

Manmohan Kalia

Vs

Yash and Others

Civil Appeal No. 2691 (NCE) of 1982

(Syed M. Fazal Ali, A. Varadarajan, Ranganath Misra JJ)

02.04.1984

JUDGMENT

FAZAL ALI, J. -

1. This election appeal is directed against a judgment dated June 4, 1982 of the Punjab and Haryana High Court dismissing the election petition filed by the appellant against the respondent. The present appeal arises out of an election to the Assembly Constituency No. 31-Jullundur Cantt, which was held on May 31, 1980 and the result of which was declared on June 3, 1980. Both the appellant and respondent 1 were the main rival candidates. The total votes polled from the constituency were 47,650, out of which the appellant polled 19,710 whereas respondent 1 secured 20,128 votes, the margin being rather small, viz., 418.

2. The appellant sought to challenge the election of respondent 1 on various grounds consisting of corrupt practices committed by him (respondent 1), which according to the appellant, materially affected the result of the election.

3. The appellant who is an advocate, argued his case with brevity and ingenuity and fairly conceded that he was not going to press all the allegations made in the petition but would confine his arguments only to the allegations pertaining to Section 123(4) of the Representation of the People Act, 1951 (for short, to be referred to as the 'Act'). In order to understand the ambit and scope within the confines of which the appellant has argued his case, it may be necessary to extract subsection (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 that candidate's election.

In view of the concessions made by the appellant, the case lies within a very narrow compass. The allegations made by the appellant against the respondent consist of two categories -

(1) speeches having been made by the respondent or his friends nearabout the time of the election and after the respondent was nominated as a candidate, which amounted to serious character assassination of the appellant by projecting him as a murderer of one Asa Ram, who died as far back as 1978. According to the appellant respondent 1

carried out a vilifying campaign to show that he (appellant) was directly connected with the aforesaid murder so as to wean away the votes of the Harijans of the locality and members of the Congress (I) party because Asa Ram was Harijans and one of the supporters of Congress (I) party. In this connection, the allegations made may be classed under two separate categories :

(a) Utterances, speeches, news items and articles regarding the allegation that the appellant was directly connected with the murder of Asa Ram in 1978, and

(b) speeches and news items made and issued by respondent 1 on various occasions proximate to the date of the election.

(2) Similar acts committed by respondent 1 in close proximity to the election, i.e., sometime in May 1980.

4. After having gone through the evidence, statement of witnesses and the documents placed before us, we are unable to find any close connection or direct link between the imputations made against the appellant in 1978 and those made in 1980. In none of the documents produced by the appellant which refer to the activities of the first respondent, there is the slightest possible hint that the appellant had anything to do with the murder of Asa Ram. Realising this difficulty, the appellant sought the application of the doctrine of innuendo. It is well settled that where this doctrine is applied, it must be clearly proved that the defamatory allegation was made in respect of a person though not named yet so fully described that the allegation would refer to that person and that person alone. Innuendo cannot be proved merely by inferential evidence which may be capable of two possibilities. Furthermore, the allegations made in 1978 being far too remote and there being no continuous link between those allegations and the allegations made in 1980, the first category of the charge against the respondent cannot be sustained, more particularly because in 1978 a fresh election was not in the offing because the Janata Government came into power in 1977 and in normal course would have completed its full term in 1982. Thus, at that time nobody could have predicated that the elections would be held only two years later which happened by a sudden spurt of events.

5. In these circumstances, we would place no reliance at all so far as the first category of the allegations against the respondent is concerned. In *N. Vimala Devi v. K. Madhusudhana Reddy* this Court completely ruled out documents containing instances of corrupt practice which had nothing to do with the 1972 election with which their Lordships were concerned in that case and in this connection while overruling an important document they observed thus : (SC p. 388, para 7)

We are not impressed by the argument on behalf of the respondent that Ex. A-57, which shows that even in 1970 a representation of a similar kind was made, shows that there were many others out to besmirch the name of the appellant. Ex. A-57 contains many instances which have nothing to do with the election in 1972 or the setting up of a Congress candidate in that election. That is the affinity between Ex. A-48 and Ex. A-1.

6. On a parity of reasoning, therefore, we cannot call into aid the allegations made as far back as 1978. It is, therefore, not necessary for us to consider or to go into the evidence offered by the appellant as far as the 1978 incident is concerned.

7. Coming now to the second category of allegations, as the appellant has confined this arguments

only to the averments made regarding the application of Section 123(4) of the Act, the ambit of the case is greatly reduced. Before examining the allegations, we might mention that the learned election Judge of the High Court had dealt with all the allegations and has given convincing and cogent reasons for holding that they had not been proved either by oral or documentary evidence. It is now well settled by several authorities of this Court that an allegation of corrupt practice must be proved as strictly as a criminal charge and the principle of preponderance of probabilities would not apply to corrupt practices envisaged by the Act because if this test is not applied a very serious prejudice would be caused to the elected candidate who may be disqualified for a period of six years from fighting any election, which will adversely affect the electoral process.

8. Keeping in view, therefore, the strict standard of proof required in such cases, we proceed to consider the evidence on which the appellant has relied in order to determine whether or not the corrupt practice alleged has been proved. In this connection, the first circumstance stressed before us was that a meeting was convened in Gopal Nagar, Ward No. 22, on May 18, 1980 where respondent 1 and, with his consent, his friend Sansar Chand, delivered fiery speeches connecting the appellant with the murder of Asa Ram, which was deposed to by PWs, 8 and 13. PW 8 has stated that he attended a meeting on May 18, 1980 at Basti Guzan. The learned judge disbelieved his evidence as being wholly improbable. Moreover, there is a contradiction in his evidence because at one place he says that Yash (respondent 1) spoke first and was followed by Sansar Chand and yet at another place he says that Sansar Chand spoke first and was followed by Yash. It is impossible to conceive of such a contradiction if the witness apart from being interested and partisan, had been present in the meeting throughout, he would not forget the sequence of such an important matter. Another witness relied upon by the appellant was PW 13 who has also been disbelieved by the learned Judge, and he had admitted in his cross-examination that he did not make a note of what Yash had spoken and yet he was able to give full and grotesque details of the speech when he was examined in the Court, after more than a year and a half. Furthermore, he states that when he talked to the appellant he was told that the respondent already knew about the meeting. This shows that the appellant himself did not take this witness very seriously. We, therefore, entirely agree with the appreciation of the evidence of these two witnesses made by the learned High Court Judge.

9. The evidence of PWs 8 and 13, however, is alleged to have been corroborated by a news item published in an Urdu daily 'Milap' whose Chief Sub-Editor (PW 5) was examined by the appellant. But the witness far from supporting his case has deposed that he had absolutely no personal knowledge of the report made by Prashar which was published on May 24, 1980. Moreover, it is very difficult for a court to rely on news items published on the information given by correspondents because that may not represent the true state of affairs. In *Samant N. Balkrishna v. George Fernandez* while dwelling on the relevance and credibility of such type of news items this Court made the following observations : (SCC p. 261, para 47)

The best proof would have been his own speech or some propaganda material such as leaflets or pamphlets etc. but none was produced..... A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second - hand secondary evidence. It is well-known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible.

10. In the instant case, there is no evidence to show the actual record of the speech made by respondent 1 or Sansar Chand and, therefore, the said news item does not advance the case of the

appellant any further, particularly when it has been stoutly denied by respondent 1 and PW 5.

11. Reliance was also placed on another news item (Ex. PW 25/4) appearing on May 20, 1980 which also has to be rejected on the same ground as the first item.

12. The learned Judge has rightly pointed out in his judgment that PW 25, after he was shown the newspaper dated May 12, 1980 (Ex. PW 25/3), has said that he did not know anything else, that is to say, neither the correspondent revealed the source from which he got the information nor does he say that he was actually present when the speeches were delivered. On the other hand, RW 3, Dev Raj Puri, had clearly stated that certain changes were made in the items which he had filed and this statement of RW 3 was not challenged.

13. Thus, the evidence furnished by the aforesaid items is also of little value to the appellant. On the same principles of reasoning the reports of the meetings published in 'Milap' regarding the speeches delivered on May 17 and 28, 1980 also suffer from the same infirmity.

14. Strong reliance was placed on the document, Ex. RW 24, which had been admitted by the first respondent. We have gone through the entire speech published in the daily 'Milap' on May 18, 1980 and we do not find even a single word to connect the appellant with the murder of Asa Ram. In fact, the entire speech reproduced in the said paper does not at all show that the speaker, viz., the first respondent, made any reference to the appellant at all. In these circumstances, therefore, even the appellant himself had to admit before us that as the text of the speech has been reproduced, no allegation has been made against him.

15. The appellant, however, tried in vain to argue that the aforesaid speech would amount to innuendo because it has expressly referred to the circumstances under which Asa Ram was murdered. By no stretch of imagination can the doctrine of innuendo be invoked to the aforesaid speech. We, therefore, reject this contention also.

16. After a careful consideration of the documents, the circumstances of the case and the oral evidence of the witnesses placed before us, we find ourselves in agreement with the judgment of the High Court. Indeed, it is very difficult to prove a charge of corrupt practice merely on the basis of oral evidence because in election cases, it is very easy to get the help of interested witnesses but very difficult to prove charges of corrupt practice. In the instance case, the evidence - both oral and documentary - led by the appellant the evidence - falls short of the standard of proof require to bring his case within the four corners of Section 123(4) of the Act.

17. We must, however, record our appreciation of the crisp and candid manner in which this case has been presented before us by the appellant.

18. For the reasons given above, the judgment of the High Court is affirmed and the appeal is dismissed but in the circumstances without any order as to costs.

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