

PATNA HIGH COURT

Nagendra Mahto

Vs

State (Patna)

Criminal Revn. No. 302 of 1953

(Ramaswami, J.)

09.01.1953. 15.03.1954

JUDGMENT

Ramaswami, J.

1. This rule is directed against the judgment of a first class Magistrate at Purulia convicting the petitioner under Section 131 (1) (b) and Section 136 (1) (f), Representation of the People Act, 1951 and sentencing the petitioner to undergo rigorous imprisonment for three months and to pay a fine of Rs. 100/- under each of these sections. On appeal, the learned Additional Sessions Judge of Purulia affirmed the convictions but reduced the sentences imposed upon the petitioner to a fine of one hundred rupees under each of these sections. The sentence of imprisonment has been set aside.

2. According to the case of the prosecution, the election of candidates to the House of People and also to the State Legislative Assembly was taking place at Dighi polling booth on the material date. The petitioner was acting as a polling agent for Sri Bhajahari Mahto, one of the candidates for election to the House of People. It is alleged that the peon, Pelaram Mahto (P. W. 7), heard the sound of boxes coming from the room where the ballot boxes had been kept. He suspected foul play and made a report to the presiding officer, Mr. J.B. Ojha (P. W. 1). The latter officer entered the room where the ballot boxes were kept. It appears that the petitioner also followed the presiding officer inside the room and in spite of the order of the presiding officer asking the petitioner to go outside the petitioner refused to obey and there was an altercation between the parties. It is further alleged that the petitioner attempted to put some ballot papers into one of the ballot boxes. The petitioner was thereupon arrested and was forwarded to the Police station and the matter was taken up by the Police authorities.

3. The defense of the petitioner was that he only protested against the entry of the presiding officer into the polling compartment and there had been exchange of hot words between him and

the presiding officer. Upon consideration of the evidence adduced in the case, both the lower Courts have accepted the prosecution case as true and held that the petitioner was guilty of disorderly conduct within the meaning of Section 131 (1) (b) and that he was also guilty for interfering with the ballot boxes under Section 136 (1) (f), Representation of the People Act.

4. In support of this rule, Mr. Ghosh submitted in the first place, that in the complaint petition the offence committed by the petitioner was stated to be an offence under Section 132 (3) read with Section 128 of the Representation of the People Act. Counsel pointed out that the conviction of the petitioner by the Criminal Court was under Sections 131 and 128 though the necessary allegations are absent in the complaint petition. Having gone through the complaint petition (Ex. 1) in this case, I am satisfied that this argument is without any substance. It is true that the section has been wrongly quoted in the petition of complaint but the material allegations have been set out therein. It is stated in the first place that the petitioner did insist upon going into the room where the ballot boxes were kept though the presiding officer had warned him to go out of the room. It is further alleged in the petition of complaint that the petitioner himself attempted to put the ballot papers into the box of one Nitai Singh Sardar. Counsel has made a point that in the examination under Section 242, Criminal Procedure Code, the particulars of the case have not been properly put to the petitioner by the learned Magistrate. But I have seen the statement taken down by the Magistrate on 1st April, 1952 and also the statement taken on the 23rd of May 1952. The statement taken on 1st April, 1952 is more elaborate and there is no substance in the argument that the particulars of the case under the two sections, namely, under Section 131 (1) (b) and Section 136 (1) (f) were not properly put before the petitioner. The evidence on this point has been analysed by the trying Magistrate who reached the finding, in the first place, that the petitioner behaved in a disorderly manner by entering into the room where the ballot boxes were kept without the permission of the presiding officer and altercating with him when he was ordered to go out of the room. In the second place, the Magistrate has come to a clear finding that the petitioner attempted to put some of the ballot papers into a ballot box whereupon he was arrested by the presiding officer. These findings have been upheld by the Additional Sessions Judge of Purulia in appeal. In my opinion, there is proper evidence on the record to support both the findings, and the conviction of the petitioner under Section 131 (1) (b) and Section 136 (1) (f) is not vitiated by any error of law.

5. The next submission made by Mr. B. C. Ghosh is that Section 131 (1) (b) is ultra vires of the Constitution. Counsel said, in the first place, that the section is vague because it makes "shouting or otherwise acting in a disorderly manner" a penal offence. It is, secondly, stated by counsel that the Parliament was not competent to legislate with reference to an election offence of the character mentioned in Section 131(1) (b) of the Representation of the People Act. Section 131 (1)(b) states :

"No person shall, on the date or dates on which a poll is taken at any polling station, shout, or otherwise act in a disorderly manner within or at the entrance of the polling station or in any public or private place in the neighborhood thereof, so as to cause

annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station."

I do not agree with learned counsel that the section is bad because of vagueness or indefiniteness. The other argument of counsel is that the Parliament is not competent to enact Section 131(1) (b) or Section 136(1) (f), Representation of the People Act. I have already quoted the language of Section 131 (1) (b). Section 136(1)(f) states as follows :

"A person shall be guilty of an electoral offence if at any election he without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purposes of the election."

The argument of Mr. Ghosh is that Section 131(1) (b) and Section 136(1)(f) both relate to item 1 of the State List (List II), namely "Public order" and the Parliament had no legislative competence in the matter. In my opinion, this argument proceeds upon a misconception. The competence of Parliament in this connection is derived from Article 327 of the Constitution and from items 72 and 93 of the Union List (List I). Article 327 states :

"Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or, in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses."

Item 72 of the Union List reads as follows :

"Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission." Item 93 is also important in this connection. Item 93 states :

"Offences against laws with respect to any of the matters in this List."

6. In my opinion the subject-matter of Section 131 (1) (b) and Section 136(1) (f) of the Representation of the People Act falls within Article 327 and item 72 of the List I and also under item 93 of List I. It follows that Parliament has full competence to legislate with regard to election offences in the manner provided under Section 131 (1) (b) and Section 136 (1) (f) of the Representation of the People Act. I have no doubt that the Parliament has full legislative competence in this matter and the argument of Mr. Ghosh on this point must fail.

7. For the reasons expressed, I think that this application must be dismissed and the rule must be discharged.

Rule discharged.

