

Sheopat Singh

Vs

Ram Pratap

Civil Appeal No. 558 of 1964

(Subba Rao JJ)

28.08.1964

JUDGEMENT

SUBBA RAO J. –

The appellant, Sheopat Singh, and two others, namely Ramchander Chowdhary and Surja Ram, contested the election for a seat in the Rajasthan Legislative Assembly from Hanumangarh constituency. The appellant polled 31,501, Ramchander Chowdhary, 18,217 and Surja Ram, 1,285 votes. The appellant was declared elected. The respondent, one of the electors, filed an election petition under s. 81 of the Representation of the People Act, 1951 hereinafter called the Act, for setting aside the election of the appellant on various grounds. The Election Tribunal, by its order dated June 18, 1963, held that the respondent had failed to substantiate the allegations made against the appellant and, on that finding, dismissed the petition. Against the said order, the respondent preferred an appeal to the High court of Judicature for Rajasthan at Jodhpur. A Division Bench of that Court heard the appeal and came to the conclusion that the appellant was guilty of a corrupt practice under sub-s. (4) of s. 123 of the Act in publishing a poster, Ex. 3, which conduct a statement of fact about the personal character and conduct of Ramchander Chowdhary, one of the candidates in the election. On that finding, it set aside the order of the Election Tribunal and declared the election of the appellant void. The appellant, by special leave, has preferred this appeal to this Court against the said order of the High Court.

Learned counsel for the appellant raised before us two points, namely, (i) that Ex. 3, the poster, published and circulated by the appellant is not hit by the provisions of s. 123(4) of the Act, and (ii) that the election petition should have been dismissed under s. 85 of the Act on the ground that it had not impleaded Hariram, another duly nominated candidate who withdrew his candidature before the election and against whom allegations of corrupt practice were made.

The first argument of the learned counsel is elaborated thus. Under s. 123(4) of the Act the burden is upon the person who seeks to impute corrupt practice described thereunder to establish all the ingredients of corrupt practice laid down therein. He has not only to prove that the elected candidate published a statement of fact, which is false, in relation to the personal character or conduct of another candidate, but also that he believed it to be false or he did not believe it to be true. He has to prove further that the said statement was calculated to prejudice the prospects of the other candidate's election, that is to say that the voters had the knowledge that the corrupt practice or practices were attributed to him and because of that knowledge did not vote for him. In the instant case, Ex. 3 contained only general allegations against the misrule of the Congress Party and even if the statements can be related to Ramchander Chowdhary, there is no evidence that the voters know that it was he who was referred to in the poster.

The first question is whether Ex. 3 is hit by the provisions of 123(4) of the Act, Before we consider the terms of the document it will be convenient and useful to notice the ingredients of the section. It reads :

Section 123(4) : The publication by a candidate or his agent or by another person, with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

The sub-section may be dissected into the following component parts relevant to the present enquiry : (1) the publication of any statement of fact by a candidate; (2) that fact is false; (3) the candidate believes it to be false or does not believe it to be true; (4) the statement is in relation to the personal character or conduct of the candidate; and (5) the said statement is one being reasonably calculated to prejudice the prospects of the other candidate's election.

An election is the expression of a popular will. It shall be so conducted that the popular will shall be reflected on the basis of the policy of the party which the candidate represents and on his merits. That object cannot be achieved unless freedom of speech is assured at the election and the merits and demerits of a candidate, personal as well as political, are prominently brought to the notice of the voters in the constituency. At the same time it shall not be allowed to degenerate into a vilification campaign aimed at bringing down the personal character or conduct etc, of the candidates without any basis whatsoever. The sub-section is designed to achieve this dual purpose, namely, freedom of speech and prevention of malicious attack on personal character or conduct etc. of rivals. The purity of an election is sought to be maintained without affecting the freedom of expression. The sub-section prohibits any statement of fact in relation to personal character or conduct of any candidate, which is not only false but also the candidate making it either believes it to be false or does not believe it to be true. It implies that a statement of fact relating to the personal character or conduct etc. of a candidate can be made, if it is true. Even if it is false, the candidate making it is protected, unless he makes it believing it to be false or not believing it to be true, that is to say statements which are not true made bona fide are also outside the ambit of the provision. To be within the mischief of sub-s. (4) of s. 123 of the Act such a statement shall satisfy another test, namely, it shall be a statement reasonably calculated to prejudice the prospects of the election of the candidate against whom it is made. The word "calculated" means designed : it denotes more than mere likelihood and imports a design to affect voters. It connotes a subjective element, though the actual effect of the statement on the electoral mind though the actual effect of the statement on the electoral mind reflected in the result may afford a basis to ascertain whether the said statement was reasonably calculated to achieve that effect. The emphasis is on the calculated effect, not on the actual result, though the latter proves the former. But what is important to notice is that it is not necessary to establish by positive evidence that the voters, with the knowledge of the contents of the statement, were deflected from voting for the candidate against whom the statement was made.

As considerable stress is laid upon the burden of proof, reference may be made to the judgment of this Court in *T. K. Gangi Reddy v. M. C. Anjaneya Reddy* ((1960) 22 E.L.R. 261, 268). In that case, dealing with the question of burden of burden of proof, this Court observed :

"Burden of proof has two distinct meanings, viz., (i) the burden of proof as a matter of law and pleading, and (ii) the burden of proof as a matter of adducing evidence The first remains constant and the second shifts."

The burden of proof as a matter of law and as a matter of adducing evidence is on the respondent, who seeks to get the election set aside, to establish corrupt practice; but, if he adduces sufficient evidence, as in this case we are satisfied he has, the burden of adducing evidence shifts on to the appellant. That apart when the entire evidence has been adduced in the case the question of burden of proof becomes merely academical. In this case the High Court considered the relevant evidence and came to the conclusion that the respondent has proved his case. No error has been committed by the High Court in this regard.

One of the important ingredients of the sub-section is that the statement shall be made in relation to the personal character or conduct etc. of another candidate. What is the meaning of the expression "personal character or conduct" ? This question has been considered by this Court in two decisions. In Gangi Reddy's case ([1960] 22 E.L.R. 261), dealing with the said expression, this Court observed at p. 266 thus :

"The words 'personal character or conduct' are so clear that they do not require further elucidation or definition. The character of a person lay ordinarily be equated with his mental or moral nature. Conduct connotes a person's actions or behaviour What is more damaging to a person's character and conduct than to state that he instigated a murder and that he was guilty of violent acts in his political career ?"

in Inder Lal v. Lal Singh ([1963] Supp. 3 S.C.R. 114, 122), this Court again; adverting to this aspect, observed thus :

"In discussing the distinction between the private character and the public character, sometimes reference is made to the "man beneath the politician" and it is said that if a statement of fact affects the man beneath the politician it touches private character and if it affects the politician, it does not touch his private character."

After referring to obvious statements which affect the private character of a person, this Court proceeded to state :

"But there may be cases on the border-line where the false statement may affect both the politician and the man beneath the politician and it is precisely in dealing with cases on the border-line that difficulties are experienced in determining whether the impugned false statement constitutes a corrupt practice or not."

It is not necessary to refer to other decisions cited at the Bar.

The boundary between personal character and conduct and public character and conduct is well drawn, though, sometimes, it is thin. Sometimes a statement may appear to touch both the candidate's personal as well as public character. But a deeper scrutiny enables a court to ascertain whether there is a reflection on his personal character or on his public character. To illustrate : suppose a statement is made to the effect that a minister has taken a bribe in making an appointment or in giving a contract. He has taken the bribe in the course of discharging his duties as a minister, but his act of taking bribe does not solely reflect on his public duty. It reflects on his moral and mental fibre. His position as a minister may have given him the opportunity to take a bribe but the taking of the bribe is mainly attributable to his deficiency in personal character. We, therefore, hold that any statement made, which reflects on the mental or moral character of a person is a reflection on his personal character, whereas any criticism of a person's political or public activities and

policies is outside it. The fact such a statement is made in the course of a political or public activity does not make it any the less a statement in relation to his personal character or conduct. It is a question of fact in each case under what category a particular statement falls.

Now let us have a look at the terms of Ex. 3. It is a big poster in which some portions have been printed in bold letters. There is a large size photo of the appellant on the end. The poster runs thus :

"Bounties of the Cement of the Rajasthan Canal. -

Cinema of seven lakhs in Ganganagar and magnificent kothis in the neighbourhood of Jaipur's "Rajmahals".

Open loot in liquor contracts by Gandhi's devotees and improper transfer of lands. Hanumangarh's gentlemanliness, honest and public welfare faced with the corrupt, permit-loving and "police-raj" of the Congress.

Give proof of bravery, modesty and selflessness by giving vote to Sheopatsingh Makkasar who would bravely sacrifice himself for the glory and prestige of Hanumangarh.

Election (Ears of corn and sickle) Symbol

Vote for ears of corn and sickle, the symbol of prosperity, progress and popular rule."

Learned counsel for the appellant contends that the poster does not overstep the limits of reasonable criticism of the opposite candidate and that it says only generally that under the Congress rule many corrupt practices are going unheeded and that if the appellant is elected he would rectify the defects and restore the glory and prestige of Hanumangarh. It is not necessary in this case to ascertain whether all the misdeeds narrated in the poster refer to Ramchander Chowdhary, for we are satisfied that the first paragraph clearly and reasonably refers to his activities. The vernacular word for "bounties" is "barkatain". The first paragraph of the poster means that the cinema theatre of Rs. 7 lakhs in Ganganagar was the bracket of the cement of the Rajasthan Canal. That means by misappropriating the cement of the Rajasthan Canal the cinema theatre worth Rs. 7 lakhs was built. Ex facie the poster does not say who misappropriated the cement and to whom the cinema belonged. But the words in the context of the well-known facts can reasonably lead only to one inference. At the crucial time, Ramchander Chowdhary was the Minister-in-charge of the Rajasthan Canal Project. During the election at Ganganagar a cinema theatre known as Adarsh Theatre was being put up. It is admitted by the appellant and his agent that the theatre referred to in the poster is the Adarsh Theatre and it belongs to Ramchander Chowdhary and his sons. In the context, therefore, it is manifest that the poster meant to convey the idea that Ramchander Chowdhary misappropriated the cement of the Rajasthan Canal, of which he was in charge, and built a big theatre in the name of his sons. That is to say the act of misappropriation was in clear terms attributed to Ramchander Chowdhary. To make a statement that a minister has misappropriated the cement in his charge and built a theatre from out of the proceeds is certainly a reflection on his personal character and conduct. Learned counsel's contention that it may mean that somebody other than the Minister might have misappropriated the cement and sold it in the black market and that the Ganganagar cinema theatre might have been built from and out of the cement purchased therefrom. This is rather an unnatural rendering of the clear recitals in the first paragraph of the poster. The word "barkatain" shows that Rs. 7 lakhs was derived from the cement for the canal. If the minister or his sons purchased cement in the blackmarket, the building cannot be the bounty of the cement of the

Rajasthan Canal. In that event only the cement misappropriated by somebody would have been used for building the cinema. The cost of building the theatre would have been borne by the minister and his sons not out of the gift made from the cement of the Rajasthan Canal. We are, therefore, clearly of the opinion that the first paragraph of the poster is a direct reflection on the personal character or Ramchander Chowdhary.

Even so, learned counsel for the appellant argues that it has not been established that the appellant made the statement believing it to be false or not believing it to be true. P.W. 4, Dharam Pal, under whose supervision the cinema theatre was built, stated that 4,000 bags of cement were used in its construction and that 2,000 of these were obtained from the cement factory of Sawai Madhopur, 1,585 bags from the cement factory at Charkhidadri and the remaining 415 bags were purchased locally against permits issued by the department concerned. This evidence has been accepted by the High Court. On the other hand, not only the appellant did not adduce any evidence to rebut the evidence adduced by the respondent but the appellant as well as his witness. D.W. 7, admitted in the witness-box that Ramchander Chowdhary was an honest man. In this state of evidence, the respondent, on whom the burden of proof lay, discharged that burden and the High Court rightly found in his favour.

The next facet of the argument is that there is no evidence in the case that the said statement was one reasonably calculated to prejudice the prospects of the election of Ramchander Chowdhary. It is asked, how could the statement deflect the voters from voting in favour of the said Ramchander Chowdhary, if they did not know that the cinema theatre that was being built in Ganganagar belonged to Ramchander Chowdhary or his sons? It is further said that there is no evidence in this case that all or any of the voters knew the fact that the cinema theatre belonged to Ramchander Chowdhary or his sons. Reliance is placed upon the decisions delivered in the context of libel actions. In *Nevill v. Fine Art and General Insurance Co. Ltd.* (L.R. [1897] A.C. 68) Lord Halsbury, L.C., accepted the principle that the questioned document should be taken in a defamatory sense by those to whom it was published according to the primary meaning of the language used in it. In *The Capital and Counties Bank Ltd. v. Groerge Henty & Sons* (L.R. (1882) 7 A.C. 741) for the purpose of ascertaining whether a statement was defamatory the test whether the circumstances in which the writing was published, reasonable men, to whom the publication laws made, would be likely to understand it in a libellous sense. In that case the House of Lords came to the conclusion that it did not. This test is relied upon in support of the argument that the voters should have known that the first paragraph of the poster referred to Ramchander Chowdhary, for without such knowledge, it could not have prejudicially affected Ramchander Chowdhary's chances in the election. We are not dealing with a libel action. We do not, therefore, propose to refer to similar cases on libel cited at Bar. We do not express any opinion thereon. We are only concerned with the express terms of s. 123(4) of the Act. The only question, therefore, is whether the said statement was reasonably calculated to prejudice the prospects of Ramchander Chowdhary's election. On behalf of the appellant it was not contended either before the Election Tribunal or before the High Court that the voters had no knowledge of the fact that the cinema theatre at Ganganagar belonged to Ramchander Chowdhary or his sons. That apart, as we have pointed out earlier, the object with which the statement was made is the crucial test. Here it is established that Ganganagar cinema theatre belonged to Ramchander Chowdhary's sons. It is proved that Ramchander Chowdhary was the minister-in-charge of the Rajasthan Canal. He was the only effective candidate against the appellant. The appellant's intention in making that statement was therefore obvious and that was to attack the personal character of Ramchander Chowdhary in order to prejudice his prospects in the election. He must have reasonably calculated that the voters, or at any rate the voters in and about the locality where the cinema theatre was being put up, had knowledge of the fact that it was being constructed

by the minister or his sons. It cannot also be said that when a big cinema theatre at a cost of Rs. 7 lakhs was being put up in Ganganagar, the voters in and about that place would not have known about the ownership of that building. The fact that the building was brought in for attacking the personal character of Ramchander Chowdhary, a rival candidate, clearly indicates that the appellant knew that the voters had knowledge of its ownership and expected that it would create the impression which it manifestly intended to convey. On these facts, of if the High Court held that the statement was reasonable calculated to prejudice the rival candidate's prospects in election, we cannot say that the finding is not supported by evidence or admitted facts placed before the High Court. It was reasonable inference from the facts found by the High Court. We, therefore, hold that Ex. 3 is hit by s. 123(4) of the Act and, therefore, the High Court rightly held that the appellant was guilty of corrupt practice.

To appreciate the second contention same facts may be recapitulated. Hariram, the father of the appellant, was one of the candidates who stood for the election. His nomination paper was held to be valid. But, later on, he withdrew his candidature. In the election petition it was stated that the appellant got printed from Iqbal Printing Press, Sri Ganganagar, hundreds and thousands of posters and leaflets containing grossly libellous and highly defamatory imputations against Ramchander Chowdhary and that the appellant himself and through his workers and supporters got them published by affixing them at conspicuous places in every village of the constituency and freely distributed them among the electors. In one of the annexures the names of the distributor of the posters and leaflets are given as Sheopat Singh, the appellant, and his father, Hariram, among others. But there is no allegation that Hariram published the statement believing it to be false or not believing it to be true.

Under s. 82 of the Act a petitioner shall join as respondent to his petition any other candidate against whom allegations of any corrupt practice are made in the petition. Under s. 85 of the Act, "if the provisions of s. 82 have not been complied with, the Election Commission shall dismiss the petition". Assuming that Hariram was a candidate within the meaning of s. 82 of the Act, the question is whether allegations of any corrupt practice were made against him in the petition. The only allegation made was that the appellant got published through him and others the said statement; but there was no allegation that Hariram believed the statement to be false or did not believe it to be true. In the absence of any such averment, it cannot be held that there was any allegation of any corrupt practice within the meaning of s. 82(b) of the Act against Hariram. In that event, as there was no allegation of a corrupt practice against Hariram, the penal provisions of s. 85 are not attracted. In this context a novel argument has been advanced before us. Publication with guilty knowledge under s. 123(4) of the Act, the argument proceeds, is a composite act and it involves two elements, namely, (i) the statement of fact, and (ii) its publication; and, therefore, all persons who take part in one or other of the said elements will be guilty of the corrupt practice, even though some of them have and others do not have the guilty knowledge. If this argument be accepted, not only the person who makes a false statement of fact and gets it published through his servant, but his innocent servant who mechanically obeys the order of his master would be guilty of a corrupt practice. This contention is obviously untenable. Under s. 123(4) of the Act mens rea is a necessary ingredient of the corrupt practice and the person who publishes a statement, whether he is the author of it or not, does not commit a corrupt practice, unless he has the requisite knowledge. The subsection does not accept the doctrine of constructive knowledge. The High Court has correctly held that the petition was not liable to be dismissed on the ground that Hariram was not included as respondent.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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