

BORGARAM DEURI
v.
PREMODHAR BORA AND ANR.

JANUARY 5, 2004

[V. N. KHARE, CJ AND S.B. SINHA, J.]

Representation of the People Act, 1951—Sections 123(3), 123(3A) and 83—Election petition—Allegations of corrupt practice—Spreading hatred on communal basis—High Court holding that charges not proved beyond reasonable doubt—Correctness of—Held: Allegations of corrupt practice must be pleaded strictly in terms of Section 83 and proved beyond all reasonable doubt—Election petitioner failed to prove charges of corrupt practice against returning candidate by adducing reliable and credible evidence—Hence order of High Court justified.

Legislative Assembly Elections were held and from one of the constituencies, the first respondent was declared elected. Appellant filed election petition alleging corrupt practice under Sections 123(3) and 123(3A) of the Representation of the People Act against respondent No.1. It was alleged that in various meetings respondent No.1 and his agents delivered speeches before the gathering appealing them to vote for respondent No.1 and refrain from voting in favour of petitioner as he belonged to scheduled tribe community. High Court analyzing the evidence on record held that the charge was not proved beyond reasonable doubt and dismissed the petition. Hence the present appeal.

Appellant contended that the High Court erred in observing that charge of corrupt practice was not proved beyond reasonable doubt; that the High Court even did not refer to the news item published in the newspaper which would prove the contents of the speech delivered by respondent No.1 wherein the speakers asked the voters not to cast their votes in favour of the appellant which was made to spread hatred against members of a Scheduled Tribe amounting to corrupt practice; and that the interestedness of a witness cannot itself be a ground to disbelieve him as certain witnesses may also be interested in speaking the truth.

Dismissing the appeal, the Court

A HELD: 1. The allegations of corrupt practice must conform to the provisions contained in Sections 123(3) and 123(3A) of the Representation of the People Act, 1951. It must be pleaded strictly in terms of Section 83 of the Act and proved beyond all reasonable doubt. The allegations of corrupt practices are considered to be quasi-criminal in nature. The standard of proof required for proving corrupt practice for all intent and purport is equated with the standard expected in a criminal trial. The difference between an election petition and a criminal trial is, whereas an accused has the liberty to keep silence, during the trial of an election petition the returned candidate has to place before the Court his version and to satisfy the Court that he had not committed the corrupt practice as alleged in the petition. The election petitioner must disclose the source of his information in the election petition fully. His burden can be said to have been discharged only if and when he leads cogent and reliable evidence to prove the charges levelled against the returned candidate. The charges must be proved beyond reasonable doubt and not merely by preponderance of probabilities as in civil action. [110-A-C]

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E *Gajanan Krishnaji Bapat and Anr. v. Dattaji Raghobaji Meghe and Ors.*, AIR [1995] SC 2284; *Surinder Singh v. Hardial Singh and Ors.*, [1985] 1 SCR 1059; *R.P. Moidutty v. P.T. Kunju Mohammed and Anr.*, [2001] 1 SCC 481 and *Mercykutty Amma v. Kadavoor Sivadasan and Anr.*, [2003] AIR SCW 6306, relied on.

F 2. In the instant case, the witnesses examined by the appellant-election petitioner in support of his allegation was found to be unworthy of any trust by the High Court. No independent witness from the village had been examined by the election petitioner. Spreading of hatred on communal basis is an offence, but the appellant did not lodge any First Information Report and no contemporaneous documentary evidence was brought on record. The contents of the news item was not proved by examining the reporter, the same could not have been exhibited legally on the statement of the witness that the report had been published in the newspaper. Therefore, was inadmissible in evidence. Even otherwise the manner in which the alleged corrupt practice has taken place does not inspire confidence. Also the listed witness had not been examined. The names of the other witnesses examined by the appellant did not figure in the list of the witnesses filed earlier by the appellant. Furthermore, applying the test that the Court should be on its guard while evaluating the testimony of interested witnesses and they must be subjected to a closer

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scrutiny, High Court disbelieved the evidence of witness. Therefore, the appellant had not been able to prove the charges of corrupt practice against the first respondent by adducing clear-cut evidence which can be said to be wholly credible and reliable. They failed to prove the charges of corrupt practice beyond reasonable doubt. Hence, the judgment of the High Court cannot be faulted with. [110-D-H; 111-F-G; 112-A-C]

Birbal Singh v. Kedar Nath, [1976] 4 SCC 691, relied on.

Quamarul Islam v. S.K. Kanta and Ors., [1994] Supp. 3 SCC 5, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1300 of 2003.

From the Judgment and Order dated 19.12.2002 of the Gauhati High Court in E.P. No. 8 of 2001.

S.B. Sanyal, Manish Singhvi and Rameshwar Prasad Goyal for the Appellant.

P.K. Goswami, Rajiv Mehta, Rajiv Malhotra and B. Aggarwala for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. The election petitioner is the appellant herein. He filed the said petition questioning the election held on 10.5.2001 and the result whereof was declared on 13th May, 2001 declaring the first respondent herein as having been elected from 109 Bihpuria Constituency in the Assam Legislative Assembly General Elections.

The appellant attributed corrupt practices against the first respondent herein purported to be under Section 123(3) and Section 123(3A) of the Representation of the People Act, 1951.

The full particulars of alleged corrupt practices had been set forth in the petition which are as under :

- (i) "On 25.4.2001 at about 2 P.M. when the petitioner was coming from Bahgora Deurigaon to Bihpuria Town in a Tata Sumo (hired) vehicle accompanied by his wife and workers of the party Sri Lakhi Kanta Hazarika and Sri Giridhar Gohain after paying a

A visit to Shiv Mandir (Kundi Mama Mandir) the petitioner and his superiors on their way themselves saw a gathering of about 200 men who were being addressed by the respondent No. 1 Sri Premodhar Bora from the stage platform of Rangamanch situated at Santhapur within Biphuria Police Station as a part of his election campaign. The petitioner halted there for a while and hear the respondent No. 1, the returned candidate urging upon appealing to the gathering to vote for the respondent/ returned candidate and to refrain from voting for the petitioner on the ground that the petitioner belongs to the Scheduled Tribe Community, he further shouted a slogan "Biphuria Bachao". The respondent No.

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C 1 also appealed to the members of the gathering to refrain from voting in favour of any candidate belonging to 'Scheduled Tribe Community'. The respondent No. 1 made this appeal to promote a feeling of enmity and hatred between different classes of the people of 109 Biphuria Legislative Assembly Constituency. It may be mentioned here that in the meeting aforesaid the respondent No. 1 was accompanied by his agents namely Sri Ghanakanta Baruah and Sri Monoranjan Sharma and they also delivered speeches before the gathering with specific slogan to vote for the respondent No. 1 and to refrain from voting in favour of the petitioner on the ground that the petitioner belongs to Scheduled Tribe Community. The respondent No. 1 and his aforesaid two agents made the aforesaid slogan appealed to the members to caste vote for the respondent No. 1 and to refrain from voting in favour of the petitioner for furtherance of the prospect of the election of respondent No. 1 and for prejudicially affecting the election of the petitioner.

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F (ii) On 1.5.2001, respondent No. 1 Sri Premadhar Boralong with Shri Monoranjan Sharma and Ghanakanta Baruah both are counting agents of Mr. Premodhar (Respondent No. 1) and also Government servants both are teachers of Nehru Higher Secondary School, Jamuguri under Bihpuria Constituency organized a meeting at village Raidongia Namghar at about 1 P.M. where about 200 voters attended the meeting. In the meeting, the respondent No. 1 Sri Premodhar Bora and two other persons mentioned above delivered speeches in succession and appealed to the persons present in the meeting and to the people at large with the use of loud speakers to vote for him i.e. the respondent

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No. 1 and to refrain from voting in favour of the petitioner on the ground that the petitioner belongs to Scheduled Tribe Community. This appeal was made by the respondent No. 1 and his two agents present there for the furtherance of the prospects of the election of respondent No. 1 and for prejudicially affecting the election of the petitioner. Sri Giridhar Gohain, Dilbyajyoti Bhuyan and other Congress workers witnessed the meeting and clearly saw the respondent No. 1 hurling the above language prejudicially affecting the prospect of the election of the petitioner. A B

- (iii) On 7.5.2001, respondent No. 1 accompanied by Sri Ghanakanta Baruah and Monoranjan Sharma and others held a meeting at Bihpuria Town at Ward No. 4 in a market house at about 6 P.M. which was attended by about 150 voters of the said locality. In the said meeting respondent No. 1 specifically appealed to persons present in the meeting and the traders of the market to vote for him and to refrain from voting in favour of the petitioner on the ground that the petitioner is a S.T. candidate and if he is elected from the constituency, the constituency will be made reserved for S.T. Community. By this words respondent No. 1 promoted a feeling of enmity and hatred between different classes of persons of that locality prejudicially affecting the election of the petitioner. One Sri Rohini Bhuyan, working President Block Congress Committee, Bihpuria and Sri Salauddin a Congress Worker witnessed the meeting and heard the speeches of Ghanakanta Barua and Monoranjan Sharma.” C D E

The first respondent herein in his written statement denied and disputed the said allegations. The parties adduced their respective evidences before the High Court. The High Court proceeded on the basis that the allegations made in the election petition would amount to corrupt practice within the meaning of Sections 123(3) and 123(3)(A) of the Act. F

As regard the meeting dated 25.4.2001, it was held: G

“8. An analysis of the evidence and counter evidence adduced by the parties in so far as the meeting held at Santapur Rang Manch on 25-4-2001 and the alleged speeches made therein, are concerned, reveals that the evidence of both sides are replete with inconsistencies and improbabilities. Certain unnatural aspects are noticeable in the evidence H

A adduced by both the sides. There is nothing on record to make one
version inherently improbable and the other version eminently
acceptable. The witnesses examined by both sides are also partisan in
character and no independent witness has been examined by either
party. Keeping in mind, the principles laid down in an earlier part of
B the judgment for determining the correctness of a charge of
commission of corrupt practice by the returned candidate in an election
and having regard to the fact that such charge must be proved beyond
all reasonable doubt, I am of the considered view that the evidence
on record being what it is, the first issue must be answered in the
negative and against the election petitioner.”

C In relation to the second meeting held on 1.5.2001, it was held:

“10. The arguments and counter arguments advanced on behalf of the
rival parties have been duly considered. Once again, the ultimate
picture that emerges from an analysis of the evidence on record is a
C case of affirmation by one side of an event having taken place and
denial of such event by the other side. There is nothing in the evidence
of the witnesses examined by either side which would make one story
wholly acceptable and the other inherently incredible. The charge
being one of the commission of corrupt practice and the standard of
proof required to establish such charge being proof beyond reasonable
E doubt, on the state of the evidence on record, the charge brought has
to fail. This issue, therefore, is decided against the election petitioner.”

As regard the third meeting dated 7.5.2001, the High Court observed:

“11. While the witnesses examined on behalf of the election petitioner
are contended to be partisan and, therefore, unworthy of credit, the
evidence tendered by the said witnesses have also been challenged as
unnatural. P.W. 8 is the General Secretary of the District Congress
and P.W.7 is admittedly his constant companion. Both the witnesses
did not report to anybody about the meeting held at Bihpuria Bazar
and incriminating speeches made therein. Their evidence, therefore,
G is unworthy of credit and no reliance ought to be placed on the same,
it is contended on behalf of the returned candidate.

In so far as the witnesses examined on behalf of the returned
candidate are concerned, the learned counsel for the election petitioner
contends that the said witnesses not being named in the list of witnesses
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filed by the returned candidate and that too, belatedly i.e., on 25.10.2001, after closure of evidence of the election petitioner, no reliance should be placed on the testimony of P.W. 9 and P.W. 10. The said witnesses have come to depose in court on their own which makes them highly interested, it is argued. That apart, the reasons cited by the returned candidate, in his application for leave to examine P.W. 9 and P.W. 10 i.e. their names could not be mentioned in the list of witnesses filed earlier due to inadvertence is incorrect inasmuch as the two witnesses have deposed that they had informed the returned candidate of their knowledge as to what had transpired in the meeting held at Bihpuria Bazar only about a week prior to the date of their deposition. If the evidence of P.W. 9 are discarded, the evidence of the election petitioner with regard to the meeting held at Bihpuria Bazar and speeches delivered therein stand unrebutted, contends the learned counsel for the election petitioner.”

Mr. S.B. Sanyal, the learned senior counsel appearing on behalf of the appellant would submit that the High Court committed a manifest error in arriving at the aforementioned conclusions insofar as it applied wrong legal tests as regard appreciation of evidence. The learned counsel would contend that the High Court even did not refer to the news item dated 19.4.2001 published in the newspaper “Azir Assam” which would prove the contents of the speech delivered by the President of the Coordination Parishad wherein the speakers asked the voters not to caste their votes in favour of the appellant and Shri Kesoram Boro from wherever and from which party they contest. Such an appeal, Mr. Sanyal would contend, was evidently made to spread hatred against members of a Scheduled Tribe which amounts to corrupt practice. Relying on the decisions of this Court in *Birbal Singh v. Kedar Nath*, [1976] 4 SCC 691, Mr. Sanyal would argue that the interestedness of a witness cannot itself be a ground to disbelieve him as certain witnesses may also be interested in speaking the truth.

The allegations of corrupt practices must conform to the provisions contained in Sections 123(3) and 123(3)(A) of the Act. It is not in dispute that Section 83 of the Representation of People Act is mandatory in nature. It is imperative that the election petitioner must disclose the source of his information in the election petition fully.

The allegations of corrupt practices are viewed seriously. They are considered to be quasi-criminal in nature. The standard of proof required for proving corrupt practice for all intent and purport is equated with the standard

A expected in a criminal trial. However, the difference between an election petition and a criminal trial is, whereas an accused has the liberty to keep silence, during the trial of an election petition the returned candidate has to place before the Court his version and to satisfy the Court that he had not committed the corrupt practice as alleged in the petition. The burden of the election petitioner, however, can be said to have been discharged only if and when he leads cogent and reliable evidence to prove the charges levelled against the returned candidate. For the said purpose, the charges must be proved beyond reasonable doubt and not merely by preponderance of probabilities as in civil action. (See *Gajanan Krishnaji Bapat and Anr. v. Dattaji Raghobaji Meghe and Ors.*, AIR (1995) SC 2284, *Surinder Singh v. Hardial Singh and Ors.*, [1985] 1 SCR 1059, *R.P. Moidutty v. P.T. Kunju Mohammad and Anr.*, [2001] 1 SCC 481 and *Mercykutty Amma v. Kadavoor Sivadasan and Anr.*, (2003) AIR SCW 6306.

The witnesses examined by the appellant in support of his allegation in relation to the first meeting was found to be unworthy of any trust by the High Court. The witnesses though admitted that they were the residents of the locality and had been present in the meeting, could not recognize any of the persons present therein. Admittedly, no independent witness from the village had been examined by the election petitioner. The High Court, however, although found fault with the nature of the evidence adduced by the first respondent herein but in making the observations as in paragraph 8 of the judgment and, as noticed hereinbefore, the High Court must be held to have meant that the appellant has not been able to discharge heavy burden.

Spreading of hatred on communal basis is an offence. The appellant herein did not lodge any First Information Report. No contemporaneous documentary evidence has been brought on record to show that the first respondent had spread hatred towards member of another community or caste. The contents of the news item whereupon Mr. Sanyal relied having not been proved by examining the reporter, the same could not have been exhibited legally on the statement of the witness that the report had been published in the newspaper. It was, therefore, inadmissible in evidence.

Even otherwise the manner in which the alleged corrupt practice has taken place does not inspire confidence. Normally a candidate would not commit an offence in presence of another candidate. It is also wholly unlikely that such statements would be made openly. Even if it had been done, it is expected that independent witnesses would come forward to testify the veracity

thereof. A

In *Quamarul Islam v. S.K. Kanta and Ors.*, [1994] Supp. 3 SCC 5, this Court held:

“48. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled.” B

So far as the allegations as regard the meeting held on 1.5.2001 is concerned, the High Court, for valid and cogent reasons, did not accept the testimonies of the witnesses examined on behalf of the appellant. P.W. 4 Shri Kushal Baruah in cross-examination could name only P.W. 5 and P.W. 6 to be present in the meeting although he is a resident of the same village. P.W. 5 and P.W. 6 admittedly belong to another village. He also admitted that only the first respondent spoke in the meeting. The evidence of P.W. 5 was not believed on the ground that he was a chance witness. He furthermore contradicted P.W. 4 by saying that even the two agents of the first respondent delivered speech. He further admitted that he is related to the election petitioner. The High Court noticed that one of the listed witness Shri Raidangia Namghar had not been examined and the witnesses examined on behalf of the election petitioner only named each other as the person present in the meeting and nobody else. C D

So far as the third meeting dated 7.5.2001 is concerned, the entire case of the appellant rested on two witnesses viz. P.W. 8 and P.W. 7. P.W. 8 admittedly was the General Secretary of the District Congress and P.W. 7 admittedly was his constant companion. The names of the other witnesses examined by the appellant did not figure in the list of the witnesses filed earlier by the appellant. E F

In *Birbal Singh* (supra) this Court while holding that the court should be on its guard while evaluating the testimony of interested witnesses observed that they must be subjected to a closer scrutiny. G

This Court in no uncertain terms stated that in a given case the Court would be justified in rejecting that evidence unless it is corroborated from an independent source. Applying the said test also, the evidence of P.W. 7 and P.W. 8 cannot be believed. H

The High Court itself while disbelieving the said witnesses noticed that

A they did not report to anybody about the meeting held at Bihpuria Bazar and incriminating speeches made therein. The findings of the High Court, therefore, are in consonance with the legal tests laid down by this Court in *Birbal Singh* (supra).

B On analyzing the materials on record, it is, therefore, evident that the appellant had not been able to prove the charges of corrupt practice against the first respondent herein by adducing clear-cut evidence which can be said to be wholly credible and reliable. The charges of corrupt practice were needed to be proved beyond doubt which the first respondent failed to do.

C It is beyond any cavil that the allegations of corrupt practice must be pleaded strictly in terms of Section 83 of the Representation of People Act and proved beyond all reasonable doubt.

For the aforementioned reasons, we are of the opinion that the judgment of the High Court cannot be faulted.

D This appeal, therefore, being devoid of any merit is dismissed. No costs.

N.J.

Appeal dismissed.