

N. VIMALA DEVI

v.

K. MADHUSUDHANA REDDY

December 20, 1974

[A. ALAGIRISWAMI, V. R. KRISHNA IYER AND R. S. SARKARIA JJ.]

Representation of the People Act, 1951—S. 116A—Allegations of corrupt practice—Duty of High Court to scrutinise with care.

In the election to the State Legislative Assembly, the respondent was declared elected. The appellant who was the defeated candidate in the election, in her election petition alleged that the respondent had committed a number of corrupt practices, the most important of which related to the distribution of a pamphlet defamatory of her, falling under s. 123(4) of the Representation of the People Act, 1951. The High Court dismissed her petition.

In appeal to this Court it was contended that the High Court applied one standard in appreciating the evidence of the appellant's witnesses and an altogether different standard in appreciating the evidence of the respondent's witnesses.

Allowing the appeal,

HELD : (1) On an examination of the evidence it is satisfactorily established that the impugned pamphlet was printed and distributed at the instance of the respondent. [135H]

(2) Where a corrupt practice is alleged against a returned candidate it must be scrutinised with considerable care because a finding to that effect has very serious consequences. It not merely sets aside the popular verdict but also subjects the successful candidate to the penalty of being disqualified for election and even criminal prosecution. [135 E]

(3) This Court does not normally reappraise the evidence and come to a contrary conclusion from that of the trial judge if it is generally acceptable. But it must not be forgotten that an appeal under s. 116A of the Representation of the People Act is a first appeal and not one under the provisions of Art. 136 of the Constitution and that an appeal is a rehearing. [135 F]

In the instant case the evidence has been reassessed because the High Court had rejected the evidence of the appellant's witnesses wholesale mainly on the ground of their being partisan witnesses while no such standard has been applied to evidence of witnesses on behalf of the respondent except in two cases. Even in those cases it was done because the documentary evidence was too strong. The rejection of the evidence by the High Court in one important instance has led to a wrong approach in the appreciation of the oral evidence.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 389 of 1973.

From the judgment and order dated the 22nd December, 1972 of the Andhra Pradesh High Court in Election Petition No. 7 of 1972.

S. V. Gupte, P. P. Rao and G. Narayana Rao, for the appellant.

P. Ram Reddy, B. Parthasarathi and B. Balainukunda Reddy, for the respondent.

The Judgment of the Court was delivered by

ALAGIRISWAMI, J.—In the election to the Andhra Pradesh Legislative Assembly from the Chennur constituency held on 5th March, 1972, the appellant was the official Congress candidate and the respondent an independent candidate though both belonged to the Congress Party. The respondent obtained 25,654 votes as against 23,940

- A votes obtained by the appellant and was declared elected. Thereupon the appellant filed an election petition which was dismissed by the Andhra Pradesh High Court. This appeal is against that decision.

- Though a number of corrupt practices were alleged in the election petition the only one pressed before this Court was that relating to the distribution of a pamphlet defamatory of the appellant falling under section 123(4). That leaflet marked Ex.A-1 purports to have been issued by the Yuvajana Congress, Thorur. It does not bear the name of the printer or the publisher. But the allegation in the election petition was that it was published by the respondent and his agents throughout the constituency. In Schedule I to the election petition were given the names of villages where the distribution was made, the persons who distributed, the date of distribution as well as the names of persons who received the pamphlet. Certain other details were also given. It was further alleged that the appellant received letters in this regard from some of her supporters in the constituency. These were marked as Exs. A-2, A-3 and A-4. It was stated that the President of the Yuvajana Congress, Thorur was a man named Uppal Reddy who became a paid clerk of the respondent. The respondent denied knowledge of the pamphlet and contended that Exs. A-2 to A-4 are self serving statements got prepared by the appellant and the persons who are supposed to have written those letters for the purpose of the election petition. He claimed that he was not aware whether Uppal Reddy was President of the Yuvajana Congress. Thorur but that he was a strong supporter of the appellant. The distribution of the pamphlet either by him or his election agent or his workers with his consent was denied. The names of workers mentioned in the schedule to the election petition were stated to be those of the supporters of the appellant with a view to let in false evidence.

- The learned Judge of the High Court after an elaborate examination of the evidence found that there cannot be any doubt that the allegations contained in leaflet Ex.A-1 go deeply against the personal character and conduct of the appellant and can be taken as being reasonably calculated to prejudice her prospects in the election. This does not seem to have been disputed before the High Court. It was only contended that neither the respondent nor his election agent was aware of the existence of those leaflets nor were they distributed during the election period and even if they were distributed they were not responsible for it. The learned Judge further held that it has to be taken that the allegations made against the appellant in Ex.A-1 were false and the respondent did not believe them to be true and he would be guilty of the corrupt practice if the publication was made by the respondent or his election agent or by others with the consent of the respondent or his election agent. He then took up the question whether the respondent or his election agent or with the consent of either any other person distributed leaflets like Ex.A-1 during the election period.

The case for the respondent as suggested in the cross-examination of the appellant was that she expected her defeat even when the

election was one week ahead and therefore she started manufacturing all the documents filed by her for the purpose of the election petition, which even then she decided to file in case of her defeat. Based on the evidence of P.W. 70, the Secretary of the Zila Parishad, Warangal who was then the Returning Officer, and P.W.76, the Sub-Collector, Warangal, the learned Judge found that leaflets like Ex.A-1 were in circulation a few days prior to the date of the election. He, however, came to the conclusion that it was not possible to say that even before the date of the election the appellant and her supporters must have thought that her defeat in the election was a certainty and thought of distributing leaflets like Ex.A-1 to prepare for the election petition instead of working vigorously for her success in the election and, therefore, whoever might be responsible for the distribution of the leaflets it could not have been the appellant or her supporters but her enemies only. He finally came to the conclusion that there is no cogent and reliable evidence to show that the distribution of the leaflets was made by the respondent or his election agent or with the consent of either by some others and it is not possible to hold the respondent responsible for the distribution. With regard to Uppal Reddy he held that there was no satisfactory evidence to show either that Uppal Reddy was a paid clerk of the respondent or that he worked for the respondent in the election and not for the appellant as alleged by the respondent.

As we are in substantial agreement with the learned Judge regarding the nature of the leaflet Ex.A-1 its possible effect and the impossibility of the appellant or anybody on her behalf having distributed those pamphlets we do not think it necessary to discuss those questions or even to set out the pamphlet itself. These were not seriously disputed by the respondent. We will therefore confine ourselves to the question as to who was responsible for their distribution.

The learned Judge seems to have thought that R.Ws. 32 and 33, the brothers of the appellant's husband, might perhaps have done it as they were bitterly inimical towards the appellant and her husband. R.W.32 was the respondent's polling agent and R.W.33 was an active worker on his behalf. There is no evidence as to who had the leaflet printed or where it was printed. Neither R.W.32 nor R.W.33 accepted either that they printed the leaflet or that they distributed it.

Some time before the election and even before the Congress candidate was selected for this constituency a representation, Ex A-48, was sent to the Congress authorities signed among others by the respondent as well as R.W.33. The main purport of that representation was that neither the appellant nor her husband should be set up as the Congress candidate. It suggested certain other persons as fit to be set up as Congress candidates, but there is no doubt that it was intended to prevent either the appellant or her husband being selected as the Congress candidate. R.W. 33 claimed that it was he that prepared Ex. A-48 and got the signatures of the persons contained therein. The first of the signatories is respondent himself. Forty out of its fortythree signatories are his supporters. Though he pretended not to have known its contents he as well as R.W. 33 had to admit

- A that it was prepared after some discussion. The respondent had also to admit that he it was who wrote in his own hand about a copy of the representation having to go to the Congress observer for Warangal district. We have no doubt at all that the main mover behind Ex. A-48 is the respondent himself and R.W. 33 is merely his instrument. This is also evident from the fact that he decided to stand for the election himself because only if he stood he could defeat the appellant.
- B Thus his main motive being to defeat the appellant is clear beyond doubt. It is not merely the normal effort of a contesting candidate to defeat his opponent but something special, something out of the ordinary. This exhibit has not been discussed at all by the learned Judge. The importance of Ex. A-48 is because it is a forerunner of Ex. A-1 and some of the statements found in Ex. A-1 as well as its main purpose are the same as of Ex. A-48. We are not impressed by the argument on behalf of the respondent that Ex. A-57, which shows that even in 1970 a representation of a similar kind was made, shows that there were many others out to besmirch the name of the appellant. Ex. A-57 contains many instances which have nothing to do with the election in 1972 or the setting up of a Congress candidate in that election. That is the affinity between Ex. A-48 and Ex. A-1. Nor are we impressed by the argument on behalf of the respondent that NGOs towards whom the appellant is said to have behaved rudely might have been responsible for the printing and distribution of the pamphlets. The NGOs as a class may not be so much interested and no suggestion has been put and we have not been told that any particular NGO had such a strong grievance against the appellant that he could go to the extent of printing clandestinely a pamphlet like Ex. A-1, meeting the expenditure therefore and for distributing it. The search ultimately must be confined to R.Ws. 32 and 33 on the one hand and the respondent on the other.
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- It is here that the relevance of the reference to Uppal Reddy and the Yuvajana Congress, Thorrur becomes important. The Yuvajana Congress, Thorrur was inaugurated on the 26th January, 1972. Before that Uppal Reddy had met P.W.66, Vasantha Nageswara Rao, the President of the State Youth Congress and a member of the Legislative Assembly from the Nandigama constituency of Krishna district. He wrote a letter Ex.A-25 on 6-2-1972 congratulating Uppal Reddy on his having organised the Yuvajana Congress. Later finding that Uppal Reddy was working against the Congress candidate on behalf of the respondent he was removed from the office and P.W.68, Vasudeva Reddy was elected President of the Yuvajana Congress, Thorrur. The removal of Uppal Reddy and the election of P.W.68 was intimated to P.W.66 by Ex.A-26. The second letter is Ex.A-28 written by P.W.68 to P.W.66 about distribution of leaflets by the respondent's associates. That letter also refers to the pamphlet as having been printed by the respondent and asks that he be suspended immediately. Another letter Ex.A-32 written by P.W.66 to P.W.68 also shows that P.W.66 was invited to tour the Chennur constituency and he was unable to do so. Exhibits A-31, A-31(a) and A-31(b) show that letters were written to P.W.66 as well as to the President of the Andhra Pradesh Congress Committee. Exhibit A-29 is a letter by P.W.68
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to P.W.66 inviting him to tour the constituency. Exhibit A-29(a) is a resolution of the Youth Congress Committee dated 29-2-1972 about Uppal Reddy having been won over by the respondent and the pamphlet against the appellant being published and requesting P.W.66 and the President of the Andhra Pradesh Congress Committee to institute proceedings against the respondent. Exhibit A-27 is a letter addressed by P.W.66 to Uppal Reddy apparently on the basis of Ex.A-26 about the complaints that he was working for the respondent and asking him to show cause why disciplinary action should not be taken against him. It also refers to the resolution of the Youth Congress.

We are unable to share the learned Judge's conclusion that all these could have been got up in order to support the election petition. The learned Judge himself recognises that the appellant would not have had any apprehension that she would be defeated in the election because she was standing from Chennur constituency which was the only one among the many constituencies comprising the Parliamentary seat that was won by a Congress candidate with a majority of 5000 votes in the previous election though all the other Assembly seats as well as the Parliament seat went to the non-Congress candidate. That is why the learned Judge took the view that the distribution of the pamphlet could not have been made by the appellant before the date of the election. It is, therefore, obvious that these documents could not have been got up before the election nor are we able to accept the learned Judge's facile conclusion that these could have been got up by antedating some postal stamps. One cannot take it that it is so easy to antedate postal stamps. In fact no such suggestion was put to the appellant or any of her witnesses. This theory of antedating the postal stamps has also been relied upon by the learned Judge in connection with Exs.A-2 to A-4, with which we shall deal a little later. The only slight reference to anybody connected with the appellant having anything to do with the Post Office was in relation to one of the Post Offices alone. It is not that if no such suggestion was made on behalf of the respondent about the postal stamps being antedated it is not permissible to the learned Judge to draw such a conclusion if the facts justify it but we feel there are no facts justifying such an inference. We are satisfied that these various documents are genuine and not got up for the purpose of the election petition.

The whole case of the respondent was that these documents as well as Exs.A-2 to A-4 had been created before the election though the question put to the appellant's witnesses was in a form which would enable him to put forward two alternative pleas (1) of their being prepared before the election, and (2) of their being prepared after the election but before the election petition was filed. We are of the opinion that the respondent should not be allowed to draft his pleadings in a dubious way and try to shape either his evidence or his arguments to suit either theory. We are unable to accept the argument on behalf of the respondent that these documents do not establish that either the respondent or his election agent distributed the pamphlets. These letters and resolutions sometimes refer to the

- A** respondent and sometimes to his associates. One of them refers to the respondent having printed the pamphlet. We do not think that in assessing the evidentiary value of these documents the statements contained in them should be scrutinised as though they were either pleadings before the Court or a statute to be interpreted. When pamphlets are said to be distributed by the respondent it does not necessarily mean that he was physically handing over those pamphlets to various persons. It includes the pamphlets being distributed in his presence or in the presence of his election agent or at his instance or on his behalf. Even if persons working for the respondent were distributing, in common parlance it would be said that the respondent was distributing the pamphlets. Interpreted in the proper perspective the various statements merely mean that the pamphlets were being distributed at the instance of the respondent.

- C** Some criticism was made of these documents on the basis of the constitution of the All India Youth Congress and that it does not provide for village Youth Congresses and that people cannot become members of the Youth Congress unless they become primary members of the All India Youth Congress. But it is obvious from the documents themselves as well as the evidence of P.W. 66, it was found necessary and advantageous to have Youth Congress in Thorur as it would help the Congress candidate as it was election time. This question cannot be decided as though we are concerned with the legality of the establishment of the Youth Congress in Thorur. All that it shows is that certain youngmen of the village decided to start a Youth Congress in the village, that it had the sanction and the blessings of P.W.66 and that they hoped to regularise the establishment of Youth Congress in due course. The criticism that the receipt of these letters is not entered in the receipt and despatch book of the State Youth Congress office is not of much substance. Non-official political Organisations are not run and do not function as though they were official administrative offices.

- D** We do not also agree with the view of the learned Judge who rejected the evidence of P.W.66 on the ground that he was merely a Congress member. He is a member of the Legislative Assembly from another district and he is the chief of the State Youth Congress. The fact that he is a Congressman could not be the sole ground for rejecting his evidence. We are, therefore, satisfied that these documents produce contemporaneous evidence of the fact that the pamphlets like Ex. A-1 were brought into existence and distributed at the instance of the respondent. They cover the period from 6-2-1972 to the day before the poll. Their evidentiary value is, therefore, very high.

- E** The distribution of the pamphlets by the respondent is also probalised by Ex. A-16 written by the appellant to the General Secretary of the Congress in Warangal District and Ex. A-44 to the Returning Officer.

- F** We shall now refer to Exs. A-2 to A-4. These are three letters written by three supporters of the appellant about the distribution of the pamphlets by either the respondent or his election agent as well as R.W. 33. The learned Judge has rejected them among other reasons

on the ground that postal stamps on them could have been antedated. The criticism we have made earlier with reference to this view of the learned Judge when we were discussing the documents relating to the Yuvajana Congress of Thorur applies here also. Four Post Offices are involved with reference to these three documents, the three different Post Offices in which they were posted and the one Post Office in which they were received. Only with reference to one of the Post Offices it was said that the Postmaster was a relative of the appellant. We think it impossible that postal stamps from four different Post Offices could have been antedated so easily. On the other hand these three documents give us the feeling that they have been prepared with an eye on an election petition. People who have been working for the appellant would not suddenly stop working merely because they saw a pamphlet like Ex. A-1 and if they did so they would just stop working and not bother further about writing to her. It was also unnatural in such letters for these persons to say that people were being convinced and that they themselves were convinced by the pamphlets. If that is so, these letters must have come into existence before the date of the poll. If the postal stamps could not have been antedated, how and why were these letters brought into existence? This question has given us considerable anxiety and we think that the most acceptable explanation is that having come to know of the distribution of the pamphlets like Ex. A-1 the appellant got her supporters to write these letters and they have done it only too well. The tell-tale statements contained in them give us no option but to reject Exs.-A-2 to A-4.

We do not think it necessary to refer at length to the oral evidence in this case about the distribution. A large volume of evidence has been let in on behalf of the appellant regarding the distribution. As already mentioned the villages in which the distribution was made, the dates on which the distribution was made, the persons who made the distribution as well as the persons to whom the distribution was made are set out in the schedule to the election petition. The attack made on these in the written statement filed by the respondent is that the names of the supporters of the appellant were given therein in order to enable them to give false evidence. The learned Judge has in discussing the evidence of these witnesses extracted their evidence at length and rejected them mostly on the ground that they were the appellant's supporters. But he has not hesitated to accept the denials by the respondent and that of his witnesses and their evidence even though they are as much partisan as the appellant's witnesses. That is why in matters of this kind in assessing the oral evidence we have got to have some reliable test for assessing the reliability of one version or the other. Much of the criticism made by the learned Judge of the evidence on behalf of the appellant is that of very tenuous kind and they can be applied as well to the evidence on behalf of the respondent and we can see no justification for the facile way he accepted the denial by the respondent and his witnesses. The documents regarding the Youth Congress of Thorur, which we have discussed, furnish strong support which one has got to look for before one can accept oral

- A evidence in matters of this kind. It is easy enough to accept or reject oral evidence by mentioning one or two minor contradictions. One should be satisfied that the broad outline of the evidence given is true and worthy of acceptance.

- B We are not impressed with the view of the learned Judge that either R. W. 32 or R. W. 33 might have been responsible for bringing into existence the pamphlet Ex.A-1. After all the person that was standing for election was the respondent and his attitude of trying to see that neither the appellant nor her husband was set up as a Congress candidate and being prepared to stand merely for the purpose of defeating her shows that it was he that was interested in publishing this pamphlet. His earlier effort, Ex. A-48 also shows this. We find it impossible to accept the evidence of R. W. 32 and R. W. 33 that the appellant and her husband were responsible for sending a petition against them in regard to a contract work that they had undertaken or that the appellant wanted a bribe of Rs. 3000 from them. All this is falsified by the admission that it was Nookala Ramachandra Reddy, a former Minister, that was responsible for the representation against R.Ws. 32 and 33 in regard to the contract about which the Anti-Corruption Department made an enquiry.
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- E We are conscious that where a corrupt practice is alleged against a returned candidate it must be scrutinised with considerable care because a finding to that effect has very serious consequences. It not merely sets aside the popular verdict but also subjects the successful candidate to the penalty of being disqualified for election and even criminal prosecution. We are also conscious that this Court does not normally reappraise the evidence and come to a contrary conclusion from that of the trial Judge if it is generally acceptable. But we must not forget that an appeal under S. 116A of the Representation of the People Act is a first appeal and not one under the provisions of Art. 136 of the Constitution and that an appeal is a rehearing. In this case we have undertaken a reassessment of evidence because the learned Judge has rejected the evidence of the appellant's witnesses wholesale mainly on the ground of their being partisan witnesses while no such standard has been applied to evidence of witnesses on behalf of the respondent, except R. W. 3 and R. W. 21. Even there it was because the documentary evidence was too strong. He has also not discussed Ex. A-48 and appreciated the evidence in the background of that document. His rejection of the evidence regarding the Thorur Yuvajana Congress has led to a wrong approach in the appreciation of the oral evidence.
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- H We have come to the conclusion that it is satisfactorily established that these pamphlets were printed and distributed at the instance of the respondent. The appeal is allowed and the election of the respondent set aside. The respondent will pay the appellant's costs.