

Jagir Singh and Another

Vs

Jasdev Singh and Others

Civil Appeal No. 737 of 1973

(M. H. Beg, A. Alagiriswami, N. L. Untwalia JJ)

28.02.1975

JUDGMENT

ALAGIRISWAMI, J. –

1. The appellants are two voters of the Dakala constituency who challenged the election of the first respondent to the Punjab Legislative Assembly on many grounds out of which only the charge of corrupt practice under Section 123(3) and 123(3A) of the Representation of the People Act now survives for consideration. Respondents Nos. 2 and 3 are the unsuccessful candidates. The charge of corrupt practice is based on the publication of a pamphlet, about the nature of which there is no dispute and the contents of which are therefore unnecessary to be set out. It is admitted that if the publication of the pamphlet either by the successful candidate or his election agent or anyone else at the instance of either of them is proved the election has to be set aside.

2. The publication was sought to be proved by the evidence of CW 1, the proprietor of the printing press where it was printed, CW 2 in whose name it was printed as well as of PW 1. The evidence of RW 5 was relied upon to prove that the pamphlet was sent to the Sub-Divisional Magistrate as required under Section 127A of the Representation of the People Act and received by her on March 12. Ext. PW 1/4 was put forward by the appellants as the manuscript which was used for printing the pamphlet. This is purported to be signed by the successful candidate as well as CW 2, Jathedar Ram Singh, in whose name the pamphlet is published and PW 1, Bedi Raghbir Singh. On the other hand the printer, CW 1 produced another manuscript Ext. CW 1/1 as the one from which the pamphlet was printed. There is also a tape-recorded conversation between the first respondent and Bhagwant Singh, the husband of the second respondent, who was also her Counsel in the election petition, from which the first respondent tried to make out that he was wholly unaware of and surprised at his signature in Ext. PW 1/4. His main argument before this Court was that the whole thing has been brought about by collusion between the second respondent, Bedi Raghbir Singh, PW 1, Nichhatar Singh CW 1 and Jathedar Ram Singh CW 2. The learned Judge held :

- (1) that he had no doubt that the pamphlet was printed from Ext. PW 1/4;
- (2) that Ext. CW 1/1 had been manufactured for the purpose of this petition;
- (3) that the figures " (20 x 30)/4=5000" on Ext. PW 1/4 are in the handwriting of Nichhatar Singh;
- (4) that the signature of the successful candidate on Ext. PW 1/4 appears to be his;

(5) that the production of Ext. CW 1/1 by Nichhatar Singh and the tape-recorded conversation show an anxiety on the part of first respondent to steer clear of his signature on Ext. PW 1/4;

(6) that this anxiety could be because he had in fact signed such a poster as it was not his case that he ever signed any blank paper; and

(7) that he was not, however, sure of the existence of the poster.

We are of opinion that conclusions Nos. 1 to 6 of the learned Judge set out above are borne out by the evidence on record and do not therefore consider it necessary to set out at length the evidence to support those conclusions. Conclusion No. 7 is rather curious in view of his earlier conclusions and his observation that from what he had stated earlier, i.e. conclusions Nos. 1 to 6, he was clear in his mind that the poster was not printed before the poll is completely non sequitur. The learned Judge then goes on to say that the strongest reason for this conclusion is the absence of any complaint by respondent No. 2, and that the evidence as to the distribution of the poster is oral and untrustworthy. That is how he has disposed of the whole question regarding the printing of the poster. We are unable to agree that absence of complaint by respondent No. 2 necessarily leads to that conclusion. We are of opinion that the conclusion arrived at by the learned Judge is wholly unsustainable especially in view of his categorical findings recorded earlier.

3. The first respondent's case was one of complete denial of the allegations in the petitions regarding the printing of the poster. He did not plead that manuscript which was used for printing the poster. Ext. PW 1/4, was manufactured on a blank paper bearing his signature. He did not even plead that the pamphlet must or might have been brought into existence by the petitioners or the second respondent after the date of the poll for the purpose of the election petition. There is very satisfactory evidence that the poster should have been printed on March 1, 1972. Ext. CW 1/1, which, as the learned Judge himself holds, has been brought into existence for the purpose of this petition bears that date. After carefully going through the evidence of CW 1, Nichhatar Singh we are satisfied that he is a witness who is anxious to help the first respondent and has brought Ext. CW 1/1 into existence for the purpose of helping him. Answers favourable to the petitioners had to be extracted out of his unwilling mouth by cross-examination. Even he has put the date on Ext. CW 1/1 as March 1 and his evidence is that it was printed on March 1 though he mentions only the name of CW 2, Ram Singh. He also says that he had sent a letter, Ext. RW 5/1, to the Sub-Divisional Magistrate. Whether that letter was sent on March 1, as is spoken to by him, or on March 5, the date which it bears, does not affect the substance of the question. This letter has been received by the Sub-Divisional Magistrate, Miss Deol on March 12. The learned Judge himself finds that it was received on March 12. We have carefully scrutinized it and are satisfied that it has been signed by the Sub-Divisional Magistrate on March 12. That has been entered in the office diary on March 16. Though it is true that the date 6th has been struck out and 16th has been put in, the 6th seems to have been put in due to a mistake. Looking into the entries in the diary on the previous pages as well as subsequent pages we have no doubt that the 16th is the correct date. The entries on this date contain a number of documents received from various government offices which bear the date March 6. We have no reason at all to doubt the genuineness of the entries in this diary. If Ext. RW 5/1 was signed by the Sub-Divisional Magistrate on the 12th and entered in the diary on the 16th they probablise the receipt of that document at least some days before the 12th. At no stage, except during the arguments before this Court, were the entries in this diary sought to be impugned. Indeed before the High Court it seems to have been urged on behalf of the first respondent that it was a diary maintained in the usual course of business. Taking therefore even Ext. CW 1/1 as well as the

evidence of CW 1 Nichhatar Singh, into consideration we are satisfied that this pamphlet should have come into existence on March 1. We have also compared the signature of the first respondent in Ext. PW 1/4 with many of his admitted signatures and are satisfied that signature is his and that is confirmed by the expert evidence of Mr. Puri. There being no satisfactory explanation on the part of the first respondent regarding the presence of his signature on Ext. PW 1/4 it is to be concluded on the evidence of Nichhatar Singh and Jathedar Ram Singh taken together that the first respondent had come to CW 1's press and given Ext. PW 1/4 for printing. Conclusion No. 3 of the learned Judge also supports this finding. We are not quite sure about the presence of Bedi Raghbir Singh at that point of time. But we can see no cogent reason for disbelieving the evidence of CW 1 whose deposition clearly shows that he was anxious to help the first respondent. But in order to deny that Ext. PW 1/4 was the manuscript which was used for printing the poster he also had to manufacture Ext. CW 1/1. That evidence even taken at its face value establishes that the printing of the pamphlet was on March 1. If so it could have been done only at the instance of the first respondent. It was not even put to CW 1 that it was done after the poll. Why Ram Singh should have printed it if not at the instance of respondent No. 1 was never sought to be explained. Nor could respondent No. 2 have printed it.

4. We have bestowed our anxious consideration on how the first respondent came to sign Ext. PW 1/4. Though Jathedar Ram Singh tried to say that he did not know Nichhatar Singh CW 1 and therefore Nichhatar Singh wanted the first respondent to undertake the responsibility of paying for the printing of the poster, it is clear that Nichhatar Singh had known Jathedar Ram Singh for some time and there was no particular reason why even if the first respondent undertook to pay for the printing he should sign it. It is said that it was because the first respondent asked Nichhatar Singh to produce that paper in his office and get the payment. This reason does not seem to be a good enough one for the first respondent signing Ex. PW 1/4. Be that as it may we have no doubt that Ext. PW 1/4 bears first respondent's signature and the whole evidence establishes beyond doubt that the first respondent got the pamphlet printed. He probably did not expect that the manuscript would reach the hands of the second respondent.

5. It is in this connection that it is necessary to refer to the tape-recorded conversation. The first respondent had stated before the High Court that the transcript of the tape-recorded conversation can be taken as correct in so far as what he had spoken was concerned. The other person concerned in the tape-recorded conversation was Bhagwant Singh, the husband of the second respondent, who was also her advocate before the High Court. Though he admitted his part in the conversation it would not be admissible in evidence because he was not examined as a witness. What he has stated there cannot be taken as an admission on behalf of the second respondent. Such admission can only relate to matters in issue before the Court, admissions prejudicial to the case of the second respondent. Leaving such questions aside for the moment one thing that is obvious is that Ext. PW 1/4 had reached the hands of the second respondent during the course of the trial and the evidence of Bedi Raghbir Singh that Nichhatar Singh gave it to him to be produced in the Court is not true. This conversation was relied upon by the learned Advocate appearing on behalf of the first respondent as establishing that the first respondent was surprised and bewildered at the fact that Ext. PW 1/4 bore his signature. We can see no such indication. It is to be remembered that when this conversation was being tape-recorded Bhagwant Singh was not aware of it and therefore was talking freely what was in his mind whereas the first respondent was quite conscious of what was going on and that he was merely laying a trap in order to trap Bhagwant Singh into saying something in his (first respondent's) favour without being aware of it. The tape-recorded conversation is absolutely unhelpful to the first respondent's case.

6. Though there are certain suspicious features in this case which the learned Advocate for the first respondent tried to magnify and blow out of all proportion so as to obscure the real picture, we are satisfied that the central point in the case as to the responsibility of the first respondent in getting the offending poster printed has been established beyond all reasonable doubt. Once that is done the question of distribution falls into its proper place.

7. According to the petitioners the posters were distributed in the villages Lalauchhi, Bakshiwala, Jhill, Dhanauri, Kutabanpur, Bhima Kheri, Siadipur, Rajila, Khuda Dadpur, Bathoi Kalan and Chhitera. The distribution in Lalauchhi is spoken to by PW 2, an advocate. Mr. Balwant Singh. His evidence is attacked on behalf of the first respondent by saying that he was the junior under the second respondent's husband but it is seen that was some time ago and he had even appeared against the husband of the second respondent in a personal case. So his evidence cannot be attacked on this basis. The first respondent examined two advocates to prove that on the particular day when he was said to have distributed the poster in Lalauchhi he was in Patiala. Their evidence has been rightly disbelieved by the learned judge. The learned Judge has stated that both these advocates have merely lent themselves to prove a false plea of alibi. The only criticism which the learned Judge has made of the evidence of Mr. Balwant Singh is that he is an Akali and his testimony cannot be accepted at its face value as he would be the last person to support the Congress candidate. We are of opinion that this is the very reason why Mr. Balwant Singh's evidence would be accepted and not the contrary. We are therefore satisfied on evidence that the conclusion of the learned Judge on this point could not be accepted and the distribution in village Lalauchhi must be held to have been proved.

8. As regards the distribution in village Bakshiwala, it is spoken to by PW 3, an employee of the C.I.D., Punjab. His father owns land in that village. The first respondent produced RW 19 to show that Sucha Singh, PW 3, did not come to him and in support of this he produced his register Ext. RW 19/1. The learned Judge's comment on this register is "The less said about this register the better". RW 19 also admitted that there was a scuffle in the village and Sucha Singh was injured. The learned Judge has held that RW 19's evidence is such that much reliance cannot be placed on him. RW 21 also admits about the injury to Sucha Singh. In this state of evidence the learned Judge has not recorded any finding about the distribution of the poster in village Bakshiwala. We are of opinion that the distribution has been satisfactorily established. We do not therefore feel it necessary to deal with the question of distribution in the other villages.

9. The second respondent is a Hindu lady married to a Sikh gentleman. Such marriages between Hindus and Sikhs have been very common. Indeed it appears that till recent times the first son of most Hindu families in Punjab became a Sikh. Still politics has driven a wedge between brothers. It has led to unfortunate situations like the one in this case where because the second respondent happens to be a Hindu lady it was sought to be taken advantage of by the first respondent for his election purposes, even though he and the second respondent's husband would seem to have been good friends.

10. The appeal is allowed and the election of the first respondent is held void. The appellants will get their costs from the first respondent.

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