

JAGMAL SINGH YADAV
v.
AIMADUDDIN AHMED KHAN

MARCH 9, 1994

[S. RATNAVEL PANDIAN AND KULDIP SINGH, JJ.]

Election Law—Representation of the People Act, 1951—Sections 123(4) and 100(1)(b)—Charge of corrupt practice—Standard of proof—Publication of defamatory news item—Source of letter addressed to Editor of newspaper doubtful—Hand writing expert—Testimony of—Reliability.

The election of appellant to the Rajasthan legislative Assembly has been set aside on the ground that the appellant committed corrupt practice u/s 123 (4) of the Representation of the People Act. The only ground on which his election has been set aside is that he got published in a local newspaper a defamatory news item against the respondent which amounted to a corrupt practice. The High Court held the appellant responsible for the publication of the news item primarily on the basis of the letter addressed to the editor of the newspaper, which according to the High Court was written and signed by the appellant. The evidence of the editor was discarded in *toto* he having been proved wholly unresiable witness. To prove the signature of the appellant the High Court finally relied on the opinion rendered by a handwriting expert. This appeal u/s 116A is filed against the judgment of the High Court by which election of the appellant has been set aside.

Allowing the appeal, this Court

HELD: 1.1. It is settled proposition of law that the charge of corrupt practice against a returned candidate has to be proved like a criminal charge and unless there is cogent evidence to take the case beyond reasonable doubt the election cannot be set aside. In the instant case the charge of corrupt practice u/s 123(4) of the Representation of the People Act, 1951 against the appellant, primarily depends on the question as to whether the letter bears the signatures of the appellant. The editor of the newspaper having been proved wholly unreliable witness, the source of the letter becomes highly tainted and as such doubtful. It is no doubt correct that the signatures on the letter have to be proved independently and

A irrespective of the source from which the document is produced keeping in view the totality of the circumstances in this case it would be difficult for this court to hold the charge proved against the appellant only on the testimony of the handwriting expert. [365-G-H; 366-A]

B 1.2. Even otherwise there are glaring circumstances which create a doubt regarding the signatures of the appellant on the letter containing defamatory material. [366-B]

1.3. The charge of corrupt practice under section 123(4) of the Act has not been proved against the appellant beyond reasonable doubt. [367-B]

C **CIVIL APPELLATE JURISDICTION** : Civil Appeal No. 2938 (NCE) of 1989.

For the Judgment and Order dated 18.5.89 of the Rajasthan High Court in Election Petition No. 10 of 1985.

D Prashant Bhushan and C. Mohan Rao for the Appellant.

B.D. Ahmam & Parijat Sinha for the respondents.

The Judgment of the Court was delivered by

E **KULDIP SINGH, J.** This appeal under Section 116A of the Representation of People Act, 1951 (the Act) is directed against the judgment dated May 18, 1989 of the High Court of Rajasthan, Jaipur Bench by which the election of the appellant to the Rajasthan Legislative Assembly from the Tijara Constituency has been set aside on the ground that the appellant committed the corrupt practice under Section 123(4) of the Act.

F

2. The poll was held on March 5, 1985. Six candidates, including the appellant, Aimaduddin Ahmed Khan, respondent in the appeal herein, and one Maya Ram had filed their nomination papers. The appellant was candidate of the Congress party whereas the respondent was the candidate of Lok Dal. The nomination paper of Maya Ram was rejected by the returning officer during the course of scrutiny. Five candidates contested the election. The total number of valid votes polled was 70802. The appellant received 37481 votes whereas the respondent received 29982 votes. On March 6, 1985 the appellant was declared elected to the Rajasthan Legislative Assembly from the Tijara Constituency.

G

H

3. Aimaduddin Ahmed Khan filed election petition on April 9, 1985 challenging the election of the appellant on the following grounds:- A

(i) The nomination paper of Mayaram was improperly rejected by the Returning Officer and the election of the respondent is liable to be set aside under Section 100(1)(c) of the Act. B

(ii) On the date of the election the respondent was not qualified under the Constitution and/or the Act to be chosen to fill the seat, inasmuch as he had not made and subscribed oath or affirmation in the manner as prescribed under Article 173(a) of the Constitution and the election of the respondent is liable to be set aside under Section 100(1)(a) of the Act. C

(iii) The nomination of the respondent was liable to be rejected on the ground that on the date fixed for scrutiny of the nomination, he was not qualified for being chosen to fill the seat under Article 173 of the Constitution. D

(iv) The respondent is guilty of corrupt practice as defined in sub-sections (3) and (4) of Section 123 the Act and his election is liable to be set aside under section 100(1)(b) of the Act.

4. The appellant contested the election petition by denying all the allegations. He specifically denied having committed any corrupt practice or consented to the commission of any corrupt practice as defined under the Act. With regard to the rejection of nomination paper of Mayaram, the case of the appellant was that the said nomination paper was rightly rejected. The appellant further raised an objection that the respondent-petitioner had not complied with the provisions of Section 81 of the Act inasmuch as the election petition was not accompanied with the requisite number of copies and that the copy of the election petition supplied to the appellant was not a true and correct copy. The respondent also contended that the allegations of correct practices were too vague and lacking in material facts as required under Section 83 of the Act and as such the paragraph containing the said allegations were liable to be struck-off. E F G

5. On the pleadings of the parties the High Court framed the following issues:-

"1. Whether the petitioner is a voter of Bani Park Assembly H

- A** Constituency in part 37 serial No.665?
2. Whether the petitioner is popularly known as Durru Main?
3. Whether the nomination paper of Shri Maya Ram had been improperly rejected?
- B**
4. Whether the respondent was not qualified to be chosen to fill the seat under Article 173 of the Constitution of India.
5. Whether the letter dated February 27, 1985 bears the signatures of the respondent?
- C**
6. Whether the respondent is guilty of committing corrupt practices within the meaning of Section 123(3) and Section 123 (4) of the Representation of People Act, 1951 as alleged in Paras No.15 to 27 of the Election Petition?
- D**
7. Whether the petitioner has not deposited the security deposit in accordance with the provisions of Section 117 of the Representation of People Act, 1951?
8. Whether the election petition was not accompanied with the requisite number of copies of the election petition and the copy served on the respondent is not true and correct copy of the election petition. If so, what is its result?
- E**
9. Whether the allegations of corrupt practices under Section 123(3) and (4) of the Representation of People Act are too vague and lacking in material facts and are liable to be struck off.
- F**
10. Relief?
6. Issues Nos. 7, 8 & 9 were treated as preliminary issues and were decided by the High Court by its order dated September 30, 1985. These issues were decided against the appellant and in favour of the respondent-petitioner. It is not necessary for us to deal with the merits of the High Court judgment in respect of these issues.
- G**
7. Issue No. 1 was decided in favour of the respondent-petitioner. Issue No. 2 was decided in the affirmative and it was held that respondent-petitioner was popularly known as Durru Mian. Issue No. 3 was answered
- H**

in the negative and issue No. 4 was decided in favour of the appellant. No arguments were addressed by the learned counsel for the parties before us on issues 1 to 4 and as such it is not necessary for us to deal with these issues any further.

8. On issue No. 5 the High Court came to the conclusion that the letter dated February 27, 1985 was signed by the appellant and as a consequence the High Court decided issue No. 6 partly against the appellant by recording a finding that the appellant was guilty of committing the corrupt practice within the meaning of sub-Section (4) of Section 123 of the Act. The election petition was, thus, allowed and the election of the respondent to the Rajasthan Legislative Assembly from Tijara Constituency was set aside under Section 100(1) (b) of the Act.

9. The only ground on which the appellant's election has been set aside is that he got published in a local newspaper of Alwar a defamatory news item against the respondent-petitioner which amounted to a corrupt practice. The news item was published in the newspaper called "Vishwa Vijay" on February 27, 1985 and repeated on March 1, 1985. The High Court held the appellant responsible for the publication of the news items primarily on the basis of the letter dated February 27, 1985, addressed to Shyam Narain Maurya editor "Vishwa Vijay", which according to the High Court was written and signed by the appellant. The said letter in Hindi script when translated reads as under:-

"Dear Shyam Narainji, Editor Vishwa Vijay News Paper, Alwar.

Kindly publish in your newspaper, Vishwa Vijay my statement given below which is against the Congress (I) candidate from the Tijara constituency and distribute the same amongst the voters of the Tijara constituency so that I derive some benefits from it in the election.

After hearing stories in connection with Durru Moya's characterlessness, the masses have started going against him. He is Nawab Aminuddin's nephew and calls himself his son. He has raped hundred of women and one women died at his residence at the time of undergoing abortion. From Nawab Aminuddin's residence, he stole and took away cash and ornaments worth Rs. 15 lakhs and was arrested in Lucknow and rotted in jails for many months. He

A had the records burnt at the Punjab Governor's House. Moreover now he has a meat shop in Delhi and transports flesh of dead buffalows from Jaipur to Delhi and sells the same there and in Jaipur, when the police tried to catch, he somehow or the other, was successful in finishing the case.

B Dated 27.2.1985.

Faithfully.

Sd/- Jagmal Singh Yadav
Candidate DMKP Party
Tijara Assembly Constituency."

C 10. The case of the respondent as set out in the election petition is that on reading the issues of the newspaper "Vishwa Vijay" of dated February 27, 1985 and March 1, 1985, wherein highly damaging statements bringing the respondent in disrepute before the electors, he inquired from Shyam Narain Maurya about the basis for publishing the news items and
D further threatened him with prosecution. Maurya, however, explained that he published the news items on the basis of the letter dated February 27, 1985 sent to him by the appellant. Maurya handed over the said letter along with an affidavit dated April 17, 1985 to the respondent. In the affidavit the circumstances under which Maurya published the defamatory material were enumerated. The affidavit was attested by the Notary Public. The
E respondent-petitioner filed the two issues of the newspaper "Vishwa Vijay", copy of the letter dated February 27, 1985 and the affidavit of Maurya dated April 17, 1985 along with the election petition.

11. In support of his aforesaid case, the respondent-petitioner examined himself as PW-1. He stated that he sought an explanation from
F Maurya as to how he had published the news items which were totally false and contained defamatory allegations against him. He further stated that he had gone with the intention of initiating civil and criminal proceedings against Maurya for defamation. Maurya explained to him that he published the news items on the basis of the written information received from the
G appellant. PW-1 further stated that thereafter Maurya gave him the original letter dated February 27, 1985 which was marked as exhibited PW 1/9. Photo copy of the said letter was marked as Exhibit PW 1/10C. The affidavit of Maurya was marked as Exhibit PW 1/10. Copies of the news papers were marked as exhibits PW 1/10A and PW 1/10B. During the
H course of cross-examination PW-1 stated that Maurya gave him letter

Exhibit PW 1/10C on April 17, 1985 at Jaipur. He further stated that he had received the letter Exhibit PW 1/9 and photo copy of the letter marked Exhibit PW 1/10C on April 17, 1985 at Jaipur. With regard to the affidavit PW 1/10, PW-1 stated that when he threatened Maurya with criminal as well as civil action, Maurya opted to give an affidavit in support of his explanation to the effect that he had published the news items under the directions of the appellant. PW-1 stated that when he met Maurya at Alwar Paltu Khan (PW-7) also accompanied him.

12. Paltu Khan (PW-7) has deposed that he accompanied the respondent-petitioner when he had gone to meet Maurya and he was the witness to the talk which took place between the two regarding the printing and publication of the news items.

13. The respondent-petitioner also examined Shabbir Ahmad (PW-11) who is employed as Reader in the court of Additional Chief Judicial Magistrate, Jaipur. He stated that he had gone to meet the petitioner at Loharu House in Jaipur on April 17, 1985 in order to invite him to a function to be held on April 18, 1985 in connection when the marriage of his daughter. PW-11 stated that when he was sitting with the petitioner, Maurya came there and handed over the letter dated February 27, 1985, the photo copy of the said letter, two news papers and an affidavit. Chandmal Jain (PW-16) is the Notary Public before whom the affidavit Exhibit PW-1/10 was sworn by Maurya. He has proved the signature of Maurya on the said affidavit and he further stated that he had attested the affidavit and made an entry in his register.

14. As against the aforesaid evidence adduced by the respondent-petitioner, the appellant examined Shyam Narain Maurya as DW-20. In his statement before the High Court Maurya stated that the appellant did not give him any matter for publication against respondent petitioner and that Exhibit PW-1/9 was not given to him by the appellant. He also stated that he did not supply Exhibit PW-1/10, Exhibits PW-1/10B and Exhibit PW-1/10C to respondent-petitioner. According to him Chiranjilal Advocate and Paltu Khan had met him in his office at Alwar on April 16, 1985 and they told him that Shri M.I. Khan, Additional Advocate General had called him (DW-20) to Jaipur and thereupon he (DW-20) came to Jaipur on the same evening and stayed alongwith Chiranjilal in Hotel Goden Inn. He further deposed that M.I. Khan met him in the hotel and asked him to meet him

- A on next day. On the next day he (DW-20) met M.I. Khan in his office in the presence of Paltu Khan and the respondent-petitioner. He further stated that Khan and the respondent petitioner told him that they would give him Rs. 2,000/- in case he gave them in writing that the appellant had sent a letter to him for the publication of the news items. DW-20 further stated that he was shown several papers containing the signatures of the appellant.
- B He stated that he had agreed to the suggestion put forward by the respondent-petitioner but at the same time he declined the financial assistance. DW-20 stated that Khan told him that he (Khan) would help him (DW-20) in a criminal case under section 500 IPC which was pending against him (DW-20) in the High Court. Thereafter, Khan got the affidavit Exhibit
- C PW-1/10 typed in his office and the same was verified before the Notary Public. DW-20 finally stated that on April, 18, 1985 he sent a complaint in the shape of an affidavit to the Chief Justice of the High Court at Jaipur bringing to his notice the circumstances under which he was made to sign a false affidavit on the previous day. He placed on record copy of the affidavit which was exhibited as DW-1/2.
- D

15. Chiranjilal, Advocate, has been examined as PW-14 but his testimony does not help the respondent-petitioner in any manner.

- E 16. There are many contradictions in the testimony of Shyam Narain Maurya as DW-20. The High Court discussed his evidence in detail and finally came to the conclusion that he was self-confessed liar. The version given by Maurya in his statement as DW-20 is also not in accord with the version which was given by him to the appellant-Jagmal Singh. The appellant in his statement as DW-1 has stated that Maurya had told him that he (DW-20) was taken to Golden Hotel, Jaipur, where Chiranjilal Advocate,
- F Paltu Khan, M.I. Khan, S. Ahmed, Collector of Bharatpur, Shri Ayub Khan, Ex. M.L.A. and the respondent-petitioner made him to drink and thereafter they got his signatures on various papers. Learned Single Judge of the High Court after careful examination of the testimony of Shyam Narain Maurya concluded as under:-

- G "Having carefully considered the testimony of Shyam Narain Maurya in the light of other evidence on record, I am of the view that reliance cannot be placed on the testimony of Shri Shyam Narain Maurya DW-20)."

- H 17. We agree with the High Court that Shyam Narain Maurya is a

wholly unreliable witness and his testimony has to be discarded in *toto*. No reliance can be placed on his affidavit Exhibit PW- 1/10. The charge of corrupt practice under section 123(4) of the Act by the appellant, in our view, primarily depends on the question as to whether the letter Exhibit PW-1/9 bears the signatures of the appellant. To prove the signatures of the appellant, the respondent-petitioner produced Shri C.T. Sarwate (PW-6) a hand writing expert. The appellant also produced Shri A.S. Kapoor (DW- 33) another hand writing expert to controvert the testimony of PW-6. The High Court examined in detail the reasons given by the two experts and finally preferred the opinion rendered by Shri C.T. Sarwate (PW-6) in the following words :-

"Having considered the disputed signatures in EX.P.W. 1/9 and the admitted signatures of the respondent, in the light of the reasons given by both the experts, namely, Shri C.T. Sarwate PW-6 and Shri A.S. Kapoor D.W. 33, I am of the view that the characteristics found in the admitted signatures of the respondent are present in the disputed signatures and the dissimilarities between the disputed signatures and the admitted signatures pointed out by Shri A.S. Kapoor D.W. 33, are also found in some of the admitted signatures of the respondent. To my mind the reasons given by Shri Sarwate PW6 for arriving at the conclusion that the disputed signatures and the standard signatures have been written by one and the same person, are more cogent and convincing and I am inclined to agree with the opinion expressed by Shri Sarwate that the disputed signatures in Ex. P.W. 1/9 are of the respondent."

18. We have examined the opinions given by the two experts. Even if we agree with the High Court that the opinion expressed by Shri Sarwate is more convincing than that of Shri Kapur, it would not be possible for us to hold that the signautres on Exhibit PW- 1/9 are of the appellant. It is settled proposition of law that the charge of corrupt practice against a returned candidate has to be proved like a criminal charge and unless there is cogent evidence to take the case beyond reasonable doubt the election cannot be set aside. Maurya (DW-20) having been proved wholly unreliable witness, the source of the letter Exhibit PW-1/9 becomes highly tainted and as such doubtful. It is no doubt correct that the signatures on the letter Exhibit PW-1/9 have to be proved independently and irrespective of the source from which the document is produced but keeping in view the

A totality of the circumstances in this case it would be difficult for us to hold the charge proved against the appellant only on the testimony of the hand writing expert.

B 19. Even otherwise there are glaring circumstances in this case which create a doubt in our mind that the signatures under the defamatory material contained in Exhibit PW-1/9 are of the appellant.

C 20. The appellant himself is a lawyer and an experienced politician having contested two elections before the election in dispute. It is difficult for us to believe that a person in the position of the appellant would address a letter containing highly defamatory matter for publication during the course of election.

D 21. We have carefully examined the paper on which the letter Exhibit PW-1/9 is written. It is a small piece of paper measuring hardly 5" from top to bottom. The letter is so closely typed from the very top of the paper till the bottom that it gives an impression as if the typist had only that piece of paper to do the job. The very look of the paper and the typed-writing on it gives the impression that the letter was prepared under abnormal circumstances. It does not give the impression of a normal letter written in the ordinary course of business.

E 22. The letter Exhibit PW-1/9 dated February 27, 1985 and its contents were published in the newspaper dated February 27, 1985 with the date-line February 26, 1985. Shyam Narain Maurya stated as DW-20 that the newspaper "dated 27.2.85 was printed one day earlier i.e., on 26.2.85." The respondent-petitioner in his affidavit dated April 17, 1985 Exhibit F PW-1/10 deposed that the appellant had handed over the letter dated February 27, 1985 Exhibited PW-1/9 to Maurya personally on February 27, 1985. If the newspaper was printed on February 26, 1985, it is difficult to understand how the letter dated February 27, 1985 which was delivered to Mr. Maurya on the same day could be printed in the said newspaper.

G 23. There is no contemporaneous evidence to show the publication of the news items. It is difficult to believe that after reading the news items the respondent-petitioner could have remained silent. The least what was expected of a reasonable person under the circumstances was to have lodged a first information report in respect of the news items or sent a H complaint to any of the authorities under the Act.

24. Once we doubt the genuineness of the letter Exhibit PW-1/9, the oral evidence of publication produced by the respondent-petitioner loses its importance. A

25. We have given our thoughtful consideration to the evidence on the record. We have also carefully gone through the reasoning of the High Court. We are not convinced that the charge of corrupt practice under section 123(4) of the Act has been proved against the appellant beyond reasonable doubt. B

26. We allow the appeal, set aside the judgment of the High Court and dismiss the election petition filed by the respondent-petitioner with costs. We quantify the costs as Rs. 20,000. C

27. The special leave petition is dismissed as having become infructuous.

A.G.

Appeal allowed.
SLP dismissed.