

Birbal Singh

Vs

Kedar Nath

Civil Appeal No. 1118 of 1973

(Y.V. Chandrachud, A.C. Gupta JJ)

02.11.1976

JUDGMENT

CHANDRACHUD, J. -

1. In the general elections to the Rajasthan Legislative Assembly held in March 1972 from the Ganganagar constituency, the respondent who was sponsored by the Sanyukt Socialist Party defeated the appellant, a Congress (R) candidate, by over 22,000 votes. The appellant filed Election Petition 5 of 1972 in the Rajasthan High Court challenging the election of the respondent on the ground of corrupt practices committed by him and his election agent Bhagirath Singh. The petition having been dismissed the election petitioner has filed this appeal under Section 116A of the Representation of the People Act, 1951.

2. We are concerned in this appeal with two corrupt practices said to have been committed by the respondent. It is alleged, firstly, that pamphlet (Ex. 1) was distributed by the respondent and his election agent in a meeting held on February 23, 1972 at Nehru Park, Ganganagar. The second corrupt practice alleged against the respondent is that several copies of a weekly newspaper called "Patal Shakti" dated February 27, 1972 containing a scurrilous editorial were distributed by the respondent and his election agent at a meeting of the Socialist Party held at Public Park, Ganganagar on the 27th. The editorial is also said to have been read out in the meeting by one Vijay Kumar Talwar. The allegations contained in the editorial and in the pamphlet (Ex. 1) to which the editorial refers are indisputably defamatory of the appellant. The editorial (Ex. 2) contained in the Patal Shakti is alleged to have been written at the instance of the respondent and in a manner, paid for by him.

3. This appeal had come up for hearing on August 6, 1975 when by consent of parties two additional issues were remitted by this Court to the High Court, with liberty to the parties to lead evidence on those issues. The first issue was whether the pamphlet (Ex. 1) was printed at the instance and with the consent of respondent and whether the payment for that pamphlet was made by his election agent Bhagirath Singh. The second issue remitted to the High Court was whether the editorial (Ex. 2) in Patal Shakti was read over in the meeting of February 27, 1972 by Vijay Kumar Talwar in the presence of the respondent. By its judgment dated April 8, 1976 the High Court after considering the fresh evidence led by the parties held in favour of the respondent on both the issues. Those findings are challenged by the appellant in this appeal.

4. The appeal is devoid of substance and this we feel contained to say in spite of a careful argument advanced on behalf of the appellant by Shri M. B. L. Bhargava. In view of some of the fundamental circumstances to which we will presently refer, it is unnecessary to discuss fully the evidence of each

one of the witnesses examined by the parties on the two corrupt practices attributed to the respondent. It is a matter of common occurrence in election petitions that parties manage to collect a large volume of oral evidence in support of the allegations of corrupt practice. Very often, the allegations are concocted and are attempted to be established with the evidence of partisan witnesses. On rare occasions when the allegations are true, untrue evidence is led to strengthen the charges.

5. Several witnesses were examined by the appellant for proving that in a meeting held on February 23, 1972 the pamphlet (Ex. 1) was distributed by the respondent and his election agent. We agree with the learned counsel for the appellant that the High Court should not have brushed aside the evidence of those witnesses on the mere ground that they belonged to the same party as the appellant or were otherwise interested in his success in the election. Interested witnesses are not necessarily false witnesses though the fact that the witness has a personal interest or stake in the matter must put the court on its guard. The evidence of such witnesses must be subjected to a closer scrutiny and indeed the court may in a given case be justified in rejecting that evidence unless it is corroborated from an independent source. But the reasons for corroboration must arise out of the context and texture of evidence. Even interested in telling the truth to the court and therefore the court must assess the testimony of each important witness and indicate its reasons for accepting or rejecting it. A broad and general comment that a particular witness is an election agent of a candidate and cannot therefore be relied upon is not a judicial assessment of evidence. Evidence can be assessed only after a careful analysis. Since the High Court has, by and large, rejected the evidence led by the appellant on the omnibus ground that the witnesses are interested, we have gone through the relevant evidence with the help of the respective counsel. It is on a careful consideration of that evidence that we have reached the conclusion that it is impossible to accept the allegations of corrupt practice made against the respondent.

6. The first allegation against the respondent is that he and his election agent Bhagirath Singh distributed the pamphlet (Ex. 1) in a meeting held on February 23, 1972 at the Nehru Park, Ganganagar. That meeting was addressed by the Prime Minister and over a lakh of people were present. It is fantastic to think that on the heels of such a largely attended meeting convened under the auspices of the rival party, the respondent and his election agent would be so foolish as to distribute a scandalous pamphlet of the type in issue. It is also difficult to believe that none of the recipients of this highly defamatory document took any action after receiving it. In a town seized by election fever, the poll being just a few days ahead, it is impossible that even rival partymen looked at the incident with such cool unconcern. Amongst the persons to whom the pamphlet is alleged to have been given either by the respondent himself or by his election agent are Ishwar Singh (PW. 7) and Arjun Singh (PW. 20). Ishwar Singh was an Additional District Magistrate whereas Arjun Singh was the Circle Officer. Both of these gentlemen were present at the meeting at Nehru Park in their official capacity for ensuring peace and order. It strains one's credulity to believe that the respondent and his election agent would take the imprudent risk of distributing the pamphlet to these high government officers. Neither Ishwar Singh nor Arjun Singh was able to produce a copy of the pamphlet nor indeed did either of them take any steps whatsoever after the alleged receipt of the pamphlet. Bhagirath Singh, the election agent of the respondent, is an advocate by profession while the respondent had won three consecutive Assembly elections in 1962, 1967 and 1972. He had fought these elections as a Sanyukt Socialist Party candidate and had won by a margin of 10,000, 11,000 and 22,000 votes respectively. It is impossible in the very nature of things that these two old hands would, so openly and incontrovertibly, lend an easy ground for the success of a possible election petition.

7. The additional issue on which a finding was called for by this Court is whether the payment for the pamphlet was made by Bhagirath Singh. It is amusing that in spite of a fresh opportunity accorded by this Court to the appellant to prove his case, what he did was to lead evidence to make nonsense of the additional issue. Instead of showing that the charges of printing the pamphlet were paid by the respondent's election agent, the appellant led evidence to show that one Kuldeep Bedi paid those charges to Tarsaim Chandra (PW. 24) who is alleged to have printed the pamphlet. Tarsaim Chandra did not produce any receipt for the payment and offered the flimsy explanation that he had given his printing press for running to a person called Mehar Singh who had not returned to him the records of the press. The appellant had cited Kuldeep Bedi as a witness but did not examine him and the appellant's counsel conceded fairly that there is no evidence on the record to show that Kuldeep Bedi bears any connection with the respondent. In these circumstances the finding on the additional issue relating to the pamphlet had to be that the appellant had failed to prove that the printing charges of the pamphlet were paid by the respondent's election agent, Bhagirath Singh.

8. Other who speak of the distribution of the pamphlet are the appellant himself (PW. 1), Khetpal (PW. 10), Gulab Rai (PW. 11), Devi Datt (PW. 12), Nathuram (PW. 13) and Madan Lal Kanda (PW. 16) besides of course Ishwar Singh, the Additional District Magistrate (PW. 7) and Arjun Singh the Circle Officer (PW. 20). The evidence of these witnesses has been rejected by the High Court and for reasons which we have mentioned above we feel that the High Court was perfectly justified in refusing to place reliance on the evidence of these interested witnesses who told an utterly incredible story to the court. Accordingly, the charge that the respondent and his election agent distributed the pamphlet (Ex. 1) must fail.

9. Coming to the second charge of corrupt practice, the case of the appellant is that the editorial which appeared in the Patal Shakti of February 27 was written at the instance of the respondent and that the issue of the newspaper was read and distributed at a meeting of the Socialist Party which was held at Public Park, Ganganagar, on the 27th itself. The matter contained in the editorial is highly defamatory and we entertain but little doubt that anyone who reads the editorial would carry an ugly impression of the appellant's political image. But the question for decision is whether the respondent is responsible for the publication and whether as stated in additional issue 2 which was remanded to the High Court, the editorial was read over by Vijay Kumar Talwar in the Meeting of the 27th in the presence of the respondent.

10. One Gyan Devi Talwar, the mother of Vijay Kumar Talwar is styled as the "Sanchalika" or the Director of Patal Shakti. Raj Kumar Sethi is said to be the Chief Editor of the weekly, while Vijay Kumar Talwar is an Assistant Editor. Learned counsel for the appellant has naturally placed great reliance on the evidence of Raj Kumar Sethi (PW. 5) who, being the Chief Editor of the newspaper, should be in the best position to know whether the defamatory matter which appeared in the issue of February 27 was inserted at the instance of the respondent. A large number of witnesses were examined by the appellant on this question, the more important of them being the appellant himself (PW. 1), Raj Kumar Sethi (PW. 5), Madan Lal Kanda (PW. 16), Radhey Shyam (PW. 17), Om Prakash (PW. 18), Harbeant Singh (PW. 21), Banwari Lal (PW. 22) and Avinash (PW. 23). These witnesses, we feel no doubt, have concocted an utterly false story as will be apparent from the following circumstances.

11. On February 18, 1972 a meeting of about 300 Congress workers was held in the Block Congress Committee, Ganganagar. The proceedings of that meeting are recorded in the minutes, Ex. A/24, which were produced by Kesho Ram Garg (PW. 12), who has been the Secretary of the Congress

Committee since 1975. The appellant's counsel objected to the admissibility of the document but no such objection having been taken in the trial Court, we are unable to entertain it here. The minutes show that the meeting was attended amongst others by Gyan Devi Talwar, Raj Kumar Sethi (PW. 5), Madan Lal Kanda (PW. 16), Om Prakash (PW. 18), Harbeant Singh (PW. 21), Banwari Lal (PW. 22), Chand Ram Sherwal, one of the Assistant Editors of Patal Shakti and by Manphool Singh, an ex-Deputy Minister in Rajasthan who is the brother of the appellant. The meeting resolved unanimously to support the candidature of the appellant. In this context, it is difficult to believe that the newspaper of which Gyan Devi Talwar was the Director and Raj Kumar Sethi is its Chief Editor could possibly be persuaded to print and publish an editorial so highly defamatory of a candidate in whose success they were so keenly interested. The second circumstance which has an important bearing on this question is that on February 20, 1972 Gyan Devi Talwar had called a meeting of trade union workers for supporting the appellant's candidature. That meeting was attended, amongst others, by Raj Kumar Sethi and Vijay Kumar Talwar, the main speaker being Gyan Devi herself. The weekly, Patal Shakti, was started on the eve of the elections on January 26, 1972 the object of starting the journal being obviously to undertake an election campaign on behalf of the Congress (R) candidates. Seeing that persons closely connected with the journal had taken a prominent part in the appellant's election campaign, it is absurd to think that these very persons would be parties to the printing and publication of the editorial.

12. Raj Kumar Sethi says in his evidence that the respondent paid him 200 rupees as the price of the publication and this is attempted to be corroborated by the production of the counterfoil of a receipt showing that the newspaper had received 200 rupees from the respondent on the 27th. The receipt, however, apart from being otherwise uninspiring says that the amount was paid for charges of an advertisement. The argument of the appellant's counsel that the editorial was in the nature of an advertisement in favour of the respondent is too naive for our acceptance. Besides, it is not likely that the respondent would pay Rs. 200 under a receipt and create evidence against himself to show that he was a party to the defamatory publication.

13. Raj Kumar Sethi has perjured himself on several important points. In his enthusiasm to support the cause of the appellant, he said in his evidence that copies of the newspaper were distributed in meeting held at Nehru Park. The election petition speaks of a meeting in Public Park and it is common ground that the two places are distinct and separate. Raj Kumar Sethi's sense of honour can be assessed in reference to the fact that a creditor had to file a suit for a paltry sum of Rs. 450 against him and after a decree was passed in that suit execution proceedings had to be commenced to recover the amount.

14. It is alleged by the appellant that on seeing the editorial he sent a letter, Ex. 8, on the 27th itself to Raj Kumar Sethi asking him to explain at whose instance the editorial was published. Raj Kumar wrote a reply (Ex. 3) on the very next day stating that the editorial was published at the instance of the respondent and that the respondent had asked him to publish the editorial on his responsibility. Both Ex. 3 and Ex. 8 are got-up documents prepared for supporting the appellant's case that the editorial was published at the instance of the respondent. We have already indicated that in the very nature of things it is impossible that Raj Kumar Sethi, Gyan Devi Talwar and Vijay Kumar Talwar who were interested in the success of the appellant would permit a publication, so highly defamatory of the appellant.

15. There is an extremely interesting aspect of this matter to which we must refer. During the pendency of the election petition on October 23, 1972 Raj Kumar Sethi made an affidavit stating that he was an active member of the Congress, that he had supported the appellant in the elections

held in 1972, that the letter (Ex. 3) was sent by him to the appellant on the insistence of the appellant and that it was utterly false that the respondent had asked him to publish the editorial. Confronted by this affidavit, to which his attention was pointedly drawn in cross-examination, he trotted out the story "that his lawyer, Kesho, Ram Garg, had taken the affidavit from him by making a misrepresentation that the document was a deed of compromise", Raj Kumar Sethi says that he put his signature on the document in the belief that the representation made by his lawyer was true. In one part of his evidence he said that he had put his signature on the document voluntarily, believing in the representation made by his lawyer. Quite a different version was given by him later that he was forced to subscribe to the document. How false the story is can be judged from the fact that Kesho Ram Garg, who is alleged to have deceived him, was still representing him in the execution petition filed against him. The witness had the temerity to write a letter, Ex. A/3, to the Chief Justice of Rajasthan complaining that an affidavit was obtained from him by fraud and misrepresentation. It is obvious that the witness was pliable and could for consideration be made to say different things at different times.

16. The evidence of the appellant Birbal Singh suffers from equally serious infirmities. He speaks of the distribution of the newspaper in a public meeting held on the 22nd at Public Park but in the election petition, as originally filed, his case was that the newspaper was distributed throughout Ganganagar. The election petition also mentioned that the editorial was read at the meeting but the allegation that it was distributed to several hundred persons is a later improvement. The meeting at which the newspaper was distributed was held under the auspices of the Socialist Party which renders it unlikely that the appellant had attended the meeting. And if the appellant was present at the meeting, it seems to us strange that even after noticing that the defamatory matter which had appeared in the morning's editorial was being freely distributed, he left the meeting without a protest. It is interesting that the appellant did not say in his examination-in-chief that he attended the particular meeting in which the newspaper was distributed. It occurred to him for the first time in his cross-examination to say that he was present at the meeting and was an eyewitness to the distribution of the newspaper.

17. Ex. 5, which is a draft of the editorial, is said to be in the hand of Chand Ram Sherwall, an Assistant Editor of Patal Shakti. Chand Ram was not examined in the case. Chand Ram was present in the meeting of February 18 which unanimously supported the candidature of the appellant. This makes it difficult to believe that he would write out the draft so highly defamatory of the appellant. Why Vijay Kumar Talwar who was also interested in the appellant's election and who is the son of the Director of the newspaper should sign the draft is more than we can understand.

18. The evidence of the other witnesses like Madan Lal Kanda, Radhey Shyam, Om Prakash, Harbeant Singh, Banwari Lal and Avinash can carry the matter on except perhaps to show that not one or two but several witnesses conspired to create false evidence to show that the editorial which appeared in the Patal Shakti of February 27, 1972 was written at the instance of the respondent and that Vijay Kumar Talwar read it out in a public meeting.

19. Accordingly, we are in entire agreement with the High Court that no reliance can be placed on the testimony of the witnesses examined by the appellant to prove the charges of corrupt practice against the respondent. Not only are the charges not proved beyond a reasonable doubt, but we are of the opinion that there is no substance whatsoever in the charge.

20. Consequently, we confirm the judgment of the High Court and dismiss the appeal with costs.

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