

Surinder Singh

Vs

Hardial Singh and Others

Civil Appeal No. 463 of 1982

(Ranganath Misra, P. N. Bhagwati, V. B. Eradi JJ)

29.10.1984

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal under Section 116-A of the Representation of the People Act, 1951 ('Act' for short), is directed against the judgment of the Punjab and Haryana High Court setting aside the election of the appellant to the Punjab Legislative Assembly Constituency No. 25 known as Naushehra-Pannuan Assembly Constituency. Election was held on May 31, 1980, and the result was declared the following day. Appellant was declared elected with 26,980 votes while respondent 3 Ranjeet Singh lost with 26,739 votes.

2. The election petition was filed by two voters of the constituency (respondents 1 and 2). Respondent 1 (PW 5) was admittedly the counting agent of respondent 3. The election of the appellant was challenged on two allegations of the corrupt practice in the main, namely, disturbing a meeting of the Akali Party at a place called Hadur-Shah in Village Gandiwind on May 20, 1980, where the appellant's supporters allegedly used firearms and fatally injured on and otherwise inflicted on many others. The relevant allegations in support of this plea are to be found in paragraph 5 of the election petition. The other was an allegation of corrupt practice of bribery with reference to Bagicha Singh Chakiwala. Appellant with his supporters in the course of canvassing is said to have contacted Bagicha Singh on May 28, 1980, at his village Chola-Sahib and asked for votes of his and members of his family. Bagicha Singh was alleged to have told the appellant that uncovered electric wires were dangerously passing over his house and despite his best of efforts he has not been able to get them removed and the sum being demanded for their removal was beyond his means. Bagicha Singh is alleged to have told the appellant that if he got the same removed he would get the votes of himself, members of the family as also of his brotherhood. Appellant promised to get the needful done and approached the Punjab State Electricity Board employees and on putting pressure, got the same done on May 30, 1980, on day before the poll. The relevant particulars of this allegation are contained in paragraphs 8 and 9 of the election petition.

3. Several other allegations were made in paragraphs 6, 7 and 10 of the election petition relating to threats to electors of Gandiwind on May 20, 1980, after the meeting was disturbed, improper reception of votes, reception of void votes, terrorisation of the voters at the booth on the day of polling, etc. but the same do not seem to be relevant as the High Court has not relief on the same nor in the course of hearing of this appeal have those allegations been pressed into service. It is relevant to indicate here that neither the defeated candidate nor the election petitioners had any personal knowledge of the two incidents referred to above. Verification of the election petition indicated that the allegation in paragraph 5 was true to the information received from Gurmukh

Singh, PW 10 and Milkha Singh, PW 11 while information relating to the Bagicha Singh episode was obtained from Darshan Singh, PW 12.

4. At the trial, Hardial Singh, election petitioner 1 was examined as PW 5, Respondent 3 was, however, not examined as a witness. The evidence in regard to both the incidents - Gandiwind meeting and Bagicha Singh episode - mainly consisted of oral statements of witnesses.

5. Some documents, such as the FIR, injury reports, etc. and the deposit receipt in regard to Bagicha Singh episode do not throw any conclusive light inasmuch as they lack the material aspect of correlating the appellant with the events. The appellant had in his written statement denied the allegations insofar as they implicated him with the incidents. He examined himself and led other evidence to support his stand. The learned Single Judge before whom the election came up for trial accepted the evidence of the election petitioners and held that both the corrupt practices had been committed by the appellant himself or through others with his consent and were covered by Sections 123 (1)(a), (b) and (2) of the Act. The election was declared void.

6. Mr H. L. Sibal appeared in support of the appeal and Mr Shanti Bhushan represented the election petitioners. The appeal has been heard at great length and detailed submissions have been advanced by both sides. Mr Shanti Bhushan emphatically contended that it was the practice of this Court in election appeals not to enter into re-appreciation of evidence and disturb findings of fact reached by the High Court. Therefore, we should not attempt a re-appreciation of the evidence while dealing with the appeal. He next contended that election dispute were essentially civil in nature. To require the allegations of corrupt practice to be proved as in a criminal charge was not the proper approach. With a view of the preserving the purity of the electoral process and sanctity of the democratic system to which our country is wedded, it is meet and proper that charges of corrupt practice should be allowed to be established on the basis of preponderance of probabilities as in civil litigation and not by asking for proof of the allegation beyond reasonable doubt as in a criminal case. We are of the view that these two contentions should be first dealt with in order that a proper approach to the matter can be indicated and once that is done the materials available on record can be assessed for the purpose of disposal of the appeal.

7. Section 116-C of the Act lays down the procedure in appeal. It provides :

(1) Subject to the provisions of this Act and of the rules, if any, made thereunder, every appeal shall be heard and determined by the Supreme Court as nearly as may be in accordance with the procedure applicable to the hearing and determination of an appeal from any final order passed by a High Court in the exercise of its original civil jurisdiction; and all the provisions of the Code of Civil Procedure, 1908 and the Rules of the Court (including provisions as to the furnishing of security and the execution of any order of that Court), shall, so far as may be, apply in relation to such appeal....

8. This provision makes it abundantly clear that an appeal to this Court under the Act is to be treated as a civil appeal and the jurisdiction to be exercised is as extensive as in the case of an appeal from a matter disposed of in exercise of original civil jurisdiction of the High Court. Mr Shanti Bhushan placed a series of decisions before us in support of his proposition regarding the extent of interference available in an appeal. The first of these cases is Sarju Pershad v. Raja Jwaleshwari Pratap Narain Singh (1950 SCR 781 : AIR 1951 SC 120 : 1950 SCJ 583). This was a regular civil appeal and not under the Act. This Court quoted with approval the observations of Viscount Simon in

Watt v. Thomas ((1947) AC 484 : (1947) 1 All ER 582 : 176 LT 498 (HL)). Viscount Simon had stated, inter alia :

But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial judge as to where credibility lies is entitled to great weight.

Viscount Simon proceeded further to indicate :

This is not to say that the judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given.

There cannot be much dispute that ordinarily this rule is applicable to all appellate forums.

9. Mr Shanti Bhushan then referred to the cases of *Narbada Prasad v. Chhagan Lal* ((1969) 1 SCR 499 : AIR 1969 SC 395 : 39 ELR 277); *Prabodh Chandra v. Mohinder Singh* (AIR 1971 SC 257 : (1971) 3 SCC 101), *Sumitra Devi v. Sheo Shankar Prasad Yadav* ((1973) 2 SCR 920 : (1973) 3 SCC 330 : AIR 1973 SC 215), *Chanda Singh v. Shiv Ram Varma* (AIR 1975 SC 403 : (1975) 4 SCC 393); *Vatal Nagaraj v. R. Dayanand Sagar* ((1975) 2 SCR 384 : (1975) 4 SCC 127 : AIR 1975 SC 349) and *Lakshmi Raman Acharya v. Chandan Singh* ((1977) 2 SCR 412 : (1977) 1 SCC 423 : AIR 1977 SC 587). In each of these cases, depending on the facts thereof, the Court has made an observation that the trial Judge's assessment was entitled to great weight and respect and was, therefore, not to be ordinarily interfered with. None of these cases, however, indicated that this Court would not go into the matter if the facts and circumstances warranted a detailed examination or a fresh assessment.

10. We shall presently refer to some of the decisions of the Court where this aspect has also been examined. To start with is the case of *Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji* ((1965) 1 SCR 712 : AIR 1965 SC 669), disposed of by a five-judge Bench. That was a case prior to amendment of the Act. Under the scheme then prevalent, election disputes were tried by a tribunal and an appeal lay to the High Court and the matter was before this Court by way of appeal by special leave. Dealing with this aspect of the matter, the Court Held :

For, as soon as special leave is granted there is an appeal before the Court and while dealing with such an appeal this Court exercises its civil jurisdiction. It is true that the rules framed by this Court in exercise of its rule-making powers do not contain any provision analogous to Order XLI, Rule 22 of the judgment appealed against upon a ground which has been found against him in that judgment. The provision nearest to it is the one contained in Order XVIII, Rule 3 of the Rules of this Court which requires parties to file statements of cases. Sub-rule (1) of that rule provides that Part I of the statement of the case shall also set out the contentions of the parties and the points of law and fact arising in the appeal. It further provides that in Part II a party shall set out the propositions of law to be urged in support of the contentions

of the party lodging the case and the authorities in support thereof. There is no reason to limit the provisions of this rule only to those contentions which deal with the points found in favour of that party in the judgment appealed from. Apart from that we think that while dealing with the appeal before it this Court has the power to decide all the points arising from the judgment appealed against and even in the absence of an express provision like Order XLI, Rule 22 of the Code of Civil Procedure it can devise the appropriate procedure to be adopted at the hearing. There could be no better way of supplying the deficiency than by drawing upon the provisions of a general law like the Code of Civil Procedure and adopting such of those provisions as are suitable. We cannot lose sight of the fact that normally a party in whose favour the judgment appealed from has been given will not be granted special leave to appeal from it. Considerations of justice, therefore, require that this Court should in appropriate cases permit a party placed in such a position to support the judgment in his favour even upon grounds which were negatived in that judgment.

The ratio of this decision makes the position clear that an appeal laid before this Court whether under a statute conferring a right of appeal or as a result of grant of leave under Article 136 of the Constitution opens up the normal civil appellate jurisdiction of the Court to be exercised.

11. In *Bhanu Kumar Shastri v. Mohan Lal Sukhadia* ((1971) 3 SCR 522 : (1971) 1 SCC 370 : AIR 1971 SC 2025), Ray, J. (as he then was), indicated : (SCC pp. 385-86, para 45)

If the High Court has overlooked important and crucial documents or oral evidence such evidence will justify this Court to support the contentions of the respondent that the findings of fact arrived at by the High Court are against clear and cogent proof of facts. This Court will, therefore, be justified in recording the correct findings on ample and abundant materials which have been overlooked and ignored by the High Court. In the present case, we have had occasion to deal with these aspects on the rival contentions and recorded our findings.

12. In *Sumitra Devi case* ((1973) 2 SCR 920 : (1973) 3 SCC 330 : AIR 1973 SC 215) a decision of a three-Judge Bench on which Mr Shanti Bhushan also relied, the Court observed : (SCC pp. 331-32, para 7)

It has been consistent practice of this Court not to interfere with findings on questions of fact unless there is some grave or palpable error in the appreciation of the evidence on the basis of which the findings were arrived at. (See *Dr Jagjit Singh v. Giani Kartar Singh*, AIR 1966 SC 773 : (1967) 1 SCJ 762 : 28 ELR 81)

13. In *Mohd. Yasin Shah v. Ali Akbar Khan* ((1977) 2 SCC 23), a three-Judge Bench referred with approval to the ratio in *Laxminarayan v. Returning Officer* ((1974) 1 SCR 1 SCR 822 : (1974) 3 SCC 425 : AIR 1974 SC 66), and the said : (SCC p. 45, para 41)

The propositions enunciated by this Court are well established and there can be no dispute with the propositions mentioned above. In the instant case, however, we find that the approach of the learned Judge was not correct. We have already pointed out a number of salient features appearing in the evidence which have rendered the case of the petitioner inherently improbable. The learned Judge appears to have overlooked these essential features. Further, the learned Judge himself had observed that issue No. 1 which he had framed was wide enough to include the plea of the appellant, and even

if the order of the Returning Officer in rejecting the nomination paper on the ground of the absence of the candidate or his proposer was wrong, it could still be supported on the ground that the signature of the proposer was not genuine. The learned Judge has not determined this aspect of the matter. In these circumstances, therefore, we feel that the judgment of the High Court is erroneous both on fact and in law and although the appellate Court is extremely slow in disturbing the findings of fact, in the instant case, we are satisfied that the judgment of the High Court is against the weight of the evidence on record and preponderance of probabilities.

14. In *S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra* (1980 Supp SCC 53), it was again pointed out that if something is radically wrong with the approach of the learned Judge trying the election petition it would be for this Court to rectify the error.

15. The jurisdiction to exercise in an appeal under the Act therefore, appears to be as wide as in any other civil appeal. Section 116-A(1) of the Act clearly indicates that the appeal to this Court has to be disposed of by exercising the same jurisdiction as is exercised in an appeal against the original judgment of the High Court. In this view of the matter there can really be no rule, whether statutory or evolved by this Court by long usage as alleged, that the Court would not interfere with the findings of fact reached at the trial stage. Ordinarily a finding reached on assessment of the evidence particularly when it is oral would not be interfered with but where the Court is satisfied that on account of a wrong approach to a matter, injustice has been done to one of the parties before it, it would not only be within the powers of the Court but it would be its obligation to rectify the mistake and do justice to the party.

16. We shall now turn to the other submission of Mr Shanti Bhushan. By a catena of decisions of this Court it has by now been very well settled that allegations of corrupt practice are quasicriminal charges and the proof that would be required in support of such allegations would be as in a criminal charge. Mr Shanti Bhushan has canvassed that the standard of proof required in such a case would be dependent upon the gravity of the charge and there is no justification to adopt the rule that in every case of allegation of corrupt practice the standard applicable to a criminal trial involving a grave charge like murder should be adopted. He has drawn support from the observations of this Court in *M. Chenna Reddy v. V. Ramachandra Rao* (40 ELR 390 (SC)). It may be pointed out here that the ratio in *Chenna Reddy* case (40 ELR 390 (SC)) runs counter to the current of judicial thought on the point. In fact, quite close in point of time after *Chenna Reddy* case (40 ELR 390 (SC)) came the case of *Magraj Patodia v. R. K. Birla* ((1971) 2 SCR 118 : (1970) 2 SCC 888 : AIR 1971 SC 1295) *Hedge, J.* indicated : (SCC p. 895, para 14)

It is true that as observed in *M. Chenna Reddy v. V. Ramachandra Rao* (40 ELR 390 (SC)), that a charge of corrupt practice cannot be equated to a criminal charge in all respects. While the accused in a criminal case can refuse to plead and decline to adduce evidence on his behalf and yet ask the prosecution to prove its case beyond reasonable doubt such is not the position in an election petition. But the fact remains that burden of proving the commission of corrupt practice pleaded is on the petitioner and he has to discharge that burden satisfactorily. In doing so he cannot depend on preponderance of probabilities. Courts do not set at naught the apparent verdict of the electorate except on good grounds.

Charges of corrupt practice have been dealt with by this Court for over 20 years now in election appeals under the Act. The first important case which came before this Court was disposed of by a five-Judge Bench in the case of *Mohan Singh v. Bhanwarlal* ((1964) 5 SCR 12 : AIR 1964 SC 1366). *Shah, J.* (as he then was), spoke for the Court thus :

The onus of establishing a corrupt practice is undoubtedly on the person who sets it up, and the onus is not discharged on proof of mere preponderance of probability, as in the trial of a civil suit : the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous.

17. Hegde, J. in *Guruji Shrihar Baliram Jivatode v. Vithalrao* ((1969) 2 SCR 766 : (1969) 1 SCC 82 : 40 ELR 189), reiterated the proposition by saying : (SCC p. 85, para 11)

It is trite to say that the burden of proving every one of the ingredients of the corrupt practice alleged is on him who alleges it. If he fails to establish any one of them to the satisfaction of the Court he must fail.

18. In *Mahant Shreo Nath v. Choudhry Ranbir Singh* ((1970) 3 SCC 647), it was again observed : (SCC p. 649, para 4)

A plea in an election petition that a candidate or his election agent or any person with his consent has committed a corrupt practice raises a grave charge, proof of which results in disqualification from taking part in elections for six years. the charge in its very nature must be established by clear and cogent evidence by those who seek to prove it. The Court does not hold such a charge proved merely on preponderance of probability : the Court requires that the conduct attributed to the offender is proved by evidence which establishes it beyond reasonable doubt.

19. In *Abdul Hussain Mir v. Shamsul Huda* ((1975) 4 SCC 533 : (1975) 3 SCR 106 : AIR 1975 SC 1612), Krishna Iyer, J. indicated : (SCC pp. 539, 547, paras 4, 5, 30)

Charges, such as have been imputed here, are viewed as quasi-criminal, carrying other penalties than losing a seat, and strong testimony is needed to subvert a Returning Officer's declaration.... When elections are challenged on grounds with a criminal taint, the benefit of doubt in testimonial matters belongs to the returned candidate.... Oral evidence, ordinarily, is inadequate especially if it is of indifferent quality or easily procurable.

20. In *Ch. Razik Ram v. Ch. Jaswant Singh Chouhan* ((1975) 4 SCC 769) Sarkaria, J. spoke for this Court in the following terms : (SCC p. 776, para 15)

Before considering as to whether the charges of corrupt practice were established, it is important to remember the standard of proof required in such cases. It is well settled that a charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. Thus, the trial of an election petition being in the nature of an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial. Just as in a criminal case, so in an election petition, the respondent against whom the charge of corrupt practice is levelled, is presumed to be innocent unless proved guilty. A grave and heavy onus therefore, rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt. It is true that there is no difference between the general rules of evidence in civil and criminal cases, and the definition of "proved" in Section 3 of the Evidence Act does not draw a distinction between civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainty amounting to demonstration is rarely to be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the

definition, is that of a person of prudence and practical good sense. 'Proof' means the effect of the evidence adduced in the case. Judged by the standard of prudent man, in the light of the nature of onus cast by law, the probative effect of evidence in civil and criminal proceedings is markedly different. The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is requisite for a conviction. The same is largely true about proof of a charge of corrupt practice, which cannot be established by mere balance of probabilities, and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the mind of the Court is left rocking with reasonable doubt - not being the doubt of a timid, fickle or vacillating mind - as to the veracity of the charge, it must hold the same as not proved.

To the same effect are the following decisions of this Court in *Surya Kant Roy v. Imamul Hak Khan* ((1975) 1 SCC 531); *Nizamuddin Ahmed v. Narbada Prasad* ((1976) 1 SCC 1 : AIR 1975 SC 1909); *D. Venkata Reddy v. R. Sultan* ((1976) 2 SCC 455); *Bir Chandra Barman v. Anil Sarkar* ((1976) 3 SCC 88 : AIR 1976 SC 603); *Ramji Prasad Singh v. Ram Bilas Jha* ((1977) 1 SCC 260 : AIR 1976 SC 2573); *Lakshmi Raman Acharya v. Chandan Singh* ((1977) 2 SCR 412 : (1977) 1 SCC 423 : AIR 1977 SC 587); *Amolakchand Chhazed v. Bhagwandas Arya* ((1977) 3 SCC 566 : AIR 1977 SC 813); *Ramanbhai Nagjibhai Patel v. Jashvant Singh Udesingh* ((1978) 3 SCC 142); *Haji C. H. Mohammad Koya v. T.K.S.M. A. Muthukoya* ((1979) 2 SCC 8 : AIR 1979 SC 154).

21. We may now refer to two decisions of this Court rendered this year where the same question had arisen for consideration. In *A. Younus Kunju v. R. S. Unni* ((1984) 3 SCC 346), one of us observed : (SCC p. 351, para 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* ((1970) 3 SCC 647).

22. In *Manmohan Kalia v. Yash* ((1984) 3 SCC 346), a three-Judge Bench reiterated. (SCC p. 502, para 7)

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.

23. It is thus clear beyond any doubt that for over 20 years the position has been uniformly accepted that charges of corrupt practice are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as civil action but proof beyond reasonable doubt as in criminal trials. We are bound by the decision of the larger Bench in *Mohan Singh* case ((1964) 5 SCR 12 : AIR 1964 SC 1366) as also by decisions of coordinate benches and do not feel inclined to take a different view. We also find no warrant for the contention of Mr Shanti Bhushan that a fresh look is necessary in the matter. On the other hand we feel advised to follow the dictum of Lord Devlin when he observed :

Precedents keep the law predictable and so more or less ascertainable.

Lord Chancellor Hailsham very appropriately summed up the English practice when he said in *Cassell & Co. Ltd. v. Broome* ((1972) 1 All ER 801) :

Their lordships regard the use of precedents (1) as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. (See Note (1966) 3 All ER 77 : (1966) 1 WLR 1234)

24. A Judge-made change in the law rarely comes out of a blue sky. Rumbblings from Olympus in the form of obiter dicta will give warning of unsettled weather. Unsettled weather is itself, of course, bound to cause uncertainty, but inevitably it precedes the acceptance of a change. Such a situation has not arisen yet and, therefore, a rethinking as suggested by Mr Shanti Bhushan is not warranted.

25. One more aspect should be referred to here before we proceed to examine the facts of the case. A five-Judge Bench of this Court in *Jagan Nath v. Jasvant Singh* (1954 SCR 892 : AIR 1954 SC 210 : 9 ELR 231), indicated that election disputes are not cases at common law or equity but are strict statutory proceedings and result of an election is not available to be interfered with lightly. It was said :

It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law.

This view has been reiterated by this Court in *Venkata Reddy* case ((1976) 2 SCC 455).

26. We have already taken note of the position that the election has been set aside in the present case on a finding of commission of two corrupt practices, one relating to the election meeting in village Gandiwind on May 20, 1980, and the other relating to the allegation of bribery in the matter of Bagicha Singh. We shall now proceed to deal with these two aspects separately.

27. The corrupt practices as alleged in the election petition have been found by the High Court to come within the ambit of sub-sections (1) and (2) of Section 123 of the Act. The legal position is well settled, and it has not been disputed before us, that the Act is a complete Code by itself on the subject of elections to Parliament as also to the State Legislatures and an election can be declared void only if one or the other of the stated grounds in Section 100 of the Act is attracted. Section 100(1)(b) provides that if corrupt practice is committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent, the election of the returned candidate shall be declared void.

28. The relevant provisions in Section 123 may now be extracted :

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

(1) 'Bribery', that is to say, -

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person

whomsoever, with the object, directly or indirectly of inducing -

#(a) \* \* \*##

(b) an elector to vote or refrain from voting at an election, or as a reward to -

#(i) \* \* \*##

(ii) an elector for having voted or refrained from voting;

#(B) \* \* \*##

(b) by any person whomsoever for himself or any other person for voting .... or inducing or attempting to induce any elector to vote ....

Explanation. - For the purposes of this clause the term 'gratification' is not restricted to pecuniary gratifications or gratifications estimable in money any it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expanses referred to in Section 78.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right :

Provided that -

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who -

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or

#(ii) \* \* \*##

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause.

29. We shall first deal with the Gandiwind incident of May 20, 1980. The election petition in paragraph 5 makes allegations with reference to this incident. For convenience the contents of the entire paragraph are extracted :

5. That respondent 1 along with Gurdial Singh, Hardial Singh, Rachhpal Singh sons of Tara Singh, Kulwant Singh son of Sewa Singh, Gurnam Singh son of Jinda Singh hatched a conspiracy not to allow the Akali candidate respondent 2 and his supporters to hold any meeting or do any canvassing at village Gandiwind on May 20, 1980. They had collected at the house of Gurdical Singh at about 1.30 p.m.

where the above-mentioned decision was taken. At about the same time the villagers were collecting for a meeting at the place known as Hadur-Shah and that meeting was to be addressed by S. Lehna Singh Tur, M.P. and respondent 2. At about 2 p.m. the aforesaid persons armed with firearms except respondent 1 came out of the house of Gurdial Singh. Then respondent 1 told them not to allow the meeting to proceed at any cost and himself stayed behind. On reaching the meeting place, they stood by at one side of the Jalsa. At about 2.30 p.m. when S. Lehna Singh Tur reached at the meeting, these persons started shouting slogans against respondent 2 and S. Lehna Singh and in favour of respondent 1 and caused obstruction in the proceedings of the Jalsa and did not allow S. Lehna Singh Tur to speak. When Piara Singh son of Inder Singh, Daya Singh son of Ishar Singh requested them not to do it and tried to stop them, they got into a rage and started hurling abuses at respondent 2, S. Lehna Singh Tur and others and suddenly started firing. On this the people started running for shelter and a shot fired by Gurdial Singh hit Daya Singh son of Ishar Singh on his forehead who fell down and the shots fired by the others hit Piara Singh son of Inder Singh, Kehar Singh son of Gujjar Singh and Kewal Singh son of Surain Singh. All the aforesaid persons kept on firing shots which were returned by some people.

30. The Akali Party had organised a meeting in the village to make election propaganda for respondent 3 and PW 4 was the organiser. S. Lehna Singh, PW 7 who was a sitting Member of the Lok Sabha was to address that meeting. It is the admitted position that the Akali candidate S. Ranjit Singh was not to, and did not, come to the meeting. It is also the common case of both the parties that the appellant who was another contesting candidate also did not come to the place of the meeting. There is evidence, and Mr Sibal for the appellant did not dispute the position, that the meeting so convened was disturbed. The disturbance to the meeting is said to have been caused by a group of people consisting of Gurdial Singh, Hardial Singh, Rachhpal Singh, Kulwant Singh and Gurnam Singh. There is no specific plea that these five persons were agents of the appellant. Chapter II of the Act deals with agents and refers to appointment of election agent, polling agent and counting agent. Admittedly, by May 20, 1980, none of these persons was an agent of any of these classes of the returned candidate. The only other aspect by which the appellant would be liable for the action of these five people would be of their act of disturbing the meeting was with his consent.

31. There is evidence which the High Court has accepted that when PW 7 arrived place and slogans in favour of the candidate and PW 7 were raised, Gurdial Singh and his group raised counter-slogans. Soon disorder spread. When PW 4 and Daya Singh wanted to pacify the situation with a view to making the holding of the meeting possible, Gurdial Singh opened fire from his rifle which hit Daya Singh on the forehead. Others who were armed with 12 bore guns also fired their arms and with pellets coming from their firearms many were injured. Though Mr Sibal made a serious attempt to combat the finding of the High Court regarding the disturbance to the meeting, we are inclined to agree with the High Court that the meeting convened by the Akali Party in village Gandiwind on May 20, 1980, where PW 7 was to address the electors was disturbed by Gurdial Singh and others. The fact that firearms were freely used first by Gurdial Singh and his party and then by way of retaliation by Akali workers and gunshots resulted in the death of Daya Singh and thus a grave situation arose is really not very material unless that would amount to a corrupt practice within the meaning of Section 123(2) of the Act. According to Mr Sibal disturbing an election meeting is not undue influence and for the matter of that a corrupt practice, but has been separately provided for in Section 127 of the Act and is an electoral offence. Section 127 provides :

127. Disturbances at the election meeting. - (1) Any person who at a public meeting to which this section applies acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, shall be punishable with fine which may extend to two hundred and fifty rupees.

(2) This section applies to any public meeting of a political character held in any constituency between the date of the issue of a notification under this Act calling upon the constituency to elect a member or members and the date on which such election is held.

32. Undoubtedly the meeting in question is squarely covered by sub-section (2) of Section 127 and the role assigned to Gurdial Singh and his group would certainly bring it within sub-section (1) of that section. It is not open to doubt that Gurdial Singh and his supporters in the event of the allegations being accepted had committed an electoral Offence within the meaning of Section 127 of the Act.

33. The question that has next to be considered is whether disturbing such a meeting would also amount to undue influence under Section 123(2) of the Act. Direct or indirect interference or attempt to interfere with free exercise of the electoral right by a candidate, his agent or any person with this consent or the candidate's election agent has been made a corrupt practice. "Electoral Right" has been defined in Section 79(d) of the Act to mean "the right of a person to stand or not to stand as or to withdraw or not to withdraw from being a candidate or to vote or refrain from voting at any election." In paragraph 5 of the election petition there is no allegation of any threat. It is proper at this stage to refer to the pleadings in paragraph 6 of the election petition where it has been pleaded :

That later on the same day aforesaid assailants threatened that anybody who will support or vote for respondent 2 shall meet the same fate as Daya Singh. Gurdial Singh son of Tara Singh along with others created such a terror in the village that subsequently it became very difficult and risky for anyone to canvass for respondent 2 in this village.

34. Disturbing the meeting as alleged in paragraph 5 of the election petition in our view is not covered under sub-section (2) of Section 123 of the Act and is clearly an electoral offence dealt with by Section 127 of the Act. The allegations contained in paragraph 6 of the election petition would perhaps come within Section 123(2)(a)(i) of the Act. In paragraph 5 of the election petition the following fact had been pleaded :

Then respondent 1 told them not to allow the meeting to proceed at any cost and himself stayed behind.

If this statement of fact is accepted consent of the appellant for disturbing the meeting can be found but in the absence of any specific plea that it was appellant's instruction that the electors should be threatened, the facts alleged in paragraph 6 of the election petition cannot be accepted to have been with the consent of the appellant. Mr Shanti Bhushan, learned counsel for respondents 1 and 2 has not disputed, and in our opinion rightly, that allegations of corrupt practice have to be strictly pleaded with material particulars and evidence beyond the ambit of plea would not be permitted to be led. Though there is some oral evidence to implicate the appellant, even for what followed the

disturbance to the meeting, we do not think in the absence of the requisite plea such evidence can be entertained for any effective purpose.

35. Though in paragraph 5 of the election petition the link between the appellant and Gurdial Singh and his group was pleaded in the manner extracted above, oral evidence was led particularly by PWs 10 and 11 about the details of instructions given by the appellant to create disturbance at the meeting. The learned trial Judge applied his mind to the evidence and came to hold :

Whether that omission from the election petition was due to the fact that they had not given these facts to the petitioner, whom, as per their testimony they had met a few days after the announcement of the election result, or had given the version, and the petitioner did not retain in his memory the version that was given to him when instructing the counsel, who drafted the petition. Be that as it may, the fact remains that the version remains omitted from the petition. I am, therefore, out of abundant caution, not prepared to go to the extent of accepting the version of these two witnesses that they had heard respondent 1 telling Gurdial Singh and his co-accused to disturb the meeting and the latter having assured him that they would do the needful.

We agree with the said conclusion of the learned trial Judge in the facts and circumstances of the case.

36. Mr Shanti Bhushan next contended that even if the conversation between the appellant and Gurdial Singh and his group is discarded, the fact that the appellant had come to the house of Gurdial Singh in village Gandiwind cannot be disbelieved. Learned counsel for both sides have placed the entire evidence of the witnesses twice over before us. Mr Sibal has asked us to discard the evidence of PWs 10 and 11 in support of the visit of the appellant to the house of Gurdial Singh while Mr Shanti Bhushan has contended that the defects highlighted by Mr Sibal do not make the evidence liable to rejection. In our opinion, it is totally unnecessary to go into this aspect of the matter as we have already found that even if the appellant had consented to disturbing the meeting it did not amount to "undue influence" so as to be a corrupt practice within the meaning of the Act.

37. Evidence was led again without any material pleading that the appellant had used his influence to protect Gurdial Singh police harassment as also to ensure that he was not arrested. It is not disputed that Gurdial Singh was an Akali supporter at previous elections and continued his allegiance to the Akali Party until a few months before the election of 1980. On account of personal disputes with some of the Akali members he switched over his support to the opposite faction. It is not in dispute, however, that Gurdial Singh was a supporter of the appellant and had even worked as his polling agent in the Gandiwind booth. To extend protection to a supporter, particularly, a fresh but powerful supporter, is normal human conduct. The fact that protection had been extended by the appellant to Gurdial Singh and members of his family even by raising quarrel with the local police inspector would not lead to a backwards presumption of consent for the acts of Gurdial Singh. Consent is the lifeline to link up the candidate with the action of the other person which may amount to corrupt practice and unless it is specifically pleaded and clearly proved - in view of the fact that all ingredients have to be proved beyond reasonable doubt - the appellant cannot be charged for the action of Gurdial Singh and his group.

38. In paragraph 7 of the election petition allegation was made of exercise of undue influence on the date of polling by appointing Gurdial Singh as appellant's polling agent in the Gandiwind polling

booth. Some oral evidence has been led in support of that plea. The field of operation of the polling agent is within the polling booth itself where the polling agents of the contesting candidates would be present, the Presiding Officer of the polling booth and other public functionaries would also be present. No complaint in writing had been given against the illegal activity of Gurdial Singh within the polling booth. Contemporaneous attention of the Presiding Officer could have been drawn to such nefarious act, if any. There is no evidence that the Presiding Officer or the polling officers had been notified of any such complaint. There is clear evidence also that voting was free and quite a large percentage of the votes had exercised their electoral right. These are circumstances which clearly militate against the allegation of the election petitioners that voters had been threatened and their free exercise of electoral right had been affected. It is difficult for us to accept the submission of Mr Shanti Bhushan that by appointing a person charged for murder as polling agent the appellant had exercised undue influence. It is not his contention that Gurdial Singh has not the requisite qualification for being appointed as a polling agent and his appointment was bad in law. Mr Sibal has indicated that until then there was only a charge of murder and he made a statement from the Bar that Gurdial Singh has been acquitted of the charge in due course, with that we are of course not concerned.

In the absence of requisite pleading, want of any contemporaneous complaint in writing or otherwise to the public officers within the polling booth and the nebulous nature of the oral evidence placed from the side of the election petitioners, we are not inclined to agree with Mr Shanti Bhushan that any objection could really be taken to the election on account of Gurdial Singh having acted as polling agent in the particular electoral booth.

39. The High Court clearly overlooked the fact that disturbing the election meeting by itself did not constitute undue influence. For establishing the link between the disturbance of the meeting and the returned candidate the evidence is wholly oral in character and has to be scrutinised with greater rigour. Merely on the statements of some of the witnesses who were essentially Akali Party workers or supporters a charge of corrupt practice could not have been taken as proved. The approach of the learned trial Judge to the matter is contrary to law as settled by decisions of this Court relating to corrupt practice and proof thereof.

40. Even if the charge of this corrupt practice fails, if the other is accepted the decision of the High Court cannot be interfered with because one corrupt practice would be sufficient to have the election declared as void. We shall, therefore, now proceed to examine the material with reference to the Bagicha Singh episode.

41. The requisite pleading for this part of the allegation is available in paragraphs 8 and 9 of the election petition. It is appropriate that we extract the same for convenience :

8. That on May 28, 1980 respondent 1 visited village Chola-Sahib and there whiles requesting for votes, he went to the house of Mistri Bagicha Singh Chakiwala and asked him for his vote and votes of other family members and friends. During this some others belonging to the village had also collected around him. Shri Bagicha Singh told him that the uncovered electric wires were dangerously passing above his house and despite his best efforts he has not been able to get them removed and the sum being demanded for their removal was beyond his means. He further told him that whosoever gets this job done will get his family's votes and he would help him get the votes of his brotherhood also. On this respondent 1 said that he would get the needful done and they should not bother about the expenses involved in case they

promised him the votes of his brotherhood. On this Bagicha Singh said that respondent 2 had also come to him and we had put our problem to him also but he had said that he would help them get the wires shifted after the election.

On this respondent 1 said that he would get the needful done before the election and pay the expenses also. On this Bagicha Singh agreed to poll all the votes of his family and also assured that he would help respondent 1 in getting the votes of his brotherhood as well.

9. That respondent 1 approached the Punjab State Electricity Board employees concerned and put pressure on them and also got the amount deposited and the wires were removed on May 30, 1980. Respondent 1 is guilty of having committed the corrupt practice of bribery as defined under Section 123, sub-sections A and B of the Act and his election is liable to be declared void under Section 100 of the Act on the ground of this commission of this corrupt practice of bribery. Respondent 1 has received more than 200 votes by committing this corrupt practice and the election of respondent 1 has been materially affected and but for the votes obtained by respondent 1 by the commission of this corrupt practice, respondent 2 would have obtained a majority of valid votes and he has a right to be declared as elected.

42. Commission of corrupt practice per se makes the result of election void when the corrupt practice is committed by the returned candidate. The allegation here is that these appellant, the returned candidate, had personally committed the corrupt practice. The evidence shows that Bagicha Singh is a resident of Chola-Sahib. On September 13, 1978, notice was given to him by the Electorate Board that he should demolish his construction on the first floor as it was too close to the over-hanging electric wire. A second notice was given to the same effect on July 13, 1979. Within a week, i.e. on July 20, 1979, Bagicha Singh made the initial deposit of Rs. 100 with a view to shifting of the overhanging electric wires as such shifting would save the construction from being required to be demolished. The estimate had not been prepared notwithstanding the deposit of Rs. 100. When the matter stood at such stage, on May 28, 1980, appellant is alleged to have approached Bagicha Singh at his house in the course of election propaganda.

43. The requisite pleadings in paragraphs 8 and 9 of the election petition were on the basis of disclosure made by PW 12. That witness stated in his evidence :

S. Surinder Singh Kairon and others including myself while canvassing for votes, reached the house of Bagicha Singh. Makian Singh was present in the house of Bagicha Singh. When S. Surinder Singh Kairon asked for his votes and for getting the votes of his Biradari, he replied that he had a bit of problem of getting the overhanging electric wire removed from his house. He went on to say that although he had deposited Rs. 100 about two years back yet the department had not taken any action and they were asking for a further deposit of Rs. 1000 which amount he did not have and that when S. Ranjit Singh visited him, he had told him also the same thing. S. Ranjit Singh is said to have told him that he would get it done after the election was over. Bagicha Singh made it clear that anybody who would solve his problem would get his own and family votes. Thereupon S. Surinder Singh said that he would get the needful done before the polling date and that he should not worry. They canvassed two more houses and thereafter I left them.

The evidence of PW 12 does not mention anything about the financial aspect involved in the deal

though the election petition refers to that part of it. From the documentary evidence it appears that on May 29, 1980, the estimate was prepared and Rs. 944 was required to be deposited. The S.D.O. of the State Electricity Board at Sarhalli sent his estimate to the Executive Engineer whose office was located at Patti, some distance from Sarhalli. The estimate was drawn in the name of Bagicha Singh. The deposit appears to have been made on May 30, 1980, in the name of Bagicha Singh also and the removal was done on the same day. PW 6 is the S.D.O. who has produced some of the papers and has spoken about events with reference to the record. He was not there at the relevant time and has candidly admitted that he was not personally aware of anything. That an old pending matter where no action was being taken has been done too quickly is not open to doubt. We are prepared to assume on the basis of submissions made by Mr Shanti Bhushan that in the facts of the case, Sardar Surinder Singh was likely to have taken some interest in ameliorating the difficulties of Bagicha Singh; otherwise where there was no movement for about a year since the deposit of Rs. 100 everything could not have been done overnight.

44. The demand of Rs. 944 as per the estimate had been raised. PW 6 has said that the demand was against Bagicha Singh and the deposit has been made and the receipt in the name of Bagicha Singh has been prepared. It was bound to be so. The material aspect for consideration is as to who deposited the amount. Was it Bagicha Singh or was the source the unseen hands of the appellant? On this material particular there is practically no evidence. We cannot accept the submission of Mr Shanti Bhushan that in the facts of the case the learned trial Judge was right in accepting the case of the election petitioners that Surinder Singh deposited the money. We have already taken note of the fact that there was not clear plea in the election petition that the money had been deposited by Surinder Singh though in paragraph 8 it was stated that on May 28, 1980 appellant had told Bagicha Singh that he (Bagicha Singh) should not bother about the expenses involved. There is no oral evidence even to suggest that Surinder Singh caused the amount to be deposited. There is a presumption that the person in whose name the receipt has been drawn up was the payer of the amount and burden lay on him who wanted to contend that the facts were otherwise. We cannot, therefore, in these circumstances, accept the conclusion of the learned trial Judge which is vehemently supported by Mr Shanti Bhushan that Surinder Singh had got the estimated demand deposited with the authorities of the Board.

45. A candidate is entitled to canvass for votes. One who is in the field to be an electoral representative is also entitled to nourish his constituency. As pointed out by this Court in *Bhanu Kumar Shastri case* ((1971) 3 SCR 522 : (1971) 1 SCC 370 : AIR 1971 SC 2025), amelioration of grievances of the public is innocuous and cannot be construed against a candidate. We agree that while nourishing is a legitimate activity, it is of paramount importance that nourishing should not transgress the limit so as to corrupt the electoral process. The appellant was already in the field as a candidate for the Legislature and was entitled to help the people in his constituency in a legitimate way. Once the allegation that he had deposited the amount of Rs. 944 is discarded, his taking up of the cause of Bagicha Singh for early shifting of the electric wires overhanging the first floor of his house would not amount to 'bribe'. At any rate, the evidence on record is only of PW 12. We do not think that evidence even if accepted as a whole would be sufficient to establish the charge of corrupt practice on this score. This Court has rightly indicated that oral evidence, particularly, coming from a trained source cannot form the sole basis of proof corrupt practice. In *Younus Kunju case* ((1984) 3 SCC 346), it has been stated : (SCC p. 350, para 5)

Admittedly all these witnesses were the workers of the appellant. There is overwhelming material on the record, and even counsel fairly admitted, that the election was fought 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.

46. PW 12 was a supporter of the Akali Party as stated by him though he also indicated that he had accompanied the appellant in the course of canvassing for votes to Bagicha Singh's house. A sum total view of the evidence, in our opinion, falls short of the legal requirement for finding corrupt practice. Here again, we are of the view that the High Court went wrong in accepting the case of the election petitioners that the appellant had committed corrupt practice for procuring the votes of Bagicha Singh, members of his family and his friends by getting the overhanging electric wires removed. After all, if there be any scope for doubt, it must resolve in favour of the appellant who was facing a quasi-criminal charge.

47. The appeal has to succeed. We accordingly reverse the decision of the High Court and uphold the election of the appellant. The finding of the High Court that he was guilty of corrupt practice under Section 123(1) and (2) stands vacated. Parties are directed to bear their own costs throughout.

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