

Om Prakash

Vs

Lalchand and Another

Civil Appeal No. 32 of 1969

(A. N. Ray K. S. Hegde JJ)

14.08.1969

JUDGMENT

RAY, J. -

1. This is an appeal against the judgment and order, dated November 19, 1968 of the High Court of Punjab and Haryana at Chandigarh dismissing the election petition of the appellant.

2. The appellant contested the Assembly seat from Ellenabad Constituency in the District of Hissar in the mid-term election held in May, 1968. The appellant challenged the election of Lalchand, the first respondent. The other defeated candidate in the election was the second respondent Prithvi Raj. The appellant obtained 15,485 votes. The successful candidate Lalchand secured 20,816 votes and Prithvi Raj obtained 5,726 votes. The polling was on 14 May, 1968. The results were announced on May 16, 1968.

3. At the hearing of the appeal counsel on behalf of the appellant canvassed three grounds. First, that the poster being Exhibit P. W. 1/1 was against the personal character of the appellant and therefore constituted a corrupt practice within the meaning of sub-section (4) of Section 123 of the Representation of the People Act, 1951 (hereinafter referred to as the Act). Secondly, the religious head Sat Guru Jagjit Singh of the Namdhari sect issued an appeal and a farman and thereby the provisions contained in sub-section (2) of Section 123 of the Act are attracted. Thirdly, the respondent Lalchand is guilty of corrupt practice of bribery by having given Rs. 20,000/- in cash to Prithvi Raj to contest the election.

4. I shall at the outset deal with the second and the third grounds. Counsel on behalf of the appellant pressed allegations contained in sub-paragraphs (b) and (d) of Paragraph 10 of the petition which were to the effect that Sat Guru Jagjit Singh issued a farman on or about 20 April, 1968, to the effect that it was the Guru's desire that all followers should oppose the appellant who was the son of Choudhury Devi Lal an enemy of Namdhari Guru. Further, if any of the followers did not obey the farman they would stand ex-communicated and their 'Prasad' would not be accepted in the Gurdwaras and that they would be spiritually censured by naming them as traitors of Dharma and be fallen persons in Sabha's of Namdharis. In sub-paragraph (d) of Paragraphs 10 of the petition it was alleged that on 21 April, 1968, the followers of Namdhari sect were called to Sant Nagar where a big Dewan of Namdharis was convened and Sat Guru Jagjit Singh made a speech there that he had taken a vow to defeat the appellant because he was the son of Choudhury Devi Lal whose family was an avowed enemy of Namdhari sect and that it should be treated as a vow by every Namdhari.

5. The respondent Lalchand denied that there was any meeting and further denied that there was any

farman.

6. The appellant, it may be stated, did not adduce any documentary evidence in support of the allegations. The appellant's entire case was based on oral evidence. The appellant relied on the oral testimony of P.W. 29 and P.W. 30. P.W. 29 Ram Dayal was formerly a member of the Punjab Legislative Assembly. Ram Dayal was formerly a member of the Congress Committee. He resigned from the Congress and contested the seat as an independent candidate against Choudhury Devi Lal and won the election in the year 1957. An election petition was filed by Choudhuri Devi Lal against the witness Ram Dayal. Ram Dayal was eventually unseated as a result of the decision of this Court. The witness Ram Dayal helped the respondent Lalchand in the election of 1967 and also in the mid-term election in the month of May, 1968. The witness Ram Dayal spoke of the Sat Guru Maharaj having exhorted the Namdharis to vote for Lalchand and warned them about the consequences if they failed to do so. The witness also spoke of the meeting at Rania village on 28 April, 1968. It is indeed strange and significant that Ram Dayal who supported respondent Lalchand and also attended meetings on his behalf came and gave evidence in favour of the appellant about the utterances of Sat Guru Jagjit Singh of the Namdhari sect. It is extremely unsafe and hazardous to rely on the uncorroborated and isolated oral testimony of such a person.

7. P.W. 30 Parma Nand Sharma spoke of the meeting at Sant Nagar on 21 April, 1968 and said that Guru Jagjit Singh spoke at the meeting and proclaimed that it was the duty of every Namdhari to vote for respondent Lalchand and anyone who violated the said Guru's direction would be excommunicated from the Panth. In Cross-examination the witness Parma Nand Sharma said that he came to give evidence in favour of the Congress because he was summoned to appear as a witness and therefore he spoke the truth. It is obvious that when one speaks truth one does not proclaim it. It is obvious that the witness in view of his antecedents wanted to sound truthful because he came forward to give evidence in favour of the appellant.

8. On behalf of the appellant reliance was placed on Exhibit P.W. 24/2 to show that there was a meeting on 21 April, 1968. The appellant relied on the diary entry of Gurbhajan Singh being Exhibit P.W. 24/2 bearing the date 21 April, 1968, in support of the contention that there was intrinsic evidence in the diary entry, that there was a meeting on 21 April, 1968 where Sat Guru Jagjit Singh spoke, and the said entry is in the following terms :

"Asa Diwar was recited at Sh. Jiwan Nagar. He (Sant Sahiba Singh) remained there for the whole day. He listened for some time difficulties of the Singhs who had collected there from outside at 7 p.m., he appeared before the Sadh Sangat assembled at Muhanawali Dharamsala Santnagar and made an appeal to the audience to cast their votes in favour of Ch. Lalchand independent candidate of Ellenabad Constituency and return him as successful candidate. Then he came back to Jiwanagar."

The diary entry is to the effect that the Sat Guru Jagjit Singh appeared before the Sant Nagar Assembly. The diary entry does not mention about any alleged utterance by Sat Guru Jagjit Singh at the said meeting.

9. Exhibits P.W. 24/1 and P.W. 24/2 are two pamphlets containing articles. Counsel for the appellant relied on the pamphlets to prove that the meeting was held where Sat Guru Jagjit Singh spoke. Both the articles were published after the election had been held on 16 May, 1968. These articles suffer from the vice of coming into existence under deliberate motive. We are unable to accept the oral

evidence that there was any meeting on 21 April, 1968, as alleged by the appellant and that Sat Guru Jagjit Singh spoke at the meeting, to cast votes in favour of respondent Lalchand under threat of divine displeasure and spiritual censure.

10. Counsel on behalf of the appellant contended that respondent Lalchand was guilty of offences under Section 123(1) of the Act by having given Rs. 20,000/- in cash to respondent Prithvi Raj to contest the election. There is no documentary evidence in support of the allegation. The oral evidence is that of P.W. 11, P.W. 12 and P.W. 13. Kanshi Ram, P.W. 11, said that he was Kumhar and there was meeting of the Kumhars on 30 March, 1968. It was decided that a Kumhar should be made a member of the Legislative Assembly. He also said that the Kumhars decided at the said meeting to put up respondent Prithvi Raj as a candidate. Kanshi Ram's further evidence was that Bawa Bir Singh paid Rs. 20,000/- to Prithvi Raj for election expenses. Kanshi Ram said that the payment was in the presence of respondent Lalchand. Jot Ram, P.W. 12 said that he was a Kumhar and his evidence was also that Bawa Bir Singh paid Rs. 20,000/- to Prithvi Raj in the presence of Lalchand. Rawat, P.W. 13 who was also a Kumhar said that Bawa Bir Singh paid Rs. 20,000/- to Prithvi Raj in the presence of Lalchand. The gist of the offence under sub-section (1) of Section 123 of the Act is that there has to be a gift by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person with the object of inducing a person to stand or not to stand as a candidate at the election. The elements required to constitute an offence are first, that the gift has to be by a candidate or his agent or by any other person. Secondly, the gift is to be with the consent of the candidate or his election agent and the third important element is that the gratification is to be made with the object, directly or indirectly, of inducing a person to stand or not to stand in the election, In the present case, there is no evidence to hold that any gift was made by the candidate or his agent or by any other person with the consent of the candidate, namely, the respondent Lalchand. Secondly, there is no evidence that gratification was made with the object of inducing the respondent Prithvi Raj to stand or not to stand as a candidate.

11. Counsel on behalf of the appellant contended that respondent Lalchand was guilty of corrupt practices as mentioned in sub-section (4) of Section 123 of the Act. The four elements in sub-section (4) are, first, that there has to be a publication by the candidate or his agent or by any other person with the consent of the candidate of any statement of fact. The second element is that the statement of fact is false and a candidate or his agent or any other person either believes it to be false or does not believe to be true. Thirdly, the publication is in relation to the personal character and conduct of any candidate. Fourthly, the statement is reasonably calculated to prejudice the prospects of that candidate's election.

12. P.W. 35, Lachhman Das was the Manager, Kwaliti Art Printers. He spoke of a poster which was printed in his Press. He identified the Exhibit P.W. 1/1 as a copy of the poster which was printed in his Press. He said that Exhibit P.W. 34/2 was a manuscript of Exhibit P.W. 1/1. He further said that the pamphlet was printed on the asking of Lalchand who was identified by the witnesses Muni Lal Azad and Jai Gopal Verma. Lachhman Das said that Muni Lal Azad and Jai Gopal Verma signed the manuscript Exhibit P.W. 34/2 in his presence. The further evidence was that 10,000 copies of the poster were printed in the said Press. It was suggested in cross-examination that the poster was printed after 14 May, 1968. P.W. 36 Jai Gopal Verma identified Exhibit P.W. 34/2 as a manuscript of the poster and further said that the witnesses identified Lalchand. Jai Gopal Verma proved his signature on Exhibit P.W. 34/2. Jai Gopal Verma said that Lalchand accompanied him to the Kwaliti Art Printers. Jai Gopal Verma further identified the signature of Muni Lal Azad. It was also suggested to Jai Gopal Verma that the poster was printed after 14 May, 1968. Muni Lal Azad, P.W.

37 said that he accompanied Jai Gopal Verma to Kwality Art Printers along with respondent Lalchand. He admitted his signature on Exhibit P.W. 34/2.

13. Counsel on behalf of the respondent Lalchand contended that Lachhman Das was neither the Printer nor the Publisher and that Lachhman Das joined the Press in the month of April, 1968. Lachhman Das was a disinterested person. He sent a copy of the poster to the Chief Electoral Officer. The letter to the Chief Electoral Officer Exhibit P.W. 34/1 was in a sealed cover. It was opened in this Court. It was proved by Muni Lal Jain, Accountant in the office of the Chief Electoral Officer. He proved that Exhibit P.W. 34/1 was the letter received from Kwality Art Printers on 2 May, 1968. The witness Muni Lal Jain further proved the receipt of said letter in the office of the Chief Electoral Officer, on 2 May, 1968. Muni Lal Jain identified the signatures of the clerks Jagmohan Saran Verma and D. N. Arora on Exhibit P.W. 34/1. Muni Lal Jain proved Exhibit P.W. 34/2 and Exhibit P.W. 34/3 which were the enclosures received along with Exhibit P.W. 34/1.

14. Counsel on behalf of the respondent Lalchand contended that the rubber stamp of the Chief Electoral Office bore the date 22nd May, 1968 and there was intrinsic evidence to show that the first digit 2 was smudged with carbon ink. This argument cannot be accepted because of the dominant reason that no such suggestion was made to the witness from the Electoral Office or any other witness on behalf of the appellant. If such a case had been made, the appellant would have had an opportunity of dealing with it.

15. Counsel on behalf of the respondent Lalchand contended that the receipt book and the bill register book of the Press were not produced. Lachhman Das, the Accountant of Kwality Art Printers was not asked to produce either the receipt book or the bill book. There was some dispute as to whether the signature of Lalchand on the manuscript poster Exhibit P.W. 34/2 was genuine or not. Ratan Lal Aggarwal, P.W. 58 said that the signature of the respondent Lalchand on Exhibit P.W. 34/2 was a genuine signature. The respondent's witness No. 2, A. S. Kapoor said that the signature of Lalchand on Exhibit P.W. 34/2 was not the same as the admitted signature of Lalchand and in the opinion of the witness the signature on Exhibit P.W. 34/2 was "the work of a person who was well skilled in the art of traced forgery". It is rare for two experts to agree in cases of disputed signature. The Court has to arrive at the conclusion in the light of the entire evidence. Jai Gopal Verma said that Lalchand appended his signature in his presence. That portion of the evidence of Jai Gopal Verma was not impeached in cross-examination. Lachhman Das, the Accountant of the Kwality Art Printers said that the pamphlet was printed at the request of Lalchand who was identified by Muni Lal Azad and Jai Gopal Verma. This portion of the evidence of Lachhman Das was also not challenged in cross-examination.

16. The poster on which the appellant relied is Exhibit P.W. 1/1. Exhibit P.W. 1/1 is as follows :

#"Appeal to the Voters of the Ellenabad Vidhan Sabha Constituency.Election (Rising Sun) SymbolBrothers :Just after one year election is being held. I hope I will get moresupport from public than before. Because you have seen the 'AduBadlu' policy of Ch. Pratap Singh son of Ch. Devi Dayal, Ch. DeviLal has put up the second son as a candidate because of this fear.The deeds of Om Prakash are well known to the public. Under theauspices of his father Ch. Devi Lal, he had been indulging insmuggling and today he is asking for votes in the name of his father.I hope the people will show the face of defeat to such an obnoxiousperson. My election symbol is rising sun, put stamp only on that. Yours Lal Chand Khod, Ellenabad Constituency."##

Ganga Dhar Sharma, P.W. 31, said that a memorandum of appeal in favour of respondent Lalchand was printed. He spoke of Exhibit P.W. 34/1. The appeal which was published and distributed is Exhibit P.W. 34/2 which is the same as Exhibit P.W. 1/1. This appeal leaves no room for doubt that there were allegations against the personal character and conduct of the appellant Om Prakash who was described as "having been indulging in smuggling". In the said appeal, it was further said that the appellant was an obnoxious person.

17. Various witnesses, P.Ws. 14, 16, 18, 19, 21, 23, 29, 30 and 31 gave evidence of the distribution and publication of the appeal. They identified Exhibit P.W. 24/1 which is the same as Exhibit P.W. 34/2 and the evidence of distribution and publication is overwhelming.

18. The evidence in the present case established beyond any measure of doubt first that Exhibit P.W. 1/1 which is the same as Exhibit P.W. 34/2 was published, secondly, that Lalchand got the same printed and published, thirdly, that the statement was in relation to the personal character and conduct of the appellant, fourthly, the statement is false and fifthly, the same was calculated to prejudice the prospects of the appellant's election.

19. For these reasons we are of opinion that the appeal is to be accepted on the ground that respondent Lalchand is guilty of corrupt practice under Section 123(4) of the Act.

20. The appeal is allowed with costs throughout and the election of the respondent Lalchand is declared void.

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