A

KUMARA NAND

v.

BRIJMOHAN LAL SHARMA

November 29, 1966

B [K. N. WANCHOO, R. S. BACHAWAT AND J. M. SHELAT, JJ.]

Representation of the People Act (43 *of* 1951), *s.* 123(4)—*Elections—Corrupt Practice—Statement alleging a candidate to be greatest of all thieves—Whether a statement of fact or of opinion only—Candidate with whose consent such statement is made must believe it to be true—Nature of onus in proving such belief.*

C The appellant was the winning candidate in an election to the Rajasthan Legislative Assembly. The respondent who was one of the unsuccessful candidates filed an election petition and alleged therein that the appellant was guilty of corrupt practice within the meaning of s. 123(4) of the Representation of the People Act, 1951. The corrupt practice alleged was that at a meeting presided over by the appellant a poem was read out which represented the respondent to be the 'greatest of all thieves'. The Election Tribunal as well as the High Court gave their findings against the D appellant who came to this Court with certificate.

It was contended on behalf of the appellant that : (i) the statement in question was not a statement of fact but only of opinion, (ii) No attempt had been made to prove that the person who recited the poem containing the statement believed it to be false or did not believe that it was true, (iii) the onus to prove that corrupt practice had been committed lay on the respondent and that had not been discharged.

E HELD : (i) The mere absence of details as to time and place would not turn a statement of fact into a mere expression of opinion. [130 F-G]

In the present case taking the poem as a whole there could be no doubt that when the respondent was called the greatest of all thieves there was a clear statement of fact about his personal character and conduct. [133 E-F]

F (ii) The appellant presided and his election agent was present at the meeting at which the poem in question was read. The responsibility for the publication in the circumstances of the case was that of the appellant and it was the appellant's belief that mattered and not the belief of the person who read it with the consent of the appellant. [135 E-G]

(iii) The onus on an election petitioner under s. 123(4) is to show that a statement of fact was published by a candidate or his agent or by G any other person with the consent of the candidate or his election agent and also to show that that statement was false and related to his personal character or conduct. This onus is very light and can be discharged by the complaining candidate swearing to that effect. Once that is done the burden shifts to the candidate making the false statement of fact to show what his belief was. [136 E-F]

It was for the appellant to show either that the statement was true or H that he believed it to be true. The appellant had failed to do so. The High Court therefore rightly held that the respondent had discharged the burden which lay on him. [137 A-B]

Case law considered.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2135 of 1966. A

Appeal from the judgment and order dated January 27, 1965 of the Rajasthan High Court in D. B. Election Appeal No. 93 of 1963.

R. K. Garg, D. P Singh and *S. C. Agarwal*, for the appellant. B

B.D. Sharma and *L. D. Sharma*, for the respondent.

The Judgment of the Court was delivered by

Wanchoo, J. This is an appeal on a certificate granted by the Rajasthan High Court and arises in the following circumstances. There was an election to the Rajasthan Legislative Assembly from C the Beawar constituency at the general election in 1962. A number of persons stood for election, two of whom were the appellant and the respondent. The appellant secured the highest number of votes while the respondent came second. The appellant was declared successful at the election and this led to an election petition by the respondent. D

A number of grounds were taken in the election petition for invalidating the election of the appellant; but in the present appeal we are concerned with one ground and shall refer to that only. That ground was that the appellant had commited a corrupt practice as defined in s. 123(4) of the Representation of the People Act, No. 3 of 1951, (hereinafter referred to as the Act). The case of E the respondent was that the appellant had published a statement of fact in relation to the respondent's personal character or conduct and that statement of fact was false, and the appellant either believed it to be false or did not believe it to be true. The statement was reasonably calculated to prejudice the prospects of the respondent's election. In consequence, the respondent prayed that the election F of the appellant be set aside.

It is unnecessary to refer to the reply of the appellant to the above contention, for learned counsel for the appellant does not dispute the findings of fact arrived at by the High Court. It will therefore be enough to refer to these findings with respect to the corrupt practice alleged by the respondent. The High Court G found that the appellant was responsible for the publication of a poem entitled *Mang raha hoon de bhai vote* : (I am an applicant and request your vote). This poem was composed by one Avinash Chander of Beawar. It was not disputed before the High Court that the poem in question was aimed at the respondent and he was the target of the attack made therein. The High Court also found H that the poem in question was read at an election meeting on February 21, 1962 at which the appellant himself was presiding. Avinash Chander had recited this poem at that meeting. It was also found

A that the booklet containing the poem was printed at the instance of one Chand Mohammad, who was polling and counting agent of the appellant and who had also paid the author (Avinash Chander) something for it. The appellant had seen the booklet containing this poem sometime before the meeting of February 21, 1962 and had read it. Further the High Court held that the booklet containB ing the poem was printed with the knowledge and approval of the election agent of the appellant. Finally, the High Court held that the poem was recited at the meeting of February 21, 1962 by Avinash Chander and the appellant was presiding at that meeting and Kalyan Singh, his election agent, was also present in it, and thus there was sufficient publication within the meaning of s. 123(4) of the Act, C for which the appellant was responsible.

The Tribunal had held that the appellant was responsible for the publication of the booklet containing this poem and it contained statements of fact which the appellant either believed to be false or did not believe to be true. These statements of fact were held to be in relation to the personal character or conduct of the respondent D and were reasonably calculated to prejudice the prospects of the respondent's election. In consequence the Tribunal had held the appellant guilty of the corrupt practice within the meaning of s. 123(4) and allowed the election petition.

The appellant then went in appeal to the High Court and three main points were urged on his behalf there. In the first place, it was E contended that there was no statement of fact at all in the poem in question. Secondly, it was contended that even if there was any statement of fact in the poem it should have been proved that Avinash Chander who had recited it either believed it to be false or did not believe it to be true and that no attempt was made to prove this. Lastly, it was contended that the onus to prove that corrupt practice F had been committed lay on the respondent and that had not been discharged. The High Court rejected all the three contentions and held that there was one statement of fact in the poem in question. That statement was either believed to be false or was not believed to be true by the appellant. The High Court also held that the belief of Avinash Chander was immaterial and the respondent had discharged the onus that lay on him. In the result the appeal was G dismissed. The appellant then applied for and obtained a certificate from the High Court, and that is how the matter has come before us.

The same three points which were raised before the High Court have also been raised before us in the appeal. The first question that we shall consider is whether there was a statement of fact at H all in the poem in question. The contention on behalf of the appellant is that there was no statement of fact with respect to the character or conduct of the respondent in the poem and that it merely expressed opinions which did not come within the ambit of s. 123(4)

Now there is no doubt that the poem was aimed at the respondent which is made clear by the second stanza which starts with the words "Pakka Pandit Sharma Hoon": (I am pucca Pandit Sharma). It is not in dispute that the respondent was the only Sharma who contested the election. Considering the heading of the poem to which we have already referred it is obvious that the respondent was depicted therein as requesting for votes. In the sixth stanza, the respondent is made to say: *sab choron ka sartaj:* (I am the greatest of all thieves); and it is this phrase which the High Court has held to be a statement of fact. We are of opinion that this passage states as a fact that the respondent is the greatest of all thieves, though in the poem the statement is put as if it was coming from the mouth of the respondent. The question is whether a statement to the effect that one of the candidates standing for election is the greatest of all thieves is a statement of fact or is a mere expression of opinion about the candidate. It is not in dispute that if it is a statement of fact it is clearly in respect of the personal character or conduct of the candidate concerned. It seems to us that if a candidate is called the greatest of all thieves, the person saying so is making a statement of fact. The statement that a person is a thief or the greatest of all thieves cannot in our view be a mere opinion, and we agree with the High Court that when the respondent was called the greatest of all thieves a statement of fact was being made as to his personal character or conduct.

It is however urged on behalf of the appellant that there are no details as to the time when the respondent committed thefts or the place where he committed them, and therefore a mere bald statement that the respondent was a thief or the greatest of all thieves could be an expression of opinion only and not a statement of fact. We are unable to accept this. Section 123(4) in our opinion does not require that when a statement of fact is made as to the personal character or conduct of a candidate details which one generally finds (for example) in a charge in a criminal case, must also be there and that in the absence of such details a statement to the effect that a person is (for example) a thief or murderer is a mere expression of opinion. To say that a person is a thief or murderer is a statement of fact and the mere absence of details as to time and place would not turn a statement of fact of this nature into a mere expression of opinion.

Learned counsel for the appellant relies on a number of cases in support of his contention that such a bald statement without particulars could not be a statement of fact. The first case to which reference may be made is *Ellis* v. *National Union of Conservative and Constitutional Association.*(1) It has not been possible for us to get the report of this case. But in *Parker's Election Agent and*

1. 109, Law Times Journal 493; & Times Newspaper, October 3rd, 1900 :44 Sol. Journ. 750.

A *Returning Officer*, 6th Edition, p. 91, it has been mentioned. There it is stated that "a statement which imputed that the candidate was a traitor, and was one of certain persons who were in correspondence with the enemy shortly before the South African war broke out in 1899" was not held to be a statement of fact and did not come within the mischief of the relevant provision of English law relating to elections. But in *Rogers on Elections*, Vol. II, 20th Edition, p. 368, the same case is referred and the facts given there seem to be different. It is stated there that a poster was published stating that Radical members of the House of Commons were in correspondence with the enemy, and this statement was held not to come within the ambit of the law on the ground that it did not state that the plaintiff was in correspondence with the Boers. As the report is not available it is very difficult to judge what exactly was decided in that case. If the facts are as given in *Rogers*, it seems that there was no statement of fact with respect to the candidate in that case and all that was said was that Radical members of the House of Commons were in correspondence with the Boers, and the candidate happened to be one of the Radical members. If that is so, it was not clearly a statement of fact with respect to the candidate in particular and that case would not be of any assistance to the appellant.

The next case to which reference may be made is *A. S. Radhakrishna Ayyar* v. *Emperor*.(1) It was held there that for the purpose of s. 171-G of the Indian Penal Code, something must be stated as a fact and not as a general imputation or as a matter of opinion. In that case, a candidate was prosecuted under s. 500 of the Indian Penal Code, and he took the plea that he should have been prosecuted under s. 171-C of the Indian Penal Code and that this could not be done without the sanction of government, which was not obtained. In that case a defamatory document was published with respect to the candidate. That document contained only one or two statements of fact, but the bulk of it consisted of mere general expression, and it was held that a prosecution under s. 500 of the Indian Penal Code was not barred. But one of the statements which was held not to be a statement of fact was this, namely, they are misappropriating government money by committing forgeries. Now it must be remembered that the question there was whether prosecution under s. 171-G would lie and the High Court was of the view that it would not and gave its reasons thus:

> "When it is alleged that a man does many kinds of harm to the poor, that he misappropriates government money, that he commits forgery and so forth, how would it be possible, in the absence of particulars, to prove *prima facie* that the allegations are false?"

Consequently, the High Court held that the offending document on the whole was one to which s. 171-G could not be applied. We

(1) A.I.R. 1932 Mad. 511.

are of opinion that the view taken by the High Court, at any rate, with respect to the allegation that the candidate in question was misappropriating government money was not a statement of fact is not correct.

The next case to which reference may be made is *Narayanaswamy Naichker and Others* v. *D. Devaraja Mudaliar & Others.*(1) There also the question was whether a person should be prosecuted under s. 500 and not under s. 171-G of the Indian Penal Code. This case does not seem to support the appellant, for it was held there that the statement that the candidate had committed fraud in respect of money in the fund office and was removed by the general body or by the department, was a statement of fact.

The next case to which reference may be made is *Hajee Mohammad Kadir Sheriff* v. *Rahimatullah Sahib.*(2) In that case also the question was whether the prosecution should have been under s. 500 or under s. 171-G of the Indian Penal Code. The statement there was that the candidate was a leper, and the High Court held that this was not a case which fell within s. 171-G but no reasons were given for the view. It seems to us that this case does not help the appellant for the allegation that a person is a leper cannot be said to relate to personal character or conduct of the candidate; it only mentions a physical defect.

The last case to which reference may be made is *V. P. Shanmugam and Another* v. *Thangavelu.*(3) That also dealt with s. 171-G of the Indian Penal Code. In that case, a printed notice was published containing a series of rhetorical questions *viz.* whether it was true or not that the candidate used to receive money and withdraw from contest in elections. The exact words used are not to be found in the report and the High Court seems to have held that as no particulars were mentioned it would not be a statement of fact. It seems to us however that if an allegation is made that a candidate had withdrawn from context at previous elections after taking money that would be a statement of fact and the view taken by the High Court is not correct.

The question whether a particular statement with respect to a candidate at an election is a statement of fact or is a mere expression of opinion would depend on the facts of each case and will have to be judged in the circumstances in which the statement was made and in the context of the writing in which it appears, in case it is part of a writing. But it is not in our opinion correct to say that a statement with respect to a candidate can never be a statement of fact, unless it is accompanied by particulars as to time, place and date which one finds (for example) in a charge-sheet in a crimi-

(1) A.I.R. [1936] Madras 360. (2) A.I.R. 1940, Madras 230.
(3) A.I.R. 1958, Madras 240.

A nal case. Whether in a particular setting a bald statement without particulars would be a mere expression of opinion or would amount to a statement of fact would depend upon the circumstances of each case and the court will have to consider the setting in which the statement was made and the entire writing in the context of which it appears and the nature of the statement itself before it comes to
B the conclusion that it is a statement of fact or an expression of opinion. Where particulars are given it may not be difficult to come to the conclusion that the statement is a statement of fact; but even a bald statement without particulars may be a statement of fact and not a mere expression of opinion. It seems to us that mere absence of particulars would not necessarily mean that a statement without particulars is always an expression of opinion. Take a case where a
C candidate is said to be a murderer. The mere fact that the name of the victim or the date when the murder took place or the place where it happened is not mentioned, would not detract from the statement being a statement of fact. At the same time a similar bald statement that a candidate is a murderer in the context in which it appears if it is in writing may not be a statement of fact
D and may be a mere matter of opinion, as, for example, where it is said that a candidate is a murderer of all decencies in life. The question whether a bald statement amounts to a statement of fact or a mere expression of opinion would depend on the facts and circumstances of each case and also on the setting in which the statement appears whether it is in writing or oral.

E

In the present case, taking the poem as a whole there can be no doubt that when the respondent was called the greatest of all thieves there was a clear statement of fact that he was a thief or the greatest of all thieves and not a mere expression of opinion. This is the impression that one gets from reading the poem as a whole, and we agree with the High Court that in the setting in which the statement
F was made in the poem and in the circumstances in which it came to be made, there is no question of the statement being a matter of opinion; it was undoubtedly a statement of fact.

We may in this connection refer to *Inder Lal* v. *Lal Singh*,(1) where this Court held that an allegation to the effect that a candidate
G was purchaser of the opponents of the Congress by means of money, without any particulars as to who was purchased and when, was taken as a statement of fact relating to the personal conduct or character of the candidate. It is true that in that case the question was whether the statement was with respect to personal conduct or character of the candidate and there was no dispute that it was a statement of fact. Even so we are of opinion that that case shows
H that particulars are not necessary before a bald statement with respect to personal character or conduct of the candidate can be said

(1) [1962] Supp. 3 S.C.R. 114.

to be a statement of fact. As we have said already, presence of particulars will make it easier to come to the conclusion that it is a statement of fact; but the absence thereof does not necessarily mean that it is always an opinion and can never be a statement of fact. It will all depend, as we have said already, on the facts and circumstances of each case.

Then it is said that the Madras High Court had already taken a certain view as to the meaning of the words "statement of fact" under the election law as it was before the Act, and as the words in s. 123(4) of the Act are more or less similar to the earlier law it should be taken that the legislature had approved of the view taken by the Madras High Court which seems to suggest that particulars are necessary before a statement can be said to be a statement of fact. Reliance in this connection is placed on the following observations of Viscount Buckmaster in *Barras* v. *Aberdeen Steam Trawling and Fishing Co. Ltd.*(1)

> "It has long been a well established principle to be applied in the consideration of Acts of Parliament that where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context, must be construed so that the word or phrase is interpreted according to the meaning that has previously been assigned to it."

We are of opinion that this principle does not apply in the present case. We are here concerned with the meaning of the words "statement of fact". This is not a phrase of doubtful meaning and merely because one High Court took one view it does not follow that when the Act was passed in 1951 the legislature intended that no statement can be a statement of fact unless particulars were mentioned therein. We therefore agree with the High Court that the statement that the respondent was the greatest of all thieves is a statement of fact in the facts and circumstances of this case and in the context in which the words appear in the poem.

This takes us to the next point, namely, that it should have been proved that Avinash Chander who recited the poem at the meeting believed the statement to be false or did not believe it to be true and that on this point Avinash Chander was not even questioned though he appeared as a witness. The High Court has held that the belief of Avinash Chander is immaterial, and that it is the belief of the appellant that matters. We are of opinion that this view of the High Court is correct. section 123(4) runs thus : —

(1) [1933] A.C. 402, 411.

A "(4) 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 false 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
B withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

. . . . . ."

The sub-section requires; (i) publication of any statement of fact by a candidate, (ii) that fact is false, (iii) the candidate believes it
C to be false or does not believe it to be true, (iv) the statement is in relation to the personal character or conduct of another candidate; and (v) the said statement is one being reasonably calculated to prejudice the prospects of the other candidate's election : (see *Sheopat Singh* v. *Ram Pratap*.[1]). This case thus lays down that the person with whose belief the provision is concerned is
D ordinarily the candidate who, if we may say so, is responsible for the publication. The responsibility of the candidate for the publication arises if he publishes the thing himself. He is equally responsible for the publication if it is published by his agent. Thirdly he is also responsible where the thing is published by any other person but with the consent of the candidate or his election agent. In all three
E cases the responsibility is of the candidate and it is ordinarily the candidate's belief that matters for this purpose. If the candidate either believes the statement to be false or does not believe it to be true he would be responsible under s. 123(4). In the present case the poem was not actually read by the appellant, but it was read in his presence at a meeting at which he was presiding by Avinash Chander. In these circumstances the High Court was right in com-
F ing to the conclusion that the recitation of the poem by Avinash Chander at the meeting amounted to the publication of the false statement of fact contained in it by another person with the consent of the candidate, and in this case, even of his election agent who was also present at the meeting. But the responsibility for such publication in the circumstances of this case is of the candidate and
G it is the candidate's belief that matters and not the belief of the person who actually read it with the consent of the candidate. What would be the position in a case where the candidate had no knowledge at all of the publication before it was made need not be considered for that is not so here. It is not disputed in this case that the statement that the respondent was the greatest of all thieves, was false. It is also not seriously challenged that the appellant did not believe it
H to be true. The contention that Avinash Chander's belief should have been proved must therefore fail.

(1) [1965] 1 S.C.R. 175.

Then we come to the question of onus. In this connection reliance is placed on *Dr. Jagjit Singh* v. *Giani Kartar Singh*(1). In that case it was held that the onus to prove the essential ingredients prescribed by sub-s. (4) of s. 123 of the Act is on him who alleges publication of false statements of fact. The election petitioner has to prove that the impugned statement has been published by the candidate or his agent, or if by any other person, with the consent of the candidate or his election agent. He has further to show that the impugned statement of fact is false and that the candidate either believed that statement to be false or did not believe it to be true. It has further to be proved *inter alia* that the statement was in relation to the personal character or conduct of the complaining candidate. Finally, it has to be shown that the publication was reasonably calculated to prejudice the prospects of the complaining candidate's election. But though the onus is on the election petitioner to show all these things, the main things that the election petitioner has to prove are that such a publication was made of a statement of fact and that that statement is false and is with respect to the personal character or conduct of the election petitioner. The burden of proving that the candidate publishing the statement believed it to be false or did not believe it to be true though on the complaining candidate is very light and would be discharged by the complaining candidate swearing to that effect. Thereafter it would be for the candidate publishing the statement to prove otherwise. The question whether the statement was reasonably calculated to prejudice the prospects of the election of the candidate against whom it was made would generally be a matter of inference. So the main onus on an election petitioner under s. 123(4) is to show that a statement of fact was published by a candidate or his agent or by any other person with the consent of the candidate or his election agent and also to show that that statement was false and related to his personal character or conduct. Once that is proved and the complaining candidate has sworn as above indicated, the burden shifts to the candidate making the false statement of fact to show what his belief was. The further question as to prejudice to the prospects of election is generally a matter of inference to be arrived at by the tribunal on the facts and circumstances of each case.

In the present case the main onus that lay on the respondent has been discharged. He has proved that there was a publication of the nature envisaged under s. 123(4) of the Act. He has also proved that the statement of fact was made with respect to him. He has further proved that that statement was false and related to his personal character or conduct. There can be no doubt that a statement of this nature calling one candidate a thief or the greatest of all thieves is reasonably calculated to prejudice the prospects of

(1) A.I.R. 1966 S.C. 773

A his election. He further swore that the statement was false to the knowledge of the appellant and the latter did not believe it to be true. It was then for the appellant to show what his belief was. The burden having thus shifted we are of opinion that it was for the appellant to show either that the statement was true or that he believed it to be true. This the appellant has failed to do. The
B High Court therefore rightly held that the respondent had discharged the burden which lay on him.

The appeal therefore fails and is hereby dismissed with costs.

G.C. *Appeal dismissed.*