

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

F.NO. 4/2012-SDR

Dated:- 17th September, 2012

To,

The Chief Electoral Officers of
all States/ Union Territories

Sub: Clarification on initiating action against a person violating election laws-
regarding.

Sir/ Madam,

There are provisions in the RP Act 1950, RP Act 1951 and Indian Penal Code etc. dealing with offences in regard to making false declaration in connection with inclusion or exclusion of any entry in or from an electoral roll for electoral offences in connection with elections and for breach of official duty by officers/ persons involved in connection with preparation of electoral rolls and for conduct of elections. Any violation of these provisions is punishable under the relevant legal provisions. For this the election authorities (EROs, ROs, and DEOs etc.) have to initiate action against the persons found guilty of such offences by filing complaints before the competent Court in the case of non-cognizable offence, and by getting FIR registered in the case of a cognizable offence.

It has come to the notice of the Commission that due to inordinate delay in initiating action by the election authorities for violation of election laws, the competent Courts sometimes refuse to entertain the criminal proceedings when filed after the period of limitation prescribed under section 468 read with section 469 of the CrPC. (extract enclosed)

In some cases, referring such cases to other authorities for advice has led to delay in initiating action. In order to avoid such procedural delays, the Commission hereby directs all election authorities that whenever they consider the necessity, or

are directed by the Commission, to initiate any criminal proceedings in any matter, the election authority concerned should directly move the competent court, in the case of non-cognizable offences and the concerned police authorities in case of cognizable offences without approaching/ moving through the Directorate of Prosecution or any other such authority.

The above direction of the Commission shall be brought to the notice of all election authorities for their information and necessary action, whenever required.

Kindly acknowledge receipt.

Yours faithfully,

(Ashish Chakraborty)
Secretary

Extracts from Code of Criminal Procedure, 1973

CHAPTER XXXVI : LIMITATION FOR TAKING COGNIZANCE OF CERTAIN OFFENCES

467. Definitions:-For the purposes of this chapter unless the context otherwise requires, "period of limitation" means the period specified in Section 468 for taking cognizance of an offence.

468. Bar to taking cognizance after lapse of the period of limitation:-(1)Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be :-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

469. Commencement of the period of limitation:- (1)The period of limitation, in relation to an offender, shall commence -

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier

(2) In computing the said period, the day from which such period is to be computed shall be excluded.