

Ramanbhai Nagjibhai Patel

Vs

Jashvant Singh Udesingh and Others

Civil Appeal No. 670(NCE) of 1976

(V. D. Tulzapurkar, N. L. Untwalia JJ)

28.02.1978

JUDGMENT

UNTWALIA, J. -

1. This is an appeal under Section 116A of the Representation of the People Act, 1951 - hereinafter called the Act, by a person who was elected from Ahmedabad Constituency, District Kaira at the general elections held in June, 1975 to the Gujarat Legislative Assembly. The first respondent in this appeal is the election petitioner at whose instance the election of the appellant was set aside by the Gujarat High Court. Respondents 2 to 6 are the unsuccessful candidates at the said election. The appellant was impleaded as respondent 1 in the election petition. Respondents 2 to 6 were respondents 2 to 6 in the election petition also. The appellant contested the election as an Independent candidate and out of the unsuccessful candidates, respondent 3 was a candidate set up by the Congress Party then known as the Ruling Congress. The election petition to all intents and purposes seems to have been filed at the instance and for the benefit of respondent 3.

2. The polling took place on June 8, 1975. The results were declared on June 12, 1975. The appellant was declared elected to the Gujarat Assembly from the constituency aforesaid. Election Petition 7 of 1975 was filed by one Ramanbhai Punjabhai. But this election petition was not proceeded with. Respondent 1 filed Election Petition 8 of 1975 on July 28, 1975. The High Court, by its judgment under appeal, allowed the said election petition and set aside the election of the appellant finding him guilty of having committed a corrupt practice within the meaning of Section 123(1)(a)(b) of the Act. There were several allegations in the election petition alleging commission of several corrupt practices by the appellant. But all were decided in his favour except the one which will be alluded to hereinafter. On behalf of the first respondent, the judgment of the High Court was also endeavoured to be supported by attacking its finding in regard to the incurring or authorising of expenditure by the appellant in contravention of Section 77 of the Act. The respondent combated the argument of the appellant on the point decided against him (appellant) by the High Court and further submitted that the finding of the High Court in respect of the election expenses was erroneous; the appellant has also committed a corrupt practice within the meaning of Section 123(6) of the Act by incurring an excess expenditure of Rs. 15 over the permissible limit. We shall, therefore deal with these two points only in this appeal.

3. The allegation of corrupt practice which has been found against the appellant is contained in paragraph 9 of the election petition which reads as follows :

The petitioner further states that the 1st respondent and/or his election agent and/or his son Somabhai Ramanbhai Patel with the consent of the 1st respondent or the

consent of his election agent had paid Rs. 500, by way of gift or gratification to the Sarpanch and/or the Gram Panchayat of Moti Abdoli with the object of inducing the Sarpanch, the members of the Gram Panchayat and other voters of the said village under their influence to vote for the 1st respondent. The 1st respondent and/or his election agent and/or his son abovenamed with the consent of the 1st respondent and/or his election agent has committed corrupt practice within the meaning of Section 123(1) of the Act.

The extra expenditure alleged to have been incurred by the appellant in paragraph 6 of the election petition consisted of 21 items - the total of which was Rs. 14,269. Item 20 was the sum of Rs. 500 mentioned in paragraph 9 as having been paid for inducing the voters of Moti Abdoli. This sum was alleged to have been paid on June 4, 1975. The election petitioner filed an affidavit in support of the allegations made in the election petition and vis-a-vis the statement in paragraph 9 the assertion was that the particulars of the corrupt practice given in paragraph 9 "are true to my information".

4. In evidence, it was sought to be proved that the appellant visited Moti Abdoli on June 5, 1975 alongwith PW 10, Sarpanch of Nani Abdoli - another village situated at some distance from Moti Abdoli. The appellant is said to have gone in a motor-car and reached Nani Abdoli at about noon. Since nobody was present there, he proceeded to Moti Abdoli in the company of PW 10. On reaching the chora of Moti Abdoli, he found about 15 persons including some voters present there. The persons present complained to him that nobody was taking care for the welfare of the village after the election was held. The School building required repaid and re-construction. Thereupon the appellant is said to have promised before the persons present in the chora that he would try to get the work done if he was elected. Shortly thereafter, he took the Sarpanch of Moti Abdoli aside and paid him a sum of Rs. 501 on June 5, 1975 for the purpose of the School. The said Sarpanch in the afternoon passed on that money to the Talati of the village, examined as PW 9 prepared a receipt for Rs. 501, the carbon copy of which was produced and marked as Ext. 32. It was signed by PW 9 as also by the Sarpanch of Moti Abdoli. PW 9 made an entry on June 5, 1975 in the Rojmel, which entry also was signed by the Sarpanch. The said entry was marked Ext. 31. Thus the allegation is that the appellant on the eve of the election paid a sum of Rs. 501 on June 5, 1975 to the Sarpanch of Moti Abdoli for the purpose of the School in order to induce the voters of that village to vote for him.

5. The High Court has believed the oral and the documentary evidence in regard to the allegation of payment of Rs. 501 with the object of inducing the voters to cast their votes in favour of the appellant. Mr. V. M. Tarkunde, learned Counsel for the appellant, in the first instance, attacked the finding of the High Court on the question of payment of Rs. 501. Secondly, on the basis of the authorities of this Court in Ghasi Ram v. Dal Singh ((1968) 3 SCR 102 : AIR 1968 SC 1191 : (1968) 2 SCJ 558 : 36 ELR 60), in Dev Raj Anand v. Bhagwandas (AIR 1971 SC 241 : (1970) 3 SCC 316), in Abdul Hussain Mir v. Shamsul Huda ((1975) 3 SCR 106 : (1975) 3 SCC 533), in Kalya Singh v. Genda Lal ((1973) 3 SCR 783 : (1973) 2 SCC 283) and in Harisingh Pratapsingh Chawda v. Popatlal Mulshanker Joshi ((1976) 1 SCR 897 : (1976) 3 SCC 275) he submitted that the evidence adduced in the case, even as it was, did not establish the charge of corrupt practice within the meaning of Section 123(1)(a), (b) of the Act. Mr. M. K. Ramamurthy appearing for respondent 1, the election petitioner, contested the argument of the appellant. Since we are of the view that the finding of fact recorded by the High Court is wholly erroneous, we think it is neither necessary nor advisable to advert to the discussion of the question of law.

6. The High Court found :

- (1) Exts. 32 and 31 are genuine documents;
- (2) That although Rojmel was not maintained from day to day and PW 9 was shaken in cross-examination in regard to an entry of interest alleged to have been made on June 10, 1975 in the Rojmel, the disputed entry dated June 5, 1975 was genuine and made on that date;
- (3) Petrol Voucher No. 7/1(12) dated June 5, 1975 contained in Ext. 18, the return of expenses submitted by the appellant, bore the name of the Sarpanch of Moti Abdoli on its back and that lent support to the other pieces of evidence in this case;
- (4) That the appellant visited Nani and Moti Abdolis on June 5, 1975; and
- (5) That the evidence of PWs 9 and 10 could not be shown to be of interested persons, it was credible and proved the payment of Rs. 501 by the appellant for the alleged purpose and the object.

7. In our opinion the judgment of the High Court suffers from such infirmities that we have no hesitation in upsetting the finding recorded therein, even though, this Court, ordinarily and generally, is reluctant to do so. But where a charge of corrupt practice is held to have been proved beyond doubt against a person by the High Court, this Court cannot lightly uphold that finding when it finds that it is not sustainable.

8. It is not necessary to give a list of all the cases and to discuss them in each and every election appeal decided by this Court. On the basis of the decisions of this Court in *Rahim Khan v. Khurshid Ahmed*, ((1975) 1 SCR 643 : (1974) 2 SCC 660) *D. Venkata Reddy v. R. Sultan* ((1976) 3 SCR 445 : (1976) 2 SCC 455) and *Ramji Prasad Singh v. Ram Bilas Jha* ((1977) 1 SCR 741 : (1977) 1 SCC 260) we may state that the charge of bribery is in the nature of a criminal charge and has got to be proved beyond doubt. The standard of proof required is that of proving a criminal or a quasi-criminal charge. A clear cut evidence, wholly credible and reliable, is required to prove the charge beyond doubt. Evidence merely probabilising and endeavouring to prove the fact on the basis of preponderance of probability is not sufficient to establish such a charge.

9. Mr. Tarkunde leveled several criticisms against the evidence adduced by respondent 1 to prove the charge of bribery against the appellant. We shall notice only the salient ones in our judgment which, in our opinion, shakes the foundation of the charge to such an extent that the whole structure falls to the ground. To start with, the allegation in the election petition was too vague and indefinite. The date mentioned was June 4, 1975; the amount stated was Rs. 500 while the evidence adduced was that sum of Rs. 501 was paid on June 5, 1975. In the election petition the election petitioner was not sure as to who had paid that amount. In the evidence of PW 10, it was sought to be asserted that it was only the appellant who had paid the amount. Neither his election agent nor his son is said to have been present at that time. The affidavit in support of the statements made in paragraph 9 of the election petition was wholly inadequate and wrong. To say that the statement was true to the information of the election petitioner who was examined as PW 1 stated that he had received this information from Ramanbhai Punjabhai who had filed the other election petition. Ramanbhai was not examined in this case. The High Court has not noticed and attached due importance to these discrepancies.

10. PW 9 admitted in his deposition that the sum of Rs. 501 paid on June 5, 1975 was handed back by him to the Sarpanch of Moti Abdoli on the same day. But it was deposited in the Bank along with the sum of Rs. 681, 22 days later i.e. on June 27, 1975. There was no explanation given as to why the Sarpanch kept this money all these days. PW 9 also admitted that a representative of Gram Panchayat used to go to the Bank on the 10th and 25th of each month for deposit of the revenue collections in the Bank. The Rules of Gujarat Gram and Nagar Panchayat (Custody of Gram and Nagar Funds) Rules, 1963 did not permit the retention of any sum of money exceeding Rs. 300 as cash in hand. The Sarpanch of the village was not examined. There may or may not be good reason for his non-examination. But the fact remains that no explanation was given as to why the sum of Rs. 501 was not deposited in the Bank within a day or two of its alleged payment.

11. The entry Ext. 31 in the Rojmel was wholly unreliable. As found by the High Court, the Rojmel was not written and adept from day to day in regular course of business. But that apart, the High Court has committed a serious error in brushing aside the evidence of PW 9 in regard to the interest entry made on June 10, 1975 in the Rojmel. The said entry was not claimed to have been made on the basis of any slip sent by the Bank. The definite evidence of PW 9 was that it was made on the basis of the entry in the Pass Book, which entry was made on June 27, 1975. If that was so, then the entry purported to have been made on June 10, 1975 was clearly an antedated entry, yet the High Court thought that entries made on June 10, 1975 in the Rojmel were made on the day they purported to have been made. It, therefore, does create a serious doubt in our mind whether the money said to have been paid on June 5, 1975 by the appellant was actually paid at all. The entry in the Rojmel is very suspicious, the keeping of the money for suspicious. It has to be remembered that the result of the election was declared on June 12, 1975 and in about two weeks' time it was not at all difficult to hatch up a plan to challenge the election by forging some receipts or entries in the papers of the Gram Panchayat.

12. The carbon copy of the receipt Ext. 32 cannot be relied upon to prove the alleged payment of Rs. 501 by the appellant. It is not signed by him. If the entry Ext. 31 could be signed by the Sarpanch of Moti Abdoli, an entry which has been held to be very suspicious by us, is it possible to place any reliance upon the receipt said to bear the signature of the Sarpanch, apart from the signature of PW 9? The original receipt is said to have been sent to the appellant by post under a certificate of posting. The said certificate of posting was not produced nor the entry relating to the expenses of sending the letter said to have been made by PW 9 in the Rojmel was got exhibited. It is difficult to found the charge of corrupt practice on the basis of the receipt which has a close connection with the suspicious entry in the Rojmel.

13. Petrol Voucher No. 7/1(12) dated June 5, 1975 contained in Ext. 18 apparently contains the following writing on its back. "Moti Abdoli" "Bachubhai" "Sarpanch". Mr. Ramamurthy on the basis of the decision of this Court in P. C. Purushothama Reddiar v. S. Perumal ((1972) 2 SCR 646 : (1972) 1 SCC 9) (at page 654) submitted that if the entire document was produced and exhibited on behalf of a party, then whatever was contained therein was exhibited and it was for that party to prove and explain the circumstances under which the endorsement on the back of the Petrol Voucher was made. Counsel submitted that, as held by the High Court, it did lend support to the story of respondent 1 that the appellant had gone to Moti Abdoli and met the Sarpanch on June 5, 1975. We are impressed by this argument. The endorsement became disputed one in cross-examination lawyer was not instructed with certainty as to in whose handwriting the endorsement was. First the suggestion was that it was in the handwriting of the appellant himself. Then the suggestion was that it was in the handwriting of Somabhai alias Sureshbhai - the son of the appellant. The appellant denied both the suggestions. There was no proof or any evidence on behalf of the election petitioner

as to in whose handwriting the disputed endorsement was. In petitioner as to in whose handwriting the disputed endorsement was. In our opinion, therefore, the endorsement remained unproved, and not only that, it was a suspicious one also. The Petrol Voucher showed that petrol was taken in a car which belonged to the appellant himself. But the evidence of PW 10 was that the appellant had gone to Nani and Moti Abdolis on June 5, 1975 in a taxi.

14. The evidence on the question of actual payment of the money consists only of PW 10. Support was lent to his evidence by that apparently there proved Exts. 32 and 31. The High Court says that apparently there was no reason as to why these two persons would come to depose against the appellant and in favour of respondent 1. Mr. Tarkunde submitted that both belong to Kshatriya caste to which caste the real person behind this election dispute, namely, respondent 3, belonged. Majority of voters in Moti Abdoli belong to this caste. Counsel, therefore, submitted that PWs 9 and 10 were highly interested in respondent 3. Although the explanation so given seems to be plausible, howsoever unfortunate it may be to take notice of such facts, we have thought it better not to find the interestedness of PWs 9 and 10 on the basis of the caste. But the very nature of their evidence, and when read as a whole, leaves an impression in our mind that they were out to support the interest of respondent 3 and hence deposed against the appellant. Anyway, the question of their specific interest is not very vital when their intrinsic evidence is not reliable. Out of the 15 persons said to be present in the chora, including some voters of village Moti Abdoli, none has been examined to prove the payment of the money or the talk which preceded it. We are, therefore, definitely of the view that the finding of the High Court on the question of payment of Rs. 501 with the alleged object of inducing the voters of Moti Abdoli to cast votes in the appellant's favour is erroneous. The High Court committed an error in holding that the story was proved beyond doubt.

15. On the question of the election expenses only one item of Rs. 2,100 was pressed before us, which if proved, would have exceeded the permissible limit by a paltry sum of Rs. 15 only. But the paltry sum does not matter. What matters is whether the payment of Rs. 2,100 as the hire of taxi car No. GTG 9291 was proved to have been made to Rahimbhai, (PW 4). According to the appellant's case, this taxi was engaged only for three days i.e. from June 6, 1975 to June 8, 1975 at the rate of Rs. 100 per day. The hire charges of Rs. 300 were paid to Jayrambhai examined as a court witness. The High Court has found :

- (1) That Rahimbhai was the owner of the taxi and he plied it. Jayrambhai had no connection with it.
- (2) That the charges fixed for the taxi were Rs. 150 per day.
- (3) But the evidence of Rahimbhai that his taxi was engaged for full 14 days and that a sum of Rs. 2,100 was paid to him was not quite reliable and it did not prove beyond doubt that the election expense of Rs. 2,100 as against Rs. 300 shown in the Election Return, was incurred.

16. We do not propose to examine the correctness of the finding of the High Court whether Jayrambhai had any connection with taxi car No. GTG 9291 or not. Although we do not feel confident about the correctness of the High Court's finding that the charges fixed for the taxi were Rs. 150 per day, we do not think it necessary to upset this finding either. But having heard Mr. Ramamurthy on the question of payment of Rs. 2,100 as hire charges for this taxi, we find that there will be no justification at all to upset the finding of the High Court in this regard. Taxis at Nadiad were engaged in the earlier period of the election campaign. Taxi from Anand, to which stand the

taxi in question belonged was requisitioned only at the fag end of the campaign. This taxi, therefore, could not have been pressed into service on and from May 26, 1975 up to June 8, 1975. The appellant's story that this taxi was engaged only for three days seems to be correct. Rahimbhai had to pay a monthly instalment of Rs. 600 to the Bank on account of the money advanced to him against the security of this taxi. He could not have remained without payment of a single farthing for the period of all the said two weeks if really he was plying the taxi during the whole of that period. He claims to have received the entire sum of Rs. 2,100 on or about June 15, 1975. No receipt, or any other documentary evidence, or any supporting witness was produced in regard to the alleged payment of Rs. 2,100 to Rahimbhai. We find no substance in the argument put forward on behalf of respondent 1 attacking the finding of the High Court in this regard.

17. For the reasons stated above, this appeal is allowed; the judgment of the High Court in so far as it is against the appellant is set aside; the election petition filed by respondent 1 is dismissed. The appellant must get his costs in this Court as also in the High Court from respondent 1, the election petitioner.

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