

Amolakchand Chhazed

Vs

Bhagwandas Arya and Another

Civil Appeal No. 38 (NCE) of 1974

(P.N. Bhagwati, A.C. Gupta, Syed M. Fazal Ali JJ)

17.11.1976

JUDGMENT

GUPTA, J. –

1. This is an appeal under Section 116-A of the Representation of the People Act, 1951. By our order made on May 14, 1976 we allowed this appeal setting aside the Judgment of the High Court and dismissing the election petition without any order as to costs, adding that the reasons for our decision will follow. The following paragraphs contain the reasons.
2. The appellant was elected to the Barwaha Assembly Constituency No. 267 of the Madhya Pradesh Legislative Assembly. Poll was taken on March 8, 1972 and the result was declared on March 12, 1972. There were only two contestants, appellant Amolakchand Chhazed who was a nominee of the Congress party and the second respondent before us, Vimalchand Jain, sponsored by Bhartiya Jan Sangh. The appellant was declared elected having secured 30, 295 votes, the second respondent polled 15,620 votes. One Bhagwandas, a voter in that constituency, filed an election petition in the High Court of Madhya Pradesh asking for a declaration that the appellant's election was void on the ground of corrupt practices described in paragraph 7 of the election petition. A rather unusual feature of this case is that at the stage when the parties were to file their lists of witnesses, petitioner Bhagwandas changed his lawyer and engaged a new lawyer to represent him, and the second respondent Vimalchand appearing through the lawyer who ceased to represent Bhagwandas applied to the Court for permission to file his own list of witnesses in support of the allegations made in the election petition stating that he had reasons to think that the petitioner had been won over by the successful candidate. This prayer was allowed. The High Court by its Judgment and order dated November 28, 1973 set aside the election of the successful candidate on the view that the allegations of corrupt practice have been proved against him.
3. It is alleged in the election petition that the successful candidate and his agents and workers, at his instance and in his presence, distributed in different villages in the constituency a leaflet published by the Block Congress committee, Barwaha, and copies of a weekly paper named "Prachand" containing statements regarding the personal character and conduct of the second respondent which the successful candidate knew to be false and did not believe to be true. The leaflet reads as follows  
:

In the Barwaha Assembly Constituency the corrupt and immoral Jana Sanghi candidate Vimalchand Jain should be defeated and the Congress candidate Amolakchand Chhazed should be made successful by your putting the seal on the cow-calf symbol. Read in "Prachand" the black doings of the Jana Sangh candidate

and then decide whom to give your vote.

The leaflet was followed by a more elaborate statement in that is ostensibly a special number of "Prachand" dated March, 7, 1972. It is not disputed that the contents of the leaflet and the copy of "Prachand" are defamatory. The defence of the returned candidate is that he did not either himself or by his workers distribute any of these two documents anywhere among the electorate and further, that after his defeat the second respondent himself got these printed and set up a false story to have the election set aside.

4. As regards the leaflet the allegation in the election petition is that the appellant accompanied by one Radhakishan Parekh of village Sanawad and other persons whose names the petitioner did not know, toured in a jeep in the constituency on March 6, 1972, two days before the polling, distributing the leaflet. About the copy of "Prachand", it is said that the successful candidate and three other persons, Radhakishan Parekh and Dharamchand Rakhachand Jain, both of Sanawad, and Sobhagmal Surana of Barwaha travelling in a jeep distributed copies of the paper at different places. Ten villages have been named where the leaflet and the newspaper were distributed. In the affidavit accompanying the election petition, paragraph 7 of the petition containing these allegations, in so far as it relates to the distribution of the leaflet and the paper "Prachand" in village Sanawad, is sworn as true to the petitioner's personal knowledge, and the other contents of paragraph 7 as true to the information received by the petitioner from several named persons and "others". Though the election petition names ten villages where the leaflet and copy of "Prachand" had been distributed, evidence led by the second respondent, so far as the leaflet is concerned, is confined to four villages only, namely, Amba, Baswa, Belam and Barwaha, and in respect of the copy of "Prachand" to seven, including, besides the four named above, three other villages, Mukhtyara, Sanawad and Bhoolgaon.

5. We will briefly refer to the evidence on which the decision of the High Court rests. As regards village Amba the High Court accepted the testimony of two witnesses, Nohar Singh and Shyam Singh, examined by the second respondent, to hold that the leaflet and the copy of "Prachand" had been distributed there as alleged. Both these witnesses say that the leaflet was distributed in the village about four days before the polling day. This would mean that it was on March 4 and not on March 6, as stated in the election petition, that the leaflet was distributed. The learned Judge did not attach any importance to this discrepancy on the view that the witnesses were giving evidence more than a year after the occurrence. Both these witnesses were however able to recall from memory the exact words used in the two documents defaming the second respondent. According to Nohar Singh, at the time of the distribution of the leaflet, the appellant was accompanied by Mehtab Singh and Halku Singh, besides Radhakishan Parekh. These two persons have not been named in the election petition. Halku Singh has been examined by the appellant as his witness and he denies that the appellant distributed any leaflet or other paper in Amba. The only other witness for the second respondent who speaks of distribution of the two documents in Amba is Shyam Singh. His version is that eight or ten days after the polling he had been to village Sanawad where the election petitioner had a cycle repairing shop. The petitioner asked him if he had seen the leaflet and the copy of "Prachand", on the witness answering in the affirmative, the petitioner wanted to know if he was prepared to give evidence and he agreed. Admittedly the witness was a client of Vimalchand Jain who is a lawyer. It was suggested to the witness that he was a Jan Sangh worker which he denied. The basis of the suggestion was a news item in a newspaper called "Sandesh" that both Nohar Singh and Shyam Singh were working for Vimalchand in the election. It appears that after the evidence for the second respondent was concluded, the appellant made an application for recalling Shyam Singh for further cross-examination on the ground that fresh material had come

into his possession subsequently showing that Shyam Singh had acted as a polling agent of Vimalchand Jain. This prayer was however rejected by the High Court by its order dated September 10, 1973.

6. About Belam the finding of the High Court as regards the leaflet rests on the evidence of Mangilal, and regarding the copy of "Prachand", on that of his brother Narayan Singh Pawar. According to Mangilal who also remembers the exact words used in the leaflet concerning Vimalchand, says that the leaflet was distributed about four days before the poll, which makes it on March 4. The witness admits that Vimalchand Jain had appeared as his lawyer in several Court proceedings. The witness thought that the leaflet was objectionable but he did not think it necessary to tell Vimalchand about it when they met later. The witness also contradicts himself about his meeting Vimalchand Jain after he had read the leaflet. At one place in his evidence he says that he did not meet Vimalchand after the leaflet was distributed in Belam, but later he admits that he met Vimalchand more than once after the incident. The witness says that he was introduced to the election petitioner Bhagwandas by his brother Narayan Singh when they met him accidentally on the road about ten or fifteen days after the date of polling. In answer to Bhagwandas' query the witness told him that he had seen the leaflet and the copy of "Prachand". The learned Judge accepts Mangilal's evidence because he was a prosperous cultivator and apparently unconnected with any political group. Mangilal's brother Narayan Singh speaks about the distribution of the copy of "Prachand". Admittedly Vimalchand was a teacher in the college where Narayan Singh was a student. The witness says that on March 7, at 10.30 in the morning the appellant came in a jeep, stopped in front of the witness' house, the witness took him inside, and the appellant gave him a copy of "Prachand" saying "read this and after this vote as you like". This witness found what was written therein about Vimalchand Jain as objectionable but did not disclose to anyone that the appellant had given him a copy of the paper. Explaining how he remembered the exact time of the appellant's arrival, the witness says that he happened to note the time on his wrist watch and it stuck in his memory though this happened about a year ago. The learned Judge accepts Narayan Singh's evidence because he appeared to be a straightforward witness.

7. For Barwaha, the Court accepts the evidence of Sukhchand and Chandrakant on distribution of the leaflet. Their version is that on the evening of March 6, both parties, the Jan Sangh and the Congress had arranged meetings near a street junction. At about 5 p.m. when the crowd was dispersing from both the meetings, the appellant came to be sport accompanied by a number of people including Radhakishan Parekh and began distributing the leaflet. Admittedly both Sukhchand and Chandrakant were active supporters of Jan Sangh. The appellant examined S. D. O. Bhatt and Sub-Inspector Pathak who attended the meetings in the course of their respective official duties. Their evidence is that no such leaflet was distributed at that place, but the learned Judge prefers to accept what he calls the "positive evidence" given by Sukhchand and Chandrakant to "negative evidence" of these two witnesses. As regards the distribution of the copy of "Prachand", the High Court relies on two more witnesses, Sohanlal Soni and Surendra Pathak, besides Sukhchand and Chandrakant. Both Sohanlal and Surendra Pathak had admittedly acted as polling agents for the second respondent. According to these witnesses the appellant and his supporters distributed copies of "Prachand" in the village on the morning of March 7. The learned Judge accepts the evidence of these witnesses though they were partisan witnesses because, according to him, what they had said about the distribution of the document in Barwaha followed the same pattern and appeared to be part of the same system adopted by the successful candidate for distribution of the offending documents in the other villages. The story as regards the other villages, except Sanawad, the learned Judge held as proved on the evidence of independent witnesses, about Sanawad also there is no 'independent' witness and the finding is based on the similarity in pattern

of operation.

8. In respect of the other four villages, namely, Sanawad, Bhoolgaon, Baswa and Mukhtyara, the allegation is confined to the distribution of "Prachand" only. Of these villages again, the learned Judge has not believed the story as regards Mukhtyara. Copies of "Prachand" are said to have been distributed in Sanawad on March 7 at about 1 or 1.30 p.m. Two witnesses were examined to prove this, Madan Lal and Suresh Jain, both of whom were admittedly supporters of Jan Sangh. Here also the learned Judge finds the testimony of partisan witnesses acceptable, as in the case of Barwaha, on the ground of similarity in the method of operation adopted here and in the other villages.

9. The case regarding the two remaining villages, Bhoolgaon and Baswa, rests on the evidence of a single witness for each. The only witness for Bhoolgaon, Narayan Namdeo, is a tailor and his evidence is that at about 3 or 3.15 in the afternoon on March 7, the appellant with Radhakishan Parekh and two local residents, Raghvendra Rao and Surajmal Jain, came in a jeep which stopped in front of the tailor's shop. Surajmal is said to have handed over to the tailor three copies of "Prachand", one for the tailor and two for the two customers who were then sitting in the shop. The jeep then proceeded into the village and the witness did not know what happened thereafter. The witness did not like what he read in the paper and in the evening that day he went to Surajmal's house which was near his, and gave the papers back to him. Conduct like this fits a character who is poor but straight and has a quiet dignity, such as one expects in a story book for children but which is too good for real life. The witness goes on to say that eight or ten days after the polling he happened to be at Sanawad and was waiting at a cycle repairing shop in the bazar to have the tyres of his bicycle inflated when Bhagwandas, who was the owner of the shop, asked him whether he knew anything about the distribution of the paper "Prachand". The witness then narrated his story. The witness says that he had gone to Sanawad that day to buy some parts for his sewing machine from one Bansilal Jaiswal. Bansilal who has been examined by the appellant as his witness denied that Narayan Namdeo bought anything from his shop that day. Raghvendra Rao and Surajmal, examined as the appellant's witnesses, have denied the story told by Narayan Namdeo. Narayan Namdeo, however, impressed the learned Judge as a truthful witness.

10. Sajjan Singh is the lone witness who speaks of the distribution of "Prachand" in Baswa. The witness who is a cultivator says that on the day before the polling the appellant accompanied by Radhakishan Parekh, Chittuji Gujar and Jogilalji Gujar came waling to the place where the witness and three others were sitting at about 8 p.m. Radhakishan Parekh gave him a copy of "Prachand". The names of the other two companions of the appellant, besides Radhakishan, are not mentioned in the election petition. None of the three companions of the witness has been examined. This witness repeats the familiar story of accidental meeting with Bhagwandas. About eight days after the polling he had gone to Bhagwandas shop to mend a puncture in his cycle tyre, and in the course of conversation he disclosed to Bhagwandas what he knew about the distribution of "Prachand". The learned Judge finds that the witness had no political affiliations and concludes that he was speaking the truth.

11. The second respondent Vimalchand Jain admits in evidence that he had no personal knowledge about the distribution of the offending documents. He saw a copy of "Prachand" containing the false allegations about him on March 7 when he stopped at a panwala's shop at Barwaha. He contradicts himself as to when exactly he saw the leaflet, at one place in his evidence he says that he saw it four or five days after the polling, at another eight days. He did not file any election petition and claims to have read the petition only after he received summons from Court. At first he says that he did not try to find out the author or the printer of "Prachand" but a little later he contradicts himself and

admits that he was "eager to know who had printed and published article 2 (copy of "Prachand) and who had distributed it". He also admits that he was angry when he saw the leaflet and the copy of "Prachand", yet he did not take any action himself nor did he take any personal interest in the filing of the election petition. This attitude of unconcern hardly fits in with the zeal with which he pursues the case later.

12. On the evidence discussed above, the High Court held that the corrupt practices alleged against the successful candidate had been proved and declared his election void. This Court does not disturb in appeal the finding of fact recorded by the High Court in election cases except for strong and cogent reasons. However, if these findings have been arrived at disregarding well settled principles governing the approach to the evidence on record, this Court must come to its own conclusion on the evidence. Election petitions alleging corrupt practices are proceedings of a quasi-criminal nature and the onus is on the person who challenges the election to prove the allegations beyond reasonable doubt. The allegations made against the successful candidate in this case are that he himself and his agents and workers at his instance, in his presence and with his consent distributed the offending leaflet and copies of a special number of the paper "Prachand" in the villages. It is said that the successful candidate was instrument in getting the defamatory article in "Prachand" published. The leaflet on the face of it showed that it was published by the Block Congress Committee, Barwaha. Badrilal and Jagannath Vyas who were respectively the President and the Secretary of the Barwaha Block Congress at the relevant time both denied that the Block Congress Committee, Barwaha, published any such leaflet. The learned Judge disbelieved both of them because they said that the Block Congress did not maintain accounts of the income and expenditure as there was "no regular expenses of the Block Congress". The learned Judge found this unbelievable and held that it was "highly probable" that the Barwaha Block Congress Committee was responsible for the printing of the leaflet. The learned Judge did not consider that it was also extremely unlikely for the Block Congress Committee to allow its name to be published on this highly defamatory document which could be used as a ground for setting aside the election of their candidate even if he was elected. There is also no proof that the leaflet was printed on March 6, two days before the polling, to mar Vimalchand Jain's chances at the poll. Besides, Section 127A of the Representation of the People Act, 1951 requires inter alia a declaration as to the identity of the publisher of any election pamphlet or poster to be delivered to the printer thereof which the printer must send with a copy of the document within a reasonable time to the District Magistrate of the district in which it is printed or, where the document is printed in the capital of the State, to the Chief Electoral Officer. There is nothing on record to show that such a declaration was sent. There is thus no reliable documentary evidence to prove that the Barwaha Block Congress Committee was responsible for the publication of the leaflet. For the same reason the allegation with regard to the printing and publication of "Prachand" must also fail. This was supposed to be a special number of the paper. There is no evidence to prove that this was printed and published on March 7. Neither the editor nor anyone else connected with "Prachand" was examined. The High Court thought that the interest of the paper being the same as that of the successful candidate, it was likely that the offending article in "Prachand" was published at his instance. Even assuming that both "Prachand" and the appellant wanted Vimalchand to be defeated, in the absence of any direct evidence that it was at the appellant's insistence that the offending article was published, it is not possible to hold that the allegation is proved against the appellant.

13. The further case against the appellant is that he along with his companions distributed the offending documents in the villages. We have found that the allegation making him responsible for the printing and publication of these documents has not been brought home. If one part of the story goes the other part of course does not necessarily fall with it, but in that case the evidence as regards

the distribution must be examined very carefully. The High Court has relied on the oral evidence of a dozen witnesses examined on behalf of the second respondent to find the allegation proved against the appellant. Out of the dozen witnesses two have been examined for proving the case for Amba, two for Belam, four for Barwaha, two for Sanawad and one each for Bhoongaon and Baswa. This Court in more than one case has held it unsafe to accept oral evidence in an election case at its face value without looking for assurance from some surer circumstances or unimpeachable documents. This is what this Court observed in *Rahim Khan v. Khurshid Ahmad* [(1975) 1 SCR 643, 656 : (1974) 2 SCC 660, 671 (Para 21)] :

We must emphasize the danger of believing at its face value oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must be remembered that corrupt practices may perhaps be proved by hiring half-a-dozen witnesses apparently respectable and disinterested, to speak to short and simple episodes such as that a small village meeting took place where the candidates accused his rival of personal vices. There is no X-ray whereby the dishonesty of the story can be established and, if the Court were gullible enough to gulp such oral versions and invalidate elections, a new menace to our electoral system would have been invented through the judicial apparatus. We regard it as extremely unsafe, in the present climate of kirkennycat election competitions and partisan witnesses wearing robes of veracity, to overturn a hard-won electoral victory merely because lip service to a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, unlying circumstances or unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life.

These observations were quoted with approval in a later case *Kanhaiyalal v. Mannalal* [(1976) 3 SCC 646]. In the instant case the High Court appears to have been much influenced by its finding that the successful candidate was responsible for the printing and publication of the two documents in reaching its conclusion as to their publication. We have found that the finding regarding the printing and publication is not justified on the evidence on record. It does not seem to us that the High Court examined the evidence as to the distribution of the documents with the care and caution required in such a case. Certain aspects of this part of the case which raise serious doubts about the truth of the allegation have been overlooked or sought to be explained away. It seems that the High Court failed to keep in mind that the proceeding before it was quasi-criminal in nature requiring the allegations to be proved beyond reasonable doubt. The first thing that strikes one on this part of the case is the paucity of evidence. Of course, number is not necessarily a guarantee of truth but it has to be borne in mind that it is easy to get hold of a handful of people and induce them to narrate a short and simple story, as pointed out in *Rahim Khan's* case. The learned Judge of the High Court also felt that the second respondent "has not been able to or has not cared to call a large number of witnesses". The High Court has suggested some reasons to explain the dearth of witnesses, but it appears that the Court itself felt that this was guess-work and we do not therefore think it necessary to examine the validity of the reasons suggested.

14. Many of these witnesses, again, are partisan or interested witnesses. Their evidence therefore must be viewed with circumspection. The High Court found corroboration of what the partisan witnesses said in the evidence of other witnesses whom the High Court considered independent. But the evidence of these "independent" witnesses has been accepted not because of the intrinsic quality of their evidence but only on the ground that they did not belong to any political party and on the apparently straightforward manner in which they deposed in Court. This was certainly not a correct

method of assessing the evidence. Earlier in our Judgment we have noted the discrepancies and the unnatural features in the evidence. Speaking about the leaflet almost all the witnesses said that this was distributed four days before the polling day. Poll was taken on March 8. Thus according to these witnesses the leaflet was distributed on March 4. In the election petition however the date of distribution so far as the leaflet is concerned is put as March 6. The wrong date mentioned by the witnesses was, according to the learned Judge, due to lapse of memory. What the learned Judge failed to note was that this uniform lapse of memory was not quite natural, especially when these witnesses could recall the exact words in the leaflet defaming the second respondent. Further, the all too naive statement made by witness after witness about the accidental manner in which he happened to meet the election petitioner Bhagwandas that enabled the petitioner to cite him as a witness and which made it possible for him to depose for the second respondent, is more than one could believe. The seemingly straightforward manner in which witnesses like Nohar Singh, Narayan Namdeo and Sajjan Singh deposed in Court, all of whom met Bhagwandas accidentally eight or ten days after the polling day, is not sufficient to allay the suspicion which their story gives rise to. We are inclined to agree with the Counsel for the appellant that these witnesses were all tutored. The second respondent in his evidence said in the beginning that he did not try to find out who was the author or the printer of "Prachand". He assumed an air of indifference saying that he did not see the draft of the election petition before it was filed and read the petition only after he received summons from Court, but later, in answer to a question put by the Court, he contradicted himself by saying that he was eager to know who had printed and published the special number of "Prachand" and who were responsible for distributing the copies. He admitted in the end that he was angry when he saw the leaflet and the copy of "Prachand". It is therefore a little surprising that he did not take any steps in the matter or show any interest in the filing of the election petition. This conduct seems to us too unnatural to be believable.

15. The High Court rejected the evidence adduced by the appellant mainly on the ground that this was negative in character which however was the only possible kind of evidence that could be led by him in the circumstances. The negative evidence may not have been sufficient to disprove the allegations, had sufficient and convincing evidence been led to prove them. The High Court also failed to consider that the appellant had examined some of the persons who, according to the witnesses for the second respondent, accompanied the appellant when the offending documents were distributed, and they have denied the allegation. In any case we have found that the evidence led in support of the allegation of corrupt practice is neither sufficient nor convincing. Not only the oral evidence led on behalf of the second respondent lacks assurance from any "unlying circumstances" or "unimpeachable documents", the evidence suffers from serious infirmities which make it quite unsafe to rely on. On such evidence it is impossible to hold that the allegation of corrupt practice has been proved beyond reasonable doubt. For these reasons we are of the opinion that the appeal must be allowed and the election petition dismissed.

</html