

PETITIONER:
LAKHI PRASAD AGARWAL

Vs.

RESPONDENT:
NATHMAL DOKANIA

DATE OF JUDGMENT:
06/09/1968

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
HIDAYATULLAH, M. (CJ)

CITATION:
1969 AIR 583 1969 SCR (2) 41

ACT:

Representation of the People Act, 1951 s. 123(2), (3) and (4)-Allegations of corrupt practice-Necessity of proper pleadings-Contentions cannot be considered if not borne out by pleadings-Arrest of candidate immediately before election-Whether inference of mala fide or collusion with opposing candidate can be drawn.

HEADNOTE:

The election of the respondent to the Bihar Legislative Assembly at the 1967 general election was challenged by the appellant---one of the defeated candidates- in an election petition. Annexure 2 to the petition was a pamphlet alleged to have been issued by the respondent and his supporters in which reference was made to the call of two Muslim religious heads that Muslims should not vote for the Congress party to which Islam was opposed. The High Court dismissed the election petition whereupon appeal was filed in this Court. The appellant urged that (i) In the aforesaid pamphlet an attempt was made to induce muslim voters not to vote for a Congress candidate in opposition to the mandate of two named religious heads and this amounted to the corrupt practice of "undue influence" under s. 123(2) of the Representation of the People Act 1951; (ii) The reference to the mandate of Islam amounted to the use of a religious symbol within the mischief of s. 123(3); (iii) The said pamphlet also came within the mischief in s. 123(4); (iv) The Returning Officer who was also the Sub-Divisional Officer of the District ordered the arrest of the appellant immediately before the election; this was done mala fide, in collusion with the respondent and the appellant was thereby hampered in his election campaign.

HELD: (i) The pleadings in the appellant's election petition did not permit consideration of his contention based on s. 123(2) of the Act.

In order that a pleading may be sufficient to make out a case of undue influence it must set out full particulars of it in compliance with s. 83(1)(c) of the Act comparable to Order 6 r. 4 of the Code of Civil Procedure. The said provision of the Act read with s. 123(2) makes it obligatory on a party setting up a case of corrupt practice by exercise of undue influence as suggested, to give full particulars

thereof by stating inter alia who attempted' to induce electors to believe that .voting for a particular person would render them objects of divine displeasure or spiritual censure and in what manner such attempts were made. The real charge in the relevant paragraph of the petition in the present case was that the pamphlet complained of misled the electors by false statements. Such a pleading falls short of an allegation of unique influence by an attempt to make electors exercise their franchise in a particular manner. [43 H---44 C]

(ii) The contention that the case fell under s. 123.(3) because of the use of the mandate of Islam as a religious symbol was 'also not borne out by the pleadings and therefore could not be considered. [44 D]

(iii) To bring the case under s. 123(4) there must be a publication by the candidate or his agent of any statement of same fact which is up. CI/69--4

42

false, and which is believed to be false or not believed 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. The pamphlet in question did not cast any aspersion on the personal character or conduct of the election petitioner. Nor was there any false statement in relation to the candidature, of the petitioner. .Section 123(4) was therefore not attracted to the case. [44 E-F]

(iv) The. evidence in the case did not prove that the Returning Officer caused the appellant to be arrested mala fide or in collusion with the respondent. The arrest immediately before the election surely hampered the campaign of the election petitioner, but by itself the mere fact of arrest does. not lead to the conclusion that the Returning Officer was trying to bring pressure on the election petitioner not to contest the election and much less that the arrest was made in collusion with the successful candidate. [45 G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 20 of 1968.

Appeal under Section 116-A of the Representation of the People Act, 1951 from the judgment and order dated the November 30, 1967 of the Patna High Court in Election Petition 19 of 967.

Danial A. Latifi, and R.A. Gupta, for the appellant.

D. Goburdhun, for the respondent.

The Judgment of the Court was delivered by

Mitter, J. This is an appeal by an unsuccessful candidate at an election held in February 1967 for the Bihar State Legislative Assembly from the Single Member Rajmahal Constituency No. 139. Originally there were eight candidates.: we are concerned only with two of them, namely, the election petitioner and respondent, Nathumal Dokania, the returned candidate as a result of the election. The election petitioner lost before the High Court. The main ground on which he presses this appeal are based on paras 4(c) and 4(e) of the petition. The relevant issue framed by the learned trial Judge with regard to paragraph 4 (c) issue No. 5 reading :-

"Did the respondent or his election agent or his workers with his or his election

agent's consent resort to corrupt practices in the election, as alleged by the petitioner and has the result of the election been materially affected thereby ?"

para 4(c) it is pleaded that the respondent himself and his agents and workers including certain named persons with his consent "committed a corrupt practice of publication of statements of facts throughout the constituency and mainly at Shahebganj, Teen Pahar and Rajmahal during the election campaign during

43

the period 11th February 1967 to 15th February 1967 which induced and caused deception in the mind of the electors whereby the respondent procured a large number of votes which he would not otherwise have secured but for the corrupt practice aforesaid." Copies of the pamphlets from Annexure 2 series to the petition.

Mr. Latifi appearing for the appellant submitted that Annexure 2(A) does not further his client's cause. His grievance is based on Annexure 2. The translation of this Annexure of which the original was in Hindi shows that it was a call to the Muslim voters of Rajmahal to "hear the message and prepare the graveyard for the Congress." Reference was made therein to "the appeal of the day by Maulana Syed Usman Ghani Saheb of Phulwari Sharif Khankah" "that nobody should be in illusion that Muslims have to vote for the Congress. this. time also.". It was also suggested that on account of high-handedness of the Congress group Muslims should not support it. There was also a reference to the appeal of Pit Saheb of the Dargah of Phulwari Sharif that Muslims should not vote for any Congress candidate. The appeal ends with the sentence, "when you have life-long connection with Sri Nathmal Dokania, the candidate of the Swantantra Party and when the Head of your religion, your Islam also opposes the Congress, then it becomes your duty to come out victorious by affixing stamps on the "Star" symbol."

Mr. Latifi tried to argue that by the publication of the pamphlet an attempt was made to induce Muslim electors not to vote for a Congress candidate in opposition to the mandates of the two. named religious heads. In other words, his contention was that undue influence within the meaning of s. 123(2) of the Act was sought to be exercised on the Muslim voters in the name of the religious heads mentioned in the pamphlet under the threat of divine displeasure or spiritual censure. He also sought to argue that the reference to the mandate of Islam in the pamphlet amounted to the use of a religious symbol and as such the appeal by the pamphlet came within the mischief of s. 123 (3) of the Act.

Under 8. 123(2), a candidate may be guilty of corrupt practice if he uses "undue influence" which in the words of the section means any direct or indirect interference or attempt to interfere with the free exercise of any electoral right of a voter. Mr. Latifi's submission was. that the pamphlet came within the mischief of subclause (ii) of proviso, (a) to section 123(2). Unfortunately for Mr. Latifi, although the pamphlet might have sustained a plea of undue influence about which we express no opinion, there is no pleading to that effect in the petition. In order that a pleading may be sufficient to make out a case of undue influence, it must

44

set out full particulars of it under the provisions of s. 83(1)(c) of the Act which may be compared with Order 6 rule

4 of the Code of Civil Procedure. The said provision of the Act read with s. 123(2) makes it obligatory on a party setting up a case of corrupt practice by exercise of undue influence as suggested, to give full particulars thereof by stating inter alia who attempted to induce electors to believe that voting for a particular person would render them objects of divine displeasure or spiritual censure and in what manner such attempts were made. The real charge in paragraph 4(c) of the petition is that the pamphlet complained of misled the electors by false statements. Such a pleading falls far short of an allegation of undue influence by an attempt to make electors exercise their franchise in a particular manner. Para 4(c) does not even mention Muslim voters and does not contain any averment to the effect that they were sought to be influenced by the opinion of the religious heads.

Mr. Latifi's attempt to bring his case under s. 123(3) is equally futile. Mr. Latifi sought to argue that Islam was a religious symbol of Muhamedans and the publication of the pamphlet containing a reference to the mandate of Islam was an attempt to prejudicially affect the election of the petitioner. This case too is not borne out by the pleadings. Failing in his attempt to bring the case under the two sub-sections mentioned already, he tried to bring his case under s. 123 (4) of the Act. In this too, in our view, he cannot succeed. To bring the case under this sub-section, there must be a publication by the candidate or his agent of any statement of some fact which is false, and which he believed to be false or did 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. The pamphlet does not cast any aspersion on the personal character or conduct of the election petitioner. Nor is there any false statement in relation to the candidature of the petitioner. In fact there is no reference to him at all. Consequently, the election petition does not attract the operation of the aforementioned sub-sections of s. 123 of the Act. The learned trial Judge should not have entertained any argument under subsections 3 and 3A of s. 123 of the Act as in view of the pleadings issue No. 5 did not permit the raising of such contentions. In view of the pleadings we did not permit Mr. Latifi to pursue his arguments on this issue on the basis of s. 123 sub-ss. (2) or (3) of the Act.

That leaves us only with the allegation in para 4(e) of the petition which runs thus:

"The election of the respondent is void, because the Returning Officer who is also the Sub-Divisional Magis-

45

trate of the area, in collusion with the respondents harassed the petitioner in all possible ways so much so that a mere application for correction in the petitioner's name was allowed at the last juncture and the petitioner had been arrested the very next day of the said application, was put in jail for eight valuable days and thereby prevented from pursuing the election campaign."

The issue under which the above complaint was sought to be raised was the general one, namely, whether the election of the respondent is liable to be set aside? Mr. Latifi drew our attention to portions of the testimony of the Returning Officer where he denied that he was in

collusion with Nathmal Dokania or that because of such collusion he got the petitioner arrested after he had filed applications for correction of the entries with respect to his name in the electoral roll. He also denied that he got the petitioner arrested with any mala fide intention so that he might not be able to contest the election. In his cross-examination, the Returning Officer referred to the proceedings started against the petitioner and said that the petitioner had been arrested once in January and for a second time in February 1967. The arrest in January 1967 was in connection with proceedings under s. 107 of the Code of Criminal Procedure. The arrest in February 1967 was in connection with a case for some substantive offences. He added however that he was not in a position to say what was the offence alleged to have been committed by the petitioner by a mere reference to the certified copy of the order sheet. On this evidence there was nothing before the court to justify a conclusion in favour of the petitioner on the general issue. Only some suggestions had been made to the Returning Officer in his cross-examination that he had acted mala fide and that he had acted in collusion with the successful candidate. No details with regard to the complaints leading to or the grounds for the arrests were forthcoming. We find it difficult to believe that the petitioner did not know the grounds on which he was put under arrest. The arrest immediately before the election surely hampered the campaign of the election petitioner, but by itself the arrest does not lead to the conclusion that the Returning Officer was trying to bring pressure upon the election petitioner not to contest the election and much less that the arrest was made in collusion with the successful candidate.

These being the only two points which were urged before us in the appeal, the appeal must fail and it is hereby dismissed with costs.

G.C.

Appeal dismissed.