

Shiv Charan Singh

Vs

Maharaj Kumar Sri Brijendra Pal

Civil Appeal No. 767 (NCE) of 1973

(CJI A.N. Ray, H.R. Khanna, V.V. Chandrachud JJ)

26.08.1975

JUDGMENT

KHANNA, J. -

1. This is an appeal by Shiv Charan Singh against the judgment of the Rajasthan High Court whereby election petition filed by the appellant to question the election of Brijendra Pal respondent from the Karauli constituency to the Rajasthan Legislative Assembly was dismissed.

2. The appellant and the respondent were the main candidates in the election to the Rajasthan Legislative Assembly from the Karauli constituency. The result of the election was declared on March 12, 1972 and the respondent was declared elected. The appellant challenged the election of the respondent on the ground that the respondent and his election agent Jagdish Pal published and got published statements of fact in relation to the personal character and conduct of the appellant which were false and which they believed to be false or did not believe to be true and which statements were reasonably calculated to prejudice the prospects of the appellant's election. The second ground on which the election of the respondent was assailed was that the respondent and his election agent deliberately failed to maintain regular and correct account of expenses incurred by them in connection with the election and that they incurred or authorised expenditure in contravention of Section 77 of the Representation of the People Act, 1951. As regards the first grounds, it was stated that the respondent and his election agent got published news item Ex. 1 in "Kronch", a Hindi weekly, dated February 25, 1972 published and printed in Jaipur. Radhey Shyam Sharma was the editor of that weekly. The aforesaid news item was stated to contain false defamatory statements of fact in relation to the personal character and conduct of the appellant. It was added that the respondent and his election agent and Radhey Shyam Sharma believed those statements, which were calculated to prejudice the prospects of the appellant's election, to be false and did not believe them to be true. Radhey Shyam Sharma was also stated to have addressed an election meeting of the respondent on February 27, 1972 at Chogan in Karauli city and read out news item Ex. 1. Copies of the aforesaid issue of Kronch were also stated to have been distributed in that meeting in the presence of the respondent and his election agent. According further to the appellant, Radhey Shyam Sharma got published pamphlet Ex. 2 printed at the instance of and with the consent of the respondent and his election. This pamphlet was also as objectionable as news item Ex. 1. The pamphlet was stated to have been distributed by the respondent, his election agent and Radhey Shyam Sharma at an election meeting at Bhudara on March 2, 1972. Radhey Shyam Sharma was further alleged to have published another issue Ex. 3 of Kronch containing defamatory statements of fact against the appellant. These statements were also stated to be objectionable in the same manner as those contained in news item Ex. 1. As regards the election expenses, it was stated, the respondent had not shown the expenses actually incurred by him in the matter of hiring of

vehicles, purchase of petrol, arrangement of procession and employment and entertainment of his workers. The respondent, it was claimed, had incurred an expenses to the extent of at least Rs. 35,000 over and above the amount shown by him in the return of election expenses.

3. The petition was resisted by the respondent and he denied the various allegations made by the appellant. According to the respondent, Radhey Shyam Sharma was hostile to the appellant and had as long ago as October 15, 1970 bitterly criticised the activities of the appellant in an issue of Kronch. The respondent denied that he had anything to do with the publication by Radhey Shyam Sharma of the different issues of Kronch and pamphlet Ex. 2. It was also denied that the issue of Kronch or the pamphlet in question were distributed in the meetings of the respondent. The allegation that the issues of Kronch and the pamphlet in question contained statements of fact which were false and which the respondent believed to be false or did not believe to be true and that those statement were calculated to prejudice the prospects of the appellant's election was likewise denied. According to the respondent, the allegations contained in the impugned issues of Kronch and the pamphlet had earlier been made in some other papers and on the floor of the Rajasthan Legislative Assembly. They had also been made by one Babulal Sharma, Convenor of Yuvak Congress Mandal, Karauli. As regards the election expenses, the respondent stated that he had maintained a proper and correct statement of account and has not incurred any expenditure over and above the amount of Rs. 8,665.69 shown in his return.

4. Following issue were framed in the case :

1. Did the respondent and his election agent Mr. Jagdish Pal publish the statement of fact in relation to the personal character or conduct of the petitioner as alleged in paragraphs 14, 16, 18, 19, and 20 of the petition?

2. Was Mr. Radhey Shyam Sharma engaged by the respondent carry on his propaganda and was he in charge of the respondent's publicity and did he publish the news items in 'Kronch' and read them out and distribute the news items and the pamphlet as stated in the election petition?

3. (a) Were the statements referred to in issue No. 1 false, and did the respondent or his election agent or Mr. Radhey Shyam Sharma believe them to be false, or did not believe them to be true?

(b) Were those statements reasonably calculated to prejudice the prospects of the petitioner's election?

4. Have the respondent and his election agent deliberately failed to maintain a regular and correct return of the expenses incurred by them in connection with the election of the respondent?

5. Have the respondent and his election agent incurred or authorised expenditure in contravention of Section 77 of the Representation of the People Act, 1951, as alleged in the election petition?

Issues Nos. 1 and 2 were decided against the appellant. In view of the findings on issues Nos. 1 and 2, issue Nos. 3 was held not to arise. All the same the High Court went into the matter and held that neither the respondent or his election agent nor Radhey Shyam Sharma had reason to believe the impugned statements published in Kronch and the pamphlet in question to be false and not to be true. Issues Nos. 4 and 5 too were decided against the appellant. In the result the election petition was dismissed.

5. At the hearing of the appeal Mr. D. P. Singh on behalf of the appellant has assailed the findings of

the High Court on the different issues. As regards the election expenses, it has been conceded by Mr. Singh that even if they were not maintained in the prescribed manner, that fact would not constitute a corrupt practice. According, however, to the learned Counsel, that fact taken with other evidence might justify a conclusion that the respondent has suppressed some items of expenditure. So far as this question is concerned, we find that the High Court has considered the evidence brought on record and has held on appraisal of that evidence that there was no cogent material to show that the respondent had incurred any expenditure over and above what had been shown in his return. After having been taken through the material on record, we find no cogent ground whatsoever to interfere with the appraisal of the evidence by the High Court. Reference was made to the expenses for the purchases of petrol.

According to return Ex. 6 filed by the respondent, he spent Rs. 3,253.27 on petrol. The correctness of that above figure is vouchsafed by the statement of accounts filed by Karauli Auto Stores. The petrol pump which supplied petrol for the respondent belonged to that concern. Although the said concern was family concern of the respondent, nothing has been brought to our notice as to why the statement of account filed by that concern be not accepted. During the pendency of the trial on application filed by the appellant, the High Court directed that the account books maintained by the respondent as well as the account books, cash book and the credit and cash vouchers of Karauli Auto Stores might be shown to the appellant's Counsel. In spite of that order the appellant or his Counsel did not examine those account books and documents. Nothing was consequently brought on record to question the correctness of the entries in the account books.

6. It has also been urged that the appellant engaged certain vehicles for a number of days but the expenses incurred on that account were not correctly shown. As against that, the case of the respondent is that only those vehicles were hired by him which were shown in the documents filed by him. According further to him, the number of days for which those vehicles were hired was also correctly shown. The appellant produced oral evidence of a couple of witnesses in support of the stand taken by him. The High Court declined to accept that evidence. After hearing the learned Counsel for the appellant, we are not inclined to take a contrary view. The evidence adduced by the appellant was not only not supported by any documents it ran counter to the documents which were produced by the respondent and some of which had been signed by the witnesses produced by the appellant. It is well established that in an election appeal this Court should not interfere with a finding of fact recorded by the High Court based upon the appraisal of evidence unless such finding is vitiated by some glaring infirmity. No such infirmity has been brought to our notice.

7. Mr. Singh has then submitted that the daily hiring charge of a truck was about Rs. 100 but the respondent in his return showed the daily hiring charge for the truck to be Rs. 35. The case of the respondent in that he was charged Rs. 35 as daily hiring charge because he prevented the requisitioning of those trucks by making a representation that they were needed for his election campaign. Evidence was also produce in support of the above stand of the respondent. The High Court found the above explanation of the respondent to be plausible. Nothing cogent has been brought to our notice as to why we should take a contrary view. The fact that there are suspicious features in the respondent's case about his election expenses would not justify interference with the finding of the High Court because suspicion cannot take the place of proof.

8. Coming to the question of the impugned issues of Kronch and pamphlet Ex. 2, we find that there is no cogent evidence on the record to show that Radhey Shyam Sharma published those issues and the pamphlet at the instance of or with the consent of the respondent or his election agent. It is indeed evident from the issue of Kronch dated October 15, 1970 that Radhey Shyam Sharma was

hostile to the appellant and had been criticising him since 1970, about 14 months before the election. There is, therefore, nothing to rule out the possibility, as stated by the respondent, that Radhey Shyam Sharma published the impugned issues and pamphlet at his own and without the consent of the respondent or his election agent.

9. The allegation that the impugned issues of Kronch and the pamphlet were distributed in the election meetings of the respondent remains unsubstantiated. The appellant got produced reports Exs. 15 and 16 of the two election meetings of the respondent held on February 27, 1972 and March 2, 1972. According to these reports, Radhey Shyam journalist addressed those meetings and asked those present to vote for the respondent. There is no mention in these reports of Radhey Shyam having said anything against the appellant. There is also no reference to the distribution of any pamphlets or issues of Kronch in those meetings. Our attention has been invited by the learned Counsel for the appellant to the statement of Nurul Hasan constable (PW 4), according to whom some documents were distributed in a meeting held on March 2, 1972. The witness added that he did not know as to what were the contents of those documents because he saw the whole thing from a distance. The evidence of Nurul Hasan, in our opinion, is too slender a basis for recording a finding that the impugned pamphlet and issues of Kronch were distributed in the meeting of the respondent. It is in the evidence of Sub-Inspector Bhopal Ram (PW 18) that if any newspaper is distributed in an election meeting and a copy of it becomes easily available to the constable present in that meeting, he sends it along with his report. The witness also produced some pamphlets which were distributed in an election meeting against the respondent. If as is the case of the appellant, the impugned issues of Kronch and pamphlet in question were widely distributed in the election meetings of the respondent, it is not clear as to why the policeman on duty in those meetings could not secure even one copy of those issues or pamphlets. The fact that no such copy was sent with any of the police reports shows that the allegation of the appellant in this respect is not well-founded.

10. In view of our finding that it is not proved that Radhey Shyam got published the impugned issues of Kronch and pamphlet at the instance of or with the consent of the respondent or his election agent and in view of our further finding that it is not proved that the copies of the impugned issues of Kronch or pamphlet were distributed in the election meetings of the respondent, we need not go into the question as to whether the finding of the High Court on issue No. 4 is correct or not. We consequently neither affirm nor disaffirm the finding of fact or law under this issue.

11. The appeal fails and is dismissed but in the circumstances without costs.

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