Ministerio Publico Eleitoral)	None
4.	Canada	Director of Public Prosecutions (DPP)	None
5.	England and Wales	Crown Prosecution Service	None

6.	Indonesia	Public Prosecutor (within Gakkumudu framework)	Involved in prosecution and hence, has a role
7.	Kenya	Director of Public Prosecutions	None
8.	Malaysia	Attoney General as Public Prosecutor	None
9.	Maldives	Office of the Prosecutor General	None
10.	Mexico	Specialised electoral Prosecutor (FISEL)	None
11.	Nepal	Government Attorney	None
12.	Nigeria	Attorney-General (Federal/State)	None
13.	Pakistan	Public Prosecutor	None
14.	Phillipines	Prosecutor	Involved in the decision to prosecute and hence, has some control
15.	Singapore	Public Prosecutor	None
16.	Sri Lanka	Attorney General	None

(g) Regarding the input from election authorities, it is submitted that various countries adopt the model where Courts having the final authority over the withdrawal of cases, but the said decision being informed by consideration of election management by a defined institution, apart from prosecutorial assessment. Instances are drawn from Indonesia and the Philippines. It is further submitted that this approach would be consistent with this

Court's practice of developing '*context sensitive, indigenous constitutional solutions*' strengthening procedural accountability without disturbing constitutional boundaries, such as in the instant case, would advance the commitment to safeguarding free and fair elections. Let us now, in the light of the above discussion, examine each of these suggestions.

17. Let us now, in the light of the above discussion, examine each of these suggestions.

17.1 Regarding seizure of cash, the SOPs and the Commission's instructions specify that the reasons leading the authorities to believe that the purpose for which an individual is carrying or having cash in excess of Rs.50,000/- in his possession, should be based on 'reliable information' that the same is intended to be used for purposes that would compromise election integrity, such as distribution among votes, bribing official, etc.

It is imperative to take note of the procedures in this regard mentioned in the SOP of the EC. Relevant parts thereof are extracted under:

Regarding flying spot squads

"4. Whenever a complaint regarding distribution of cash or liquor or any other item of bribe or regarding movement of antisocial elements or arms and ammunition, is received, the FS shall reach the spot immediately. In case of suspicion of commission of any crime, the incharge Police Officer of FS shall seize cash or items of bribe or other such items, and gather evidence and record statement of the witnesses and the persons from whom the items are seized and issue proper Panchnama for seizure as per the provisions of CrPC to the person from whom such items are seized. He shall ensure that case is submitted in the Court of competent jurisdiction within 24 hrs. The Magistrate of the FS will ensure that proper procedure is followed and there is no law and order problem.

6. The entire proceeding shall be video recorded. The Incharge Officer of FS shall also file complaints/F.I.R. immediately against (i) the persons, receiving and giving bribe; and ii) any other person from whom contraband items are seized, or (ili) any other antisocial elements found engaged in illegal activity. The copy of the complaint/FIR shall be displayed on the notice board of the R.O. for public information and be sent to the DEO, General Observer, Expenditure Observer and Police Observer. The Expenditure Observer shall mention it in the Shadow Observation Register, if it has links with any candidate's election expenditure."

Regarding Static Surveillance Teams:

"4. The checking by the SSTs shall be done in the presence of an Executive Magistrate and shall be video-graphed. No such checking shall take place without the presence of Executive Magistrate. The video/CCTV record with an identification mark of date, place and team number shall be deposited with the R.O, on the next day who shall preserve the same for verification by the Commission at later point of time. It may also be widely advertised by the DEO that any member of the public can obtain a copy of the video/ CCTV record by depositing Rs. 300/-.

7. During checking, if any cash exceeding Rs. 50,000/- is found in a vehicle carrying a candidate, his agent, or party worker or carrying posters or election materials or any drugs, liquor, arms or gift items which are valued at more than Rs. 10,000/-, likely to be used for inducement of electors or any other illicit articles are found in a vehicle, shall be subject to seizure. The whole event of checking

> and seizure is to be captured in a video/CCTV, which will be submitted to the Returning Officer, everyday.
> 9. During checking, if there is any suspicion of commission of crime, the seizure of cash or any item shall be done by the incharge Police Officer of the SST as per provision of CrPC in presence of the Executive Magistrate. The Police Officer in charge of SST shall file complaint/FIR in the Court, having jurisdiction, within 24 hours."

A perusal of the above extracted portions of the SOPs both in regard to the Flying Squads (FS) and the Static Surveillance Teams (SST) reveals that there has to be suspicion of commission of any crime when the flying squad takes the call to seize cash. Panchama has to be prepared as per the CrPC, and it has to be video-graphed. Similarly, for the static surveillance teams, the presence of the Executive Magistrate, video-graphing with safeguards in place regarding its originality by time and date stamp. This is to be subsequently verified by the Commission. Also, any member of the public can obtain such video-graphed evidence by depositing a specified sum. Still further for a particular event of cash being in possession, exceeding ₹ 50,000 the term used is "likely to be used for inducement of electors". When any seizure is done, the complaint regarding the same is to be filed within 24 hours. All of these aspects taken together, to our mind, revealed a requirement that although the freezing indicates sufficient leeway for subjective satisfaction, the likeliness of the material being used for untoward

purposes has to be reduced in writing by the concerned officer, so does the suspicion of commission of crime leading the flying squad to seize articles/cash. This recording of reasons serves to demonstrate the reasons as to why such a procedure was resorted to. Collectively, all of these aspects meet the suggestion of the learned *amici* that hardships should not be caused to the common citizens. It goes without saying that once reasons are to be recorded, an essential aspect thereof shall be the information that led the team to spring into action against a particular incident.

17.2 The second suggestion is with regard to real-time tracking of each seizure made by the teams of the EC, demonstrating digitally at which stage each seizure is at. This is in furtherance of transparency.

This suggestion appears to be justified. Each seizure will have to be given an identification number through which its stage can be tracked by interested people, medical personnel, activists, etc. Implementation across the board, however, is not something that can be directed. Agreeing with the suggestion, as made, by the EC may bring this out first as a private project and then in stages across India, keeping in view the logistical requirement of maintaining such a live E-Ledger.

17.3 With respect to effective legislation and prosecution, the EC itself has made certain suggestions. They are to the effect that **(a)** The investigating officer shall make all possible endeavors to complete investigations within one year; **(b)** through the nodal officer of the ED such investigating officer shall submit for perusal and in furtherance of superintendence by the EC, quarterly reports regarding such investigation after approval of the senior superintendence of the police/ Deputy Commissioner of the concerned area; **(c)** when such timeline of completion of investigation i.e. one year can not be complied with, the reasons therefor shall be duly recorded and forwarded to the EC; **(d)** in every district there shall be at least one or more designated special courts for dealing with these cases on a fast-track basis. Endeavor shall be made to complete trial in regard thereto within complete trial within one year from filing of the chargesheet.

Timely completion of the investigation is a recognized part of the Criminal Justice System. The under investigation tag can not be allowed to hang endlessly upon the heads of individuals. This becomes all the more important in the context of election-related matters where the public has a right to know, whether of not the candidate of their choice has indulged in corrupt practices or

inducements which would be deemed illegal, unethical, unsavory and unacceptable. At the same time, a candidate who has not indulged in any such practice does not deserve to be maligned, possibly by his opposing concept of being under investigation by the EC. By extension of this very same logic, suggestions (b) and (c) also appear to be in line with the established principles of law. Regarding suggestion (d), which is with respect to the designation of a special court to deal with cases concerning MPs / MLAs, we find there to be merit in this suggestion. This is for the reason that the electoral process is once in a five-year occurrence and it is imperative that before the next election cycle, the cases instituted in the previous election cycle are taken to their logical conclusion. This goes a long way in informing the public regarding the bona fides of a particular candidate. Once the public has all information about a candidate, only then can they make an informed decision, the next time around. In so far as a timeline for disposal of such cases is concerned, however, while it is true that all efforts should be made for expeditious disposal, the imposition of a standard timeline would be ineffective and in ignorance of ground realities of the criminal justice system. Ordered accordingly. Hopefully the

respective High Courts shall take adequate measures in this regard.

17.4 The withdrawal of cases is indeed an issue of importance raised in these proceedings. We have already extracted supra the stand of the EC supra in para 14. It is suggested that when the concerned government is desirous of withdrawing a particular case, the reasons therefore and the material supporting such decision should be sent to the Chief Electoral Officer of the State, who shall give their view thereon within a fixed time period of twelve (12) weeks. The views of the public prosecutor should also be ascertained. After all these steps are complied with, the material gathered should be placed before the High Court, and it is then the Court that should take a decision thereon.

As already noted above, the stand of the EC is that cases should not be withdrawn as the norm. It is not a hidden truth, however, that changes in political dispensation often lead to such decisions being taken. Needless to say, such practice is entirely anti-thetical to the spirit of an unbiased criminal justice system, which is a hallmark of a constitutionally governed republic, specially one like India where the separation of powers is clearly recognized, and as far as possible, enforced. This Court, in ***State of Kerala v. K.***

***Ajith*,**[17] formulated the principles regarding withdrawal of cases under Section 321 CrPC. They are extracted as under:

> "25. The principles which emerge from the decisions of this Court on the withdrawal of a prosecution under Section 321CrPC can now be formulated:
> 25.1. Section 321 entrusts the decision to withdraw from a prosecution to the Public Prosecutor but the consent of the court is required for a withdrawal of the prosecution.
> 25.2. The Public Prosecutor may withdraw from a prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice.
> 25.3. The Public Prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution.
> 25.4. While the mere fact that the initiative has come from the Government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the Public Prosecutor was satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons.
> 25.5. In deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature. Before deciding whether to grant its consent the court must be satisfied that:
> (a) The function of the Public Prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes;
> (b) The application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law;
> (c) The application does not suffer from such improprieties or illegalities as would cause manifest injustice if consent were to be given;
>
> (d) The grant of consent subserves the administration of justice; and
> (e) The permission has not been sought with an ulterior purpose unconnected with the vindication of the law which the Public Prosecutor is duty-bound to maintain.
> 25.6. While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinising the nature and

[17] (2021) 17 SCC 318

> gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated.
> 25.7. In a situation where both the trial Judge and the Revisional Court have concurred in granting or refusing consent, this Court while exercising its jurisdiction under Article 136 of the Constitution would exercise caution before disturbing concurrent findings. The Court may in exercise of the well-settled principles attached to the exercise of this jurisdiction, interfere in a case where there has been a failure of the trial Judge or of the High Court to apply the correct principles in deciding whether to grant or withhold consent."

In ***Ashwini Kumar Upadhyay v. Union of India***[18], a Bench of Three-Judges had directed that cases concerning sitting Members of Parliament and Members of Legislative Assemblies should be withdrawn only with the leave of the High Court. Undoubtedly, this suggestion appears to be a great leap in favour of impartiality; in effect, this would place candidates for elections at the same pedestal as elected MPs and MLAs in relation to criminal prosecutions against them. To our mind, this indicates to candidates and also prospective candidates that indulging in unsavoury practices is not a matter of triviality. Once prosecution is initiated against them, change in political dispensation simpliciter will not let them of the hook. In other words, a Constitutional democracy expects from its representatives. The same decree of moral rectitude and uprightness.

[18] (2021) 20 SCC 599

DIRECTIONS AND SUGGESTIONS

18. Keeping in view the above, i.e., the discussion made above, reference to case laws, the detailed affidavits of the parties, and the submission of the learned *amici*, this Court issues the following directions:

a. When a seizure of cash or other assets takes place, the authority affecting the seizure, must, within 24 hours, report the same to the District Magistrate/Additional District Magistrate/Court having competent jurisdiction along with written reasons disclosing the prima facie nexus between the cash or other asset seized and the suspected electoral offence.

b. When FIRs are registered, the Investigation Officer (IO) entrusted with the investigation thereof shall make every possible endeavour to complete investigations thereinto, within a year, from the date of registration. If this timeline is exceeded, reasons therefor shall be recorded and communicated to the Election Commission of India;

c. The investigating officer shall submit a quarterly status report regarding the investigation to the EC through the Nodal Officer, after due approval of the Senior Superintendent of

Police/the Deputy Commissioner of Police of the concerned district;

d. When Static Surveillance Teams (SST) during checks find money in excess of Rs. 10 lacs, information about the same shall be forwarded to the income tax authorities.

e. All endeavours ought to be made for expeditious disposal of cases against candidates/sitting MPs/MLAs keeping in view the recurrent nature of elections. For this purpose, it is directed that the High Courts may, by following respective procedures, designate courts for the purposes of prompt hearing and disposal of such cases.

f. For withdrawal of cases against candidates in a particular election cycle, the approval of the concerned High Court is mandatory in view of ***K.Ajith (supra)*** and ***Ashwani Kumar Upadhyay (supra)***.

g. The affidavit of the EC that details the number of cases pending in connection with the Lok Sabha (2024) and Assembly elections (2019-25), shows quite a large percentage of pendency. The concerned courts should make all efforts to take the cases to the logical conclusion with utmost expedition.

19. Let a compliance report regarding these directions be filed by the Election Commission of India and the respective State Governments on or before November 18, 2026.

.....J.
(SANJAY KAROL)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI
AUGUST 17, 2026