

Rabodh Chandra

Vs

Mohinder Singh

Civil Appeal No. 2631 of 1969

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

15.10.1970

JUDGMENT

HEGDE, J. -

1. This is an appeal under Section 116-A of the Representation of the People Act, 1951 (to be hereinafter referred to as the Act). It arises from the decision of the High Court of Punjab and Haryana in Election Petition No. 6 of 1969 on its file. In that petition the appellant unsuccessfully challenged the validity of the election of the respondent to the Punjab Legislative Assembly in the mid-term election held in 1969.
2. The appellant and the respondent contested the Gurdaspur Assembly seat in the mid-term election held in 1969. The appellant was the Congress nominee and the respondent was the candidate of the Akali party. It is said that he had the support of the Jan Sangh. One other candidate who filed his nomination for that constituency had withdrawn from the contest. It is not necessary to refer to him. Polling took place on February 9, 1969 and the result of the election was declared on February 10, 1969. The appellant secured 20,044 votes and the respondent 25,501. Hence the respondent was declared elected.
3. The validity of the election of the respondent was challenged by the appellant on various grounds. The Trial Judge, as mentioned earlier, rejected the petition. In this Court the appellant pressed for our consideration only one of the several grounds urged by him in his petition, and that ground is that the respondent was guilty of a corrupt practice under Section 123(3) of the Act inasmuch as he exhibited the "Holy Cross", the sacred symbol of the Christians in front of his office for a period of about 15 days prior to the election. The respondent denied this allegation.
4. In support of the allegation relating to the exhibition of the "Holy Cross", the appellant has relied on documentary as well as oral evidence. But before referring to those pieces of evidence, it is necessary to deal with one of the grievances of the appellant. The appellant summoned the Government of Punjab to produce certain reports received by it from the C.I.D. relating to certain agitations said to have been made during the election in connection with the exhibition of the "Holy Cross" in front of the respondent's office. The concerned reports were sent to the Court under a sealed cover but the Home Secretary claimed privilege in respect of the same on the ground that these documents are unpublished records relating to the affairs of the State. The learned Trial Judge upheld that claim and hence those documents could not be brought on record. It is contended on behalf of the appellant that the Trial Court erred in upholding the privilege claimed by the Government. It does not appear that the appellant asked the Trial Judge to peruse the records before considering the question of privilege or hold any enquiry relating to the claim made. In this Court

no application has been made to receive any additional evidence; not those reports have been summoned. Those reports are not before us. Hence we cannot go into the question whether privilege was properly claimed by the Government. Now that we do not have those reports before us, we are unable to differ from the conclusion reached by the Trial Judge that they are documents relating to the affairs of the State.

5. Before we proceed to examine the oral and documentary evidence, it is necessary to refer to the pleadings relating to the charge of corrupt practice with which we are concerned in this case. The relevant averments on this point are found in paragraph 8(c) of the election petition. Those averments read :

"That the respondent, his agents and other persons with the consent of the respondent have committed a corrupt practice within the meaning of Section 123(3) of the Act by... use of the Holy Cross which is a sacred religious symbol of the Christians in order to further the prospects of the respondent's election. The details of the aforesaid corrupt practice are as under...

(c) That the Central Election Office of the respondent was situated in a central place Main Bazar, Gurdaspur, where he boldly exhibited the Holy Cross, the sacred religious symbol of the Christians, in front of his office which was visible to every passer-by. This was done by the respondent and his agents and other persons with his consent with a clear intention of using the religious symbol in order to further his election prospects."

6. In his written statement the respondent denied that he exhibited the "Holy Cross" in front of his office.

7. Documents relied on, by the appellant in support of the charge are Annexures A, B, C, D, E and F. These are either correspondence that passed between the appellant and the Salvation Army authorities or representations made by some persons, to the Deputy Commissioner. In all these documents, the allegation made is that the respondent installed a "Holy Cross" in front of his office. The allegations contained in the letters written by the appellant on the Salvation Army authorities as well as the representations made to the Deputy Commissioner are at best accusations. They do not by themselves prove the truth of the allegations made. The truth of those allegations have to be proved by examining persons who made those allegations.

8. In order to prove the corrupt practice in question, the appellant has examined several witnesses. Out of them P.W. 1, the Deputy Commissioner and P.W. 4, the C.I.D. Inspector have not given any useful evidence in support of the appellant's case. All that P.W. 1 has deposed is that when he was coming out of the Red Cross building after making arrangements for the counting of votes, somebody told him that "he would raise an issue about the religious symbol of the 'Cross' having been used by the alleged supporters of the respondent in the course of his election campaign". He had also deposed to the fact that during the election various complaints as well as cross-complaints had been made to him and he had forwarded the same for necessary action either to the Superintendent of Police or to the Election Commissioner or his subordinates.

9. None of the witnesses examined on behalf of the appellant to support the charge spoke to the exhibition of the "Holy Cross" in front of respondent's office. Not one of them spoke to the fact that the "Holy Cross" was exhibited in front of the respondent's office. On the other hand they spoke

to the flying of three or four flags in front of the office of the respondent. According to them no one of those flags a "Cross" had been painted. Even as regards the alleged flag the evidence is not consistent. According to the correspondent of the Tribune (P.W. 12), two Christians had gone on hunger strike because of the flying of the Masihi Dal flag. Hence he sent the following news item to the Tribune :

"Hunger Strike : Two Christian workers, Mr. B. M. Samuel and Mr. Chiman Lal started a fast outside the Town Hall on Tuesday, in protest against the flying of the Masihi Dal flag on the election office of the Akali candidate".

10. This news item was published on the February 6, 1969.

11. In his evidence he deposed that the hunger strike was in connection with the flying of the Masihi Dal flag on the election office of the Akali candidate. He further deposed that after interviewing the hunger strikers, he went to the respondent's election office and saw that the "symbol in question was being displayed there". In the course of his cross-examination, this witness first tried to deny that the Masihi Dal is a political party. But later he started that "Masihi Dal may be a political party in the sense that they may be fighting for their own rights". P.W. 8, Chimanlal one of the persons said to have gone on hunger strike admitted in his cross-examination that "the Christian political party is known as Masihi Dal in Punjab in the same way as Jan Sangh and Akali parties are known". He also admitted that Masihi Dal has its own flag.

12. From what is stated above, it is seen that in the election petition, the allegation was that the respondent exhibited in front of his election office the "Holy Cross" while adducing evidence that case was given up and in its place a new version was introduced namely that a flag bearing "Cross" was flown in front of the office of the respondent. Even this version was not consistently adhered to. According to P.W. 12, the flag complained of is the flag of the Masihi Dal. Masihi Dal is proved to be a political organization. These contradictory versions are alone sufficient to reject the case of the appellant.

13. The oral evidence adduced on behalf of the appellant in support of the charge was disbelieved by the Trial Judge. After examining the evidence of the various witnesses examined in support of the charge, the Court came to the conclusion that no reliance can be placed on their testimony. This finding of the Trial Court is a finding of fact. Unless we are satisfied that this finding is basically wrong, this Court following its usual practice will not reappreciate the evidence on record. But that apart, we are not satisfied that the witnesses examined on behalf of the appellant in support of the charge are reliable witnesses. The appellant himself who spoke in support of the charge is an interested witness. As seen earlier the evidence given by him does not accord with the plea taken by him in his election petition. The other witnesses examined in support of the charge are P. Ws. 2, 3, 5, 6, 7, 8, 12 and 15. So far as P.W. 2 is concerned, his antecedents are such that his evidence cannot inspire confidence. He was prosecuted for an offence under Section 467/193, I.P.C. for identifying a wrong person for the purpose of cashing a cheque. According to his own admission he procured his acquittal by paying the complainant a sum of Rs. 1,000/-. So far as P.W. 3 is concerned he admits that he was working for the appellant during the election. From the admissions taken from him during his cross-examination, it is clear that he was a strong supporter of the appellant. Similarly it is clear from the evidence of P.W. 5 that he and his father were the supporters of the appellant. P. Ws. 6 and 3 are close associates. Further P.W. 6 was the polling agent of the appellant. P. Ws. 7 and 8 are said to be the persons who went on hunger strike as a protest against the flying of the flag bearing a "Cross". A comparison of the evidence of these two witnesses will show that they are

wholly untruthful witnesses. According to P.W. 7, after holding a meeting of the Christians they went in a procession to the Deputy Commissioner and presented a written complaint to him; the Deputy Commissioner asked them to meet him next morning and when they met him on the next morning, he told them that he had forwarded that petition to the Superintendent of Police. No such case was suggested to the Deputy Commissioner. We have earlier referred to the evidence of the Deputy Commissioner. As regards the presentation of the written complaint to the Deputy Commissioner, the version given by P.W. 8 materially differs from that given by P.W. 7. He deposed as follows :

"At the meeting resolution was passed to represent the matter to the Deputy Commissioner and observe fast unto death. We went to the Deputy Commissioner and gave him a written complaint. He directed us to go to the Superintendent of Police there and then."

14. According to this witness they immediately went to the Superintendent of Police. We are inclined to accept the suggestion made on behalf of the respondent that P. Ws. 7 and 8 were the supporters of the appellant in the election.

15. We have already referred to the evidence of P.W. 12. So far as P.W. 15 is concerned he also appears to be interested in the appellant.

16. Taking into consideration the departure from the pleadings in the case, the various conflicting versions put forward in the case and the interested nature of the testimony adduced in support of the charge, we are not surprised that the learned Trial Judge was unable to place reliance on the evidence referred to earlier. In this view it is not necessary for us to consider whether the flag on Masihi Dal can be considered as a religious symbol.

17. For the reasons mentioned above this appeal fails and the same is dismissed with costs.

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