

A. Younus Kunju

Vs

R. S. Unni and Others

Civil Appeal No. 5992 (NCE) of 1983

(Syed M. Fazal Ali, Ranganath Misra JJ)

08.03.1984

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal under Section 116-A of the Representation of People Act, 1951 (hereinafter referred to as the Art) is directed against the decision of the Kerala High Court dismissing the election petition of the appellant whereby he challenged the election of respondent 1 as a member of the Kerala Legislative Assembly from Constituency No. 125 Eravipuram in the Quilon district of that State. Election was held on May 19, 1982 and the result was declared on the following day. There were eight candidates in all but the main contest was between the appellant and respondent 1. The appellant polled 37, 073 while respondent 1 polled 37, 862. There was, therefore, an excess of 789 votes. All the remaining candidates together polled about 2000 votes.

2. Challenge to the election was laid on two grounds namely, commission of corrupt practices within the meaning of sub-sections (2) (4) and (7) of Section 123 of the Act and several irregularities in the course of counting leading leading to wrong conclusion regarding the result. The returned candidate joined issue and denied these allegations. The learned Election Judge in the High Court came to hold that the appellant had failed to bring home the charges of corrupt practices. He also did not accept the plea of irregularities in counting of ballot-papers, A request made to him for recount was rejected and on these conclusion he held that the election petition was liable to be dismissed.

3. Appellant's counsel conceded that the allegations of corrupt practices covered by sub-section (2) of Section 123 of the Act would not be pressed. He also fairly accepted the position that the evidence relating to obtaining or procuring of assistance for the furtherance of the prospects of respondent 1's election from government servants was inadequate as found by the High Court. Two grounds were, therefore, pressed in support of the appeal, namely, the allegations of corrupt practice within the Section 123 (4) of the Act and the allegations of irregularities in the matter of counting of ballot- papers.

4. Section 123 (4) provides :

123. Corrupt practices - The following shall be deemed to be corrupt practices for the purposes of this Act :

(4) The publication by a candidate or his agent or by any other person (with the consent of a candidate or his election agent), of any statement of fact which is false,

and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated, to prejudice the prospects of the candidate's election.

Admittedly Azeez was the election agent of respondent 1. In paragraphs 4 to 8 of the election petition, it had been alleged that election agent Azeez published a statement dated May 13, 1982 in the form of a handbill making false but serious allegations against the appellant touching his personal character and conduct. It was alleged that the appellant had caused the murder of one Omana, a lady worker supporting respondent 1 because refused to support his campaign. A meeting was held on May 14, 1982 at a place known as Tatamala Junction to condemn and condole the said death. It was represented that the death was caused on the ground that the said helpless lady was not prepared to work for him. Azeez along with other election workers carried wide scale propaganda with loud-speakers. At the said meeting there were many speakers including Azeez and respondent 1 who spoke in the same strain as the contents of the handbill. This was done with a view to affecting the prospects of the appellant's election. Similar propaganda was said to have been made by them until canvassing stopped. Respondent 1 denied these allegations in the written statement. According to the appellant the corrupt practices within the meaning of Section 123 (4) of the Act related to distribution of the handbill in question, namely, at two places being Mayyanana and Thrikkovil Batom areas and the speeches were made at the public meeting held at Tatamala Junction.

5. Exhibit P-1 is a copy of the handbill. No steps were taken to summon the original documents from the press where the handbill is said to have been got printed by Azeez, though the name of the press was borne on the handbill. Soon after the handbill came to be circulated a denial was published by the press to the effect that the handbill was not printed or published by the press. Admittedly the relevant materials if called from the press would have been the best evidence to provide the link between the publication of the objectionable material and the election agent of respondent 1. When we made a query from counsel for the appellant as to why such steps were not taken and the primary evidence was kept away from the Court, learned counsel indicated to us that the press had come out with a denial closely following the circulation and it was not likely that the press would have caused production of the document. Since the name of the press was given in the document and appellant proceeded on the footing that the document was printed in the said press, if the press did not comply with the summons, production could have been enforced by law. Want of proper steps at the right time and negligence or willful default at the trial cannot be answered in the manner appellant's counsel has contended before us and we must draw adverse inference against the appellant for non-production of the relevant material. Reliance was also placed on a report by PW. 4. a police officer where there was mention of such propaganda being carried on with reference to the death of the lady. The report did not indicate the source but only stated that the police officer collected the information from the gossips in the locality. Such a report as rightly held by the High Court was not admissible and it was hearsay of a type to which no credence could attach. Though counsel was very vehement to press this document into service he was not in a position to cite any legal basis for doing so, Apart from these two documents which we hold had been rightly ruled out, the other evidence is oral in character and PWs. 7, 8, 11 and 12 are the witnesses who have spoken about it. Admittedly all these witnesses were the workers of the appellant. There is over whelming material on the record, and even counsel fairly admitted, that the election was bought on party basis and there was sharp division of the electorate on the basis of political parties. That being the position, workers at the

election with party alignment would necessarily be political supporters of the respective candidates and when called as witnesses they would support their stand. Instances are not uncommon where such witnesses support their respective candidates and their cases even though the same be far from truth. In such circumstances we do not think on the oral testimony of these four witnesses the charge of publication of objectionable materials can be said to have been established.

6. Admittedly the meeting at Tatamala Junction was held on May 14, 1982 towards the evening. It is the case of the appellant that at this meeting respondent 1, his election agent Azeez and several other supporters spoke. Each one of them referred to the appellant as the person responsible for the murder of the lady. There is no dispute before us that the picture drawn up of the appellant as the murderer of the lady would very much tarnish his image, personality and character and would have adversely affected the prospects of his winning the election if widely circulated in the constituency before polling. Three witnesses have been examined being PWs. 2, 6 and 9 in respect of the Tatamala meeting. PW. 2 was the Circle Inspector of Police of the area and stated that he had attended the meeting. Though the meeting started at 7. p.m. he went to the meeting place at about 9 p.m. and remained there for about an hour. Thus at about 10 p.m. he left the place but the meeting was still continuing. He referred to the speech by Azeez but did not indicate as to what exactly he spoke. In cross-examination he admitted that though he maintained a diary, the details of the meeting were not available and he did not report about the meeting to his superior officers. This evidence does not lend any support to the case sought to be made out by the appellant. PW 6 was a printer and publisher of the newspaper by name Pauramitram. His evidence is that he was also working as reporter of the paper and had gone to the meeting in such capacity. On the basis of his jottings he gave a news item which was published in the paper marked Exhibit P- 3. He claims to have left the meeting place at 9.30 p.m. but the meeting was still continuing. The news item as reported does indicate what Azeez spoke. The witness also deposed on oath about the speech of Azeez. The High Court refused to place any reliance on this witness mainly on account of the fact that this paper was not an established newspaper of the area and did not have regular publication. On the basis of the evidence of RW 1 the information officer at the State head quarters, the High Court came to doubt the bona fides of PW 6 as also his paper. We have also perused the evidence of PW 6 and RW 1 and the observations of the High Court in regard to this aspect. We are inclined to agree with the High Court that the evidence of the witness is not impressive and we hold the same was rightly rejected by the High Court which had occasion to see him. The only other witness who has been examined in regard to the meeting is PW 9, a person who claims to be independent and unconnected with the lis. PW 9 on his own showing had gone to see his father suffering from a heart attack. He came from a place about 20 kilometers away. According to him he left father's place by bus around 10.30 p.m. If that be so and he was covering a distance of about 20 kilometers, he would not have reached the meeting place before 11 p.m. when the meeting is said to have concluded. His evidence that he stayed at the meeting is said to have concluded. His evidence that he stayed at the meeting place to listen to the speeches for quite some time has, therefore, to be ruled out as inconsistent with the other evidence. His evidence too has been rightly rejected by the High Court.

7. There is total consensus of judicial opinion that a charge of corrupt practice under the Act has to be proved beyond reasonable doubt and the standard of proof is the same as in a criminal case. See *Mahant Shreo Nath v. Choudhry Ranbir Singh*. This proposition has even not been disputed by counsel for the appellant. We, therefore, do not propose to refer to the catena of decisions affirming the aforesaid view. The High Court applied the right standard in the matter of appreciation of the material placed before it and has come to hold that the allegations of corrupt practice within the meaning of Section 123 (4) of the Act has not been proved. In such a situation as pointed out by this Court in the case of *Boddepalli Rajagopala Rao v. N. G. Ranga*, this Court would not reappreciate

the evidence. Such, J. as he then was observed thus : (SCC p. 582, para 10)

The finding of the learned trial Judge is based upon appreciation of evidence of the witnesses in the light of probabilities, A charge of corrupt practice under the Representation of the People Act must be established by clear and cogent evidence.

When the Court of first instance of a consideration of the evidence of the witnesses has refused to place any reliance upon their testimony the burden lying upon the party setting up a plea of corrupt practice becomes no lighter in appeal. The charge cannot be held established merely upon suspicion, or preponderance of probabilities. Unless the appellant establishes that the appreciation of the evidence or because of failure to consider important pieces of evidence or because of failure to consider important pieces of evidence which had a bearing on the charge or because of serious irregularities in procedure which amount to a denial of a fair trial the appellate court will not proceed to reappraise the evidence on which the findings are recorded by the Court of first instance on the credibility of witnesses.

We are in complete agreement with these observations. Our conclusion therefore, is that the High Court rightly negatived the challenge to the election of respondent 1 on grounds of corrupt practices.

8. The only other contention canvassed at the hearing is about the irregularities in the counting. The total rejected ballot-papers were within the rang of 500 while the difference between the appellant and respondent 1 was about 800. The details necessary for obtaining a recount were not pleaded in the election petition nor was any cogent material placed before the Court which could bring the matter within the rule indicated by this Court to justify a direction for recount. That plea, in our opinion, has rightly been negatived by the High Court. The appeal files and is dismissed. Parties shall bear their own costs in this Court.

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