

Ramji Lal

Vs

Ram Babu Maheshwari and Another

Civil Appeal No. 2392 of 1968

(J. C. Shah, K. S. Hegde JJ)

21.08.1970.

JUDGMENT

HEGDE, J. -

1. This is appeal under Section 116-A of the Representation of the People Act (1951) (to be hereinafter referred to as the Act) from the judgment and order of the Delhi High Court, dated the 29th March, 1968, in Election petition No. 2 of 1967 on its file. The petition was brought by two electors. It was dismissed by the High Court. As against the order only one of the petitioners as come up in appeal.
2. The election petition arose from the election held for a seat to the Delhi Metropolitan Council from the Kalan Masjid constituency. The polling for the said constituency was held on February 19, 1967 and the result of the election was declared on February 22, 1967. In that constituency three persons contested; one Rajesh Sharma was the Congress nominee, the respondent Ram Babu Maheshwari was the Jan Sangh candidate and Z. R. Abbas was the Republican candidate. The respondent secured 7490 votes, Rajesh Sharma 5,277 votes and Abbas 3,203.
3. The defeated candidates have not come forward to challenge the validity of the election. On the other hand two electors from the constituency in question have challenged the election of the respondent primarily on two grounds. Those grounds are : that the returned candidate or his agents with his consent had distributed calendars like Annexure 'A' which amounted to a contravention of Section 123 (2) and (3) of the Act inasmuch as it was an exercise appeal to muslim voters for votes on the basis of a religious symbol. So far as the Contravention of Section 123(2) namely exercise of undue influence is concerned it was not pressed before the Trial Court not in this Court. Therefore we shall not consider that part of the case. The second ground urged against the respondents election was that he or/and his agents or/and other statements of fact which are false and which were either believed to be false or were not believed to be true in relation to the personal character and conduct of Rajesh Sharma.
4. The High Court has come to the conclusion that there is no satisfactory evidence to show that the publication of calendars similar to Annexure 'A' was done with by the respondent or with his consent. So far as leaflets similar to Annexure 'C' are concerned, it has held that there is not satisfactory proof of its publications much less that the same was published with the consent of the returned candidate.
- 5 The questions arising for decision in this case are essentially questions of fact. Their proof depends on oral evidence. Voluminous evidence has been adduced by the parties in this case in

support of their respective contention. The Trial Court after carefully examining their evidence has come to the conclusion that the petitioners have failed to establish the corrupt practices pleaded by them. This is essentially a finding of fact. The Court ordinarily does not interfere with the findings of fact reached by the High Court in an election petition particularly when the High Court comes to the conclusion that the corrupt practices pleaded are not established. Charge of commission of corrupt practice is akin to a charge of commission of an offence. No satisfactory ground is made out to persuade us to reopen the findings of fact reached by the High Court. The learned Trial Judge had the advantage of seeing the witnesses examined before him. That circumstances must have aided him in the appreciation of the evidence adduced. It is not said that he had ignored any material piece of evidence or his conclusion are unsupported by evidence. All that is aside on behalf of the appellant is that the conclusion reached by the Trial Judge on the basis of the evidence on record are not correct and that a different view of the evidence is reasonable. That is not a Sufficient ground to interfere with the finding reached by the Trial Court.

Having laid down the general line of approach in election cases, we shall not proved to examine the material on record relating to the two corrupt practices alleged. It is needless to say that the respondent vehemently denied the allegation made against him.

6. Now coming to Annexure 'A' it is a calendar depicting (1) Mecca Sharif and the Minaret in Madina Sharif; (2) Crescent; (3) the Holy Quran with the words accused Hasin Va Allai Haib' (the quotation form the Holy Quran) and along with the Rosary; (4) the words in Arbic Allah and another quotation (Aiyat) form the Holy Quran 'Lalil Illah Mohammad Rasool IIIIlla). In that calendar there was an appeal to vote fort the Jan Singh candidates. The Trial Court held that this calendar was published during the election. It also came to the conclusion that in that calendar there is an appeal to religious symbols. It is not necessary to go into the correctness of those findings. We shall assume that those findings are correct. But the question is whether there is an satisfactory proof to show that those calendars were published by the returned candidate ? It may be remembered that the election with which we are concerned is a part of the general election held in 1967. At Delhi it was as a combined election for the Lok Sabha, Metropolitan Council and for the Corporation. The Kalan Masjid constituency of the metropolitan Council was a part of the parliamentary constituency of Chandni Chowk. Included in the Kalan Masjid constituency, there were some corporation constituencies. It is also in evidence that Jan Sangh had put up candidates for the Chandni Chowk parliamentary constituency, Kalan masjid Metropolitan Council constituency as well as the Corporation constituencies that formed part of that constituency. Therefore unless there is satisfactory evidence to show that the calendars in question were published by or with the consent of the respondent, the election of the respondent cannot be invalidated. Hence we have to see whether there is satisfactory evidence to show that they were published by the respondent or with the consent.

7. The appellant's case is that on February 4, 1967, there was a meeting in the house of Shyam Kishore and at that meeting a decision was taken that calendars similar to Annexure 'A' should be distributed on the next day. The principal witness who speaks to this meeting is Jugal Kishore, P.W. 45. He is also the main witness to speak to the fact that leaflets similar to Annexure 'C' were distributed with the consent of the returned candidate. Therefore it is necessary to examine his evidence in some detail. According to P.W. 45, he was an active worker of the respondent during the election and he was also his counting agent. The respondent denied that he either his worker to his counting agent. The Trial Court has found that this witness was the counting agent of the respondent. There is conclusive evidence to show that he was one of the counting agents of the respondent. But the question still remains whether we can rely on the testimony of this witness.

According to his own showing he had known the contents of calendars and leaflets similar to Annexure 'A' and 'C' and yet took a prominent part in distributing them. The stranger part of his behaviour is that while before the election he actively worked for the respondent and did not hesitate to be an accomplice to the commission of election offence, immediately after the election he became a star witness for the petitioner who are seeking to get set aside the election of the respondent. This is a case of running with hare and hunting with the hound. It is clear that his loyalty was easily transferable. It was suggested during his cross-examination that he was siding with Rajesh Sharma because he wants Rajesh Sharma to put back his brother in service from the which he had been thrown out. P.W. 45's new-found enthusiasm for Rajesh Sharma's cause cannot be altruistic. It is quite clear that he can desert from camp to camp if it becomes worthwhile for him to do so. He appears to have a convenient memory as could be gathered from his cross-examination. The next witness who spoke about the publication of calendars similar to Annexure 'A' is P.W. 48, Munna Lal Gupta. He also tried to connect the respondent with the publication of those calendars. Admittedly he is a Congress worker and a close associate of Rajesh Sharma. The Trial Court was unable to place reliance on his testimony.

8. Some witnesses have been examined to show that the calendars in question had been distributed during the meeting held on February 15, 1967 and that meeting was addressed by several members including the respondent. The witnesses who speak to this are : P.W. 4, Abdul Rashid; P.W. 6, Hansraj; P.W. 11, Haji Lakhman; P.W. 12, Karim-uddin; P.W. 13, Qamar-uddin; P.W. 14, Abdul Majid; P.W. 15, Ahmad; P.W. 18, Mohamad Yusuf and some others. Their evidence has been carefully analysed by the Trial Court. They are shown to be interested witnesses. Many of them are the workers of Rajesh Sharma. Some of them are staunch supporters of the Congress party. There is no material contradiction between the evidence of some of these witnesses which are detailed in the Judgment of the Trial Court. It is true that some of these witnesses are seemingly disinterested. We come across such witnesses in election cases. An election generates bitter party feelings and the factious spirit continues even after the election. Therefore in evaluating the evidence adduced in election cases, a Judge has to be extremely careful. After taking an overall view of the evidence, the Trial Judge has come to the conclusion that it is unsafe to rely on the evidence of the witnesses who seek to connect the respondent with the publication of Annexure 'A'.

9. We also agree with the Trial Court that there is no satisfactory evidence to that Annexure 'B', a poster wherein there is a reference to Annexure 'A', was either published or at any rate published with the consent of the respondent.

10. This takes us to Annexure 'C'. In this Court, learned Counsel for the appellant strenuously pressed for our acceptance of the petitioner's evidence relating to the publication of leaflets similar to Annexure 'C'. Undoubtedly there are scurrilous statements in those leaflets. There is hardly any doubt that the facts mentioned there amount to an attack on the personal character and conduct of Rajesh Sharma. It was not contended before us that the document does not come within the scope of Section 123(4) of the Act. If we believe that such a document was published during the election either by the respondent or by someone with his consent, the election of the respondent will have to be necessarily set aside. But the question for our consideration is whether such a document was published during the election or if it was published whether it was published by the respondent or alternatively with his consent.

11. Now coming to those leaflets, there is no satisfactory evidence as to their printing. It is proved in which press the same was printed not is there any evidence to show as to who got it printed. It is shown in those leaflets that they were printed at "Kailash Printers, Delhi-6". The proprietor of that

press has been examined on behalf of the petitioners. He denied that those leaflets were printed at his press or that they were got printed by the respondent. The petitioner's Council did not seek the permission of the Court to cross-examine that witness to show that he had turned hostile to the petitioners. There is no reason why we should reject the testimony of this witness. The respondent has denied that he got those leaflets printed. No doubt not must reliance can be placed on the testimony of the respondent because he has given false evidence on several aspects of the case but the fact remains that the petitioners have not been able to prove that leaflets similar to Annexure 'C' were got printed at Kailash Printers and further that they were printed at the instance of the respondent.

12. The leaflets in question were issued under the signature of one Rishi Ram. One Rishi Ram was examined as R.W. 26. He denied that he got those leaflets printed or published. But there is evidence to show that there was bitter enmity between Rajesh Sharma and R.W. 26. Therefore there was a possibility of his getting those leaflets printed and he may even have distributed some of those leaflets. As R.W. 26 had serious enmity with Rajesh Sharma, he needed no prodding from the respondent for getting those leaflets printed or even for publishing them. If he had got those leaflets printed and published, on his own, as it appears to be likely, the respondent cannot be held responsible for the same.

13. The witnesses who speak to the fact that the leaflets in question were published with the consent of the respondent are P.W. 45, Jugal Kishore P.W. 21, Manmohan Sharma and P.W. 33, R. B. Gupta. We have already considered the evidence of P. W. 45 and come to the conclusion that it is unsafe to place reliance on his testimony. That was also the conclusion reached by the learned Trial Judge. P.W. 33, Ram Babu Gupta was a worker of Rajesh Sharma during the election. It is not likely that he would have gone to the offence of the respondent on being invited by the respondent and that the respondent would have committed serious election offence in his presence or to his knowledge. He wanted to show that from his childhood he was a member of the R.S.S. and lately he disassociated himself from that organization. The version of his appears to be wholly false. From the facts elicited in his cross-examination, it is clear that he does not know anything about R.S.S. organization in Delhi. He does not know who is its Sanchalak at Delhi or the General Secretary or the Chief Organizer in Delhi State. In our opinion the evidence of this witness has been rightly rejected by the Trial Court. Do far as P.W. 21 is concerned he admits that he was intimate with Rajesh Sharma. His evidence appears to be quite artificial. His story that the respondent was accompanying his workers when they were distributing the leaflets is difficult to accept. We agree with the learned Trial Judge that his evidence also is not reliable.

14. Large number of witnesses have been examined to show that the leaflets in question were distributed by the Jan Sangh workers P.Ws. 17, 21, 33, 36, 41, 42, 43, 45, 49 and some others. The Learned Trial Judge after examining their evidence has rejected the same as unreliable. We agree with his conclusion. It is not necessary to examine their evidence in details as their evidence does not show that distribution was made at the instance of the respondent.

15. A tame attempt was made to show that even if we hold that there is no satisfactory proof to show that calendars similar to Annexure 'A' and leaflets similar to Annexure 'C' were not proved to have been distributed with the consent of the respondent the very proof of their distribution is sufficient to set aside the election as the distribution of those calendars and leaflets must have vitiated the result of the election. We have earlier come to the conclusion that there is no satisfactory evidence as regards their distribution. Further from the evidence on record it is not possible to hold that they were widely distributed. From the evidence before us it is not possible to come to a

positive finding that their distribution is likely to have vitiated the result of the election.

16. In the result this appeal fails and the same is dismissed. Now coming to the question of costs, we think that we must disallow respondents' costs. The evidence adduced by the respondent has not been accepted by the Trial Court. There is hardly any doubt that he has come forward with several false pleas. His plea that P.W. 45 was not his counting agent is proved to be wholly false. In several other material aspects, he has tried to support his case by false evidence. Under these circumstances we think that we should disallow his costs of this appeal. We accordingly make no order as to costs in this appeal.

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