

PETITIONER:
ASHOK DULICHAND

Vs.

RESPONDENT:
MADAHAVLAL DUBE & ANOTHER

DATE OF JUDGMENT 05/08/1975

BENCH:
KHANNA, HANS RAJ
BENCH:
KHANNA, HANS RAJ
BEG, M. HAMEEDULLAH
GUPTA, A.C.

CITATION:
1975 AIR 1748 1976 SCR (1) 246
1975 SCC (4) 664

ACT:
Representation of People Act, 1951-Section 123(4)-
Statement relating to personal character or conduct-65(a) of
Evidence Act-Secondary evidence-Photostat copy.

HEADNOTE:

The election for Pandhurna Constituency for the M.P. legislative Assembly took place in March, 1970. There were 6 candidates who contested the election. The main contest was between respondents nos. 1 and 2. Respondent no. 1 was declared elected. The appellant, a voter, filed an Election Petition challenging the election on the grounds that respondent no. 1 published and circulated a leaflet containing defamatory and false averments against respondent no. 1 and it was calculated to prejudice the election prospects of respondent no. 2. The leaflet it was alleged contained the statement of fact about the personal character or conduct of respondent no. 2. In the leaflet it was mentioned that respondent no. 2 committed rape and he was carrying on with another woman. The ties of respondent no. 2 were stated to have driven his wife into insanity. Reference was also made to some other shady and unethical activities.

Before the High Court the appellant wanted to file a photostat copy of the manuscript of the leaflet which according to the appellant was written by respondent no. 1. The High Court did not admit the aforesaid photostat copy in evidence on the ground that there was no sufficient reason for allowing the appellant to lead secondary evidence. The High Court also held that though the material contained in the leaflet related to the personal character and conduct of respondent no. 2, the appellant failed to prove that its contents were false to the knowledge of respondent no. 1, and he did not believe them to be true and that, therefore, the corrupt practice defined in section 123(4) of the Representation of the People Act was not proved.

While dismissing the appeal this Court held:

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Under section 65(a) of the Indian Evidence Act, secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in the possession or power of the person against whom

the document is sought to be proved or when a person refuses to produce it. There was no affidavit that the original document was in possession of respondent no. 1. The photostat copy appeared to the High Court to be not above suspicion. In view of all the circumstances, the High Court rightly came to the conclusion that no foundation was laid by the appellant for leading secondary evidence in the shape of photostat copy. There is no evidence on record to show that the contents of the leaflet were false. The respondent no. 2 was not examined as a witness. No other evidence was also led of any person who knew about the character or conduct of respondent no. 2 to show that the statements contained in the leaflet in question were false. Apart from the other requirements, it is of the essence of section 123(4) of the Representation of the People Act, 1951 that the impugned statement of fact in relation to the personal character or conduct of a candidate, which is alleged to have been published should be false [249D, F-250D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1327 of 1973.

From the judgment and order dated the 21st July 1973 of the Madhya Pradesh High Court in Election Petition No. 36 of 1972.

N. M. Ghatate and S. Balakrishnan, for the appellant.

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S. S. Khianduja, for respondent No. 1.

The Judgment of the Court was delivered by

KHANNA, J.-This appeal is directed against the judgment of Madhya Pradesh High Court whereby that court dismissed the section petition filed by the petitioner-appellant to challenge the election of respondent No. 1 to Madhya Pradesh Legislative Assembly from Pandhurna constituency in Chhindwara district.

The election for Pandhurna constituency took place on March 8, 1972. There were six candidates who contested the election. The main contest was, however, between Madhavlal Dube respondent No. 1 and Dr. Ratanchand Mangalchand Sanghvi respondent No. 2. Respondent No. 1 was declared elected. The appellant, who was an elector in the above mentioned constituency, filed election petition to challenge the election of respondent No. 1 on various grounds. It is not necessary to set out all the grounds because in the appeal before u, only one ground which is the subject matter of issue No. 10 has been pressed on behalf of the appellant. The allegation which gave rise to issue No. 10 was contained in para 13 of the election petition. The petition was, however, ordered to be amended because it did not contain full particulars. The allegation with particulars was thereafter contained in para 13 of the amended petition. According to the appellant, respondent No. 1 or his agent or any other person with his consent had got published and widely circulated a leaflet with the caption "Sawal Janta Ke" purporting to be on behalf of Pandhurna Matdar Sangh. The aforesaid leaflet, according to the appellant seemed to have been drafted by respondent No. 1 and was full of defamatory and false averments calculated to prejudice the election prospects of respondent No. 2. The leaflet was stated to have been very widely circulated and distributed throughout the constituency. Every sentence of the leaflet, it was added, contained statement of fact about the personal character or conduct of respondent No. 2 which was false to

the knowledge of respondent No. 1. Respondent No. 1 and his friends were stated to have got the leaflet published under the pseudonym of Pandhurna Matdar Sangh although there was no such Sangh in existence. The name of the press and publisher's name was also not mentioned in the leaflet. The appellant also mentioned the places where and the names of persons through whom the leaflets were alleged to have been distributed.

According to the leaflet which has been marked Ex. P4, respondent No. 2 was not a man of good character. The said respondent was alleged to have committed rape upon a nurse while he was a government doctor. He was also stated to be carrying on with another woman. The activities of respondent No. 2 were stated to have driven his wife to insanity. Reference was also made to some other shady and unethical activities in which respondent No. 2 was stated to be indulging.

Respondent No. 1 in his written statement denied that he, his agents or any other person with his consent had got published and circulated the leaflet in question. It was also denied by respondent

248 No. 1 that he had drafted the aforesaid leaflet. According to respondent No. 1, he had no connection with that leaflet and he was unable to make any statement about the truth or falsity of its contents. It was denied that the said leaflet was widely circulated and distributed throughout the constituency. The allegation that the leaflet was calculated to prejudice the election prospects of respondent No. 2 too was denied. Likewise, respondent No. 1 denied that the different sentences of the leaflet contained statement of fact about the personal character or conduct of respondent No. 2 which was false to the knowledge of respondent No. 1. According further to the respondent, he came to know of the said leaflet only some weeks after the election was over. The said leaflet, it was added, appeared to have been got printed by someone interested in respondent No. 2 to create a ground for filing an election petition. Issue No. 10 reads as under:

- "10(a) Whether the leaflet with the caption 'Sawal Janta Ke' was published by respondent No. 1, his agents or any other person with his consent?
- (b) Whether the respondent No. 1 has any connection with the aforesaid leaflet?
- (c) Whether the material contained in the leaflet relates to personal character of respondent No. 2?
- (d) Whether the leaflet was widely circulated and distributed throughout the constituency and it was calculated to prejudice the election prospects of respondent No. 2?
- (e) Whether the leaflet was distributed at the places and by the persons named in paragraph 13 of the election petition?
- (f) Whether all persons named in the paragraph 13 except Shrimati Kamla Bai Mohogaonkar of Mohogaon were active supporters of respondent No. 2?
- Whether any corrupt practice under section 123(4) of the R.P. Act was committed in respect of the above?
- Whether the allegations made in paragraph 13 make out a ground for challenging the election of respondent No. 1 under section

100(1) of the R.P. Act, 1951?"

The High Court decided issues 10(a) and (b) against the appellant on the ground that no evidence had been led by him in this behalf. On issue 10(c)? it was held, that though the material contained in leaflet P4 related to the personal character and conduct of respondent No. 2, the appellant had failed to prove that its contents were false to the knowledge of respondent No. 1 or that he did not believe them to be true. No corrupt practice as defined in section 249

123(4) of the Representation of the People Act was held to have been proved issues 1(1) and (e) were held to be of no consequence in view of the fact that it was not proved that respondent No. 1 was guilty of corrupt practice. In the result the election petition was dismissed.

In appeal before us Mr. Ghatate on behalf of the appellant has argued that the appellant wanted to file a photostat copy of the manuscript of leaflet P4 which, according to the appellant, had been written by respondent No. 1. The High Court, it is pointed out, did not admit the aforesaid photostat copy in evidence on the ground that there was no sufficient reason for allowing the appellant to lead secondary evidence. It is that order of the High Court which has been the main target of the criticism of Mr. Ghatate.

After hearing the learned counsel for the parties, we are of the opinion that the order of the High Court in this respect calls for no interference. According to clause (a) of section 65 of the Indian Evidence Act, secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it. Clauses (b) to (g) of section 65 specify some other contingencies wherein secondary evidence relating to a document may be given, but we are not concerned with those clauses as it is the common case of the parties that the present case is not covered by those clauses. In order to bring his case within the purview of clause (a) of section 65, the appellant filed applications on July 4, 1973, before respondent No. 1 was examined as a witness, praying that the said respondent be ordered to produce the original manuscript of which, according to the appellant, he had filed photostat copy. Prayer was also made by the appellant that in case respondent No. 1 denied that the said manuscript had been written by him, the photostat copy might be got examined from a handwriting expert. The appellant also filed affidavit in support of his applications. It was, however, nowhere stated in the affidavit that the original document of which the photostat copy had been filed by the appellant was in the possession of respondent No. 1. There was also no other material on the record to indicate that the original document was in the possession of respondent No. 1. The appellant further failed to explain as to what were the circumstances under which the photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent No. 1 in his affidavit denied being in possession of or having anything to do with such a document. The photostat copy appeared to the High Court to be not above suspicion. In view of all the circumstances, the High Court came to the conclusion that no foundation had been laid by the appellant

for leading secondary evidence in the shape of the photostat copy. We find no infirmity in the above order of the High Court as might justify interference by this Court.

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The matter may also be looked at from another angle. There is no evidence on record to show that the contents of leaflet Ex. P4 were false. Respondent No. 2 in relation to whose personal character and conduct statements were made in leaflet P4 was not examined as a witness. No other evidence was also led of any person who knew about the character or conduct of respondent No. 2 to show that the statements contained in leaflet in question were false. The High Court consequently arrived at the conclusion that on the material on record it could not be held that the contents of the said leaflet were false and that respondent No. 1 believed them to be false or did not believe them to be true. As such, no corrupt practice as defined in section 123 (4) of the Representation of the People Act, 1951 was held to have been proved. A corrupt practice, according to section 123(4), consists of the publication by a candidate or his agent or by any other person, with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be also or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election. Apart from the other requirements, it is of the essence of the matter that the impugned statement of fact in relation to the personal character or conduct of a candidate which is alleged to have been published should be false. Unless the said statement of fact is shown to be false, its publication would not constitute corrupt practice as defined in clause (4) of section 123 of the Act. When there is complete absence of any material on the record to show that the impugned statement of fact is false, no occasion would plainly arise for remanding the case to the High Court to enable the appellant to produce in evidence the photostat copy in question with a view to show that the original of that had been written by the respondent.

There is no merit in the appeal. The same is accordingly dismissed with costs.

P.H.P.

Appeal dismissed.

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