

A

JAGIR SINGH & ANR.

v.

JASDEV SINGH & ORS.

February 28, 1975

[M. H. BEG, A. ALAGIRISWAMI AND N. L. UNTWALIA, JJ.]

B

Representation of the People Act (43 of 1951) Section 123(3) and (3A)—Corrupt practice—Proof of.

C

The appellants, who were the voters of the constituency, challenged the election of the first respondent who was a nominee of the Akali Dal, to the State Legislative Assembly, on the ground that he was guilty of corrupt practice under s. 123(3) and (3A) of the Representation of the People Act, 1951. The second respondent, who was a nominee of the Congress and the third respondent, who was an independent candidate, were unsuccessful in the election. The charge of corrupt practice against the first respondent was based on the publication of a poster. The High Court held, (i) that the poster was printed from a document produced by the appellant's witness; (ii) that the signature on that document was that of the first respondent; (iii) the document produced by the court witness as the one from which the poster was printed was manufactured for the purpose of election petition, and that its production as well as the production of a tape-recorded conversation between the 1st respondent and the husband of the 2nd respondent, showed an anxiety on the part of the first respondent to steer clear of his signature on the document produced by the appellant's witness; and (iv) that such anxiety of the first respondent could only arise because he had, in fact, signed the document produced by the appellant's witness, as it was not his case that he ever signed any blank paper. The High Court, however, dismissed the petition holding that it was not sure of the existence of the offending poster before the poll.

D

E Allowing the appeal to this Court,

HELD: (1) The conclusion of the High Court that the poster was not printed before the poll is completely *non-sequitur*, in view of the other findings of the High Court which are borne out by the evidence on record. The evidence establishes that the printing of the poster was before the poll and that it was the first respondent who got it printed. [793C-D; 795A]

F

(a) The absence of a complaint by the second respondent does not lead to the conclusion that the poster was not printed before the appeal. [793-D]

(b) The tape-recorded conversation is absolutely unhelpful to the first respondent's case and it does not establish that the first respondent was surprised and bewildered at the fact that the document produced by the appellant's witness bore his signature. [795D-E]

G

(2) The evidence also established that the poster was distributed in various villages at the instance of the first respondent. The reason given by the High Court for disbelieving the oral testimony of one of the witnesses regarding the distribution, namely, 'that he was an Akali and that his testimony could not be accepted and he would be the last person to support the congress candidate' is the very reason that the evidence of that witness should have been accepted against the first respondent. [796A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 737 of 1973.

H

From the judgment and order dated February 16, 1973 of the Punjab & Haryana High Court in Election Petition No. 38 of 1972.

G. B. Pai, S. K. Bagga, I. K. Mehta, S. Bagga and Yash Bagga, for the appellant.

Kapil Sibal Jasdev Singh and Hardev Singh, for respondent no. 1. A

Bhagwant Singh, B. D. Sharma, M. P. Varma and S. R. Srivastava, for respondent no. 2.

The Judgment of the Court was delivered by

ALAGIRISWAMI, J. The appellants are two voters of the Dakala constituency who challenged the election of the 1st respondent to the Punjab Legislative Assembly on many grounds out of which only the charge of corrupt practice under section 123(3) and 123(3A) of the Representation of the People Act now survives for consideration. Respondents 2 and 3 are the unsuccessful candidates. The charge of corrupt practice is based on the publication of a pamphlet, about the nature of which there is no dispute and the contents of which are therefore unnecessary to be set out. It is admitted that if the publication of the pamphlet either by the successful candidate or his election agent or anyone else at the instance of either of them is proved the election has to be set aside. B C

The publication was sought to be proved by the evidence of C.W.1, the proprietor of the printing press where it was printed, C.W. 2 in whose name it was printed as well as of P.W.1. The evidence of R.W. 5 was relied upon to prove that the pamphlet was sent to the Sub-Divisional Magistrate as required under section 127A of the Representation of the People Act and received by her on the 12th March. Ext. P.W.1/4 was put forward by the appellants as the manuscript which was used for printing the pamphlet. This is purported to be signed by the successful candidate as well as C.W. 2, Jathedar Ram Singh, in whose name the pamphlet is published and P.W.1, Bedi Raghbir Singh. On the other hand the printer, C.W. 1 produced another manuscript Ext. C.W.1/1 as the one from which the pamphlet was printed. There is also a tape-recorded conversation between the 1st respondent and Bhagwant Singh, the husband of the 2nd respondent, who was also her counsel in the election petition, from which the 1st respondent tried to make out that he was wholly unaware of and surprised at his signature in Ext. P.W.1/4. His main argument before this Court was that the whole thing has been brought about by collusion between the 2nd respondent, Bedi Raghbir Singh P.W. 1, Nichhatar Singh C.W. 1 and Jathedar Ram Singh C.W. 2. The learned Judge held : D E F

(1) that he had no doubt that the pamphlet was printed from Ext. P.W.1/4; G

(2) that Ext. C.W. 1/1 had been manufactured for the purpose of this petition;

(3) that the figures $\frac{20 \times 30 = 5000}{4}$ on Ext. P.W. 1/4

are in the handwriting of Nichhatar Singh; H

(4) that the signature of the successful candidate on Ext. P.W. 1/4 appears to be his;

A (5) that the production of Ext. C.W.1/1 by Nichhatar Singh and the tape-recorded conversation show an anxiety on the part of 1st respondent to steer clear of his signature on Ext. P.W.1/4;

B (6) that this anxiety could be because he had in fact signed such a poster as it was not his case that he ever signed any blank paper; and

(7) that he was not, however, sure of the existence of the poster.

C We are of opinion that conclusions 1 to 6 of the learned Judge set out above are borne out by the evidence on record and do not therefore consider it necessary to set out at length the evidence to support those conclusions. Conclusion No. 7 is rather curious in view of his earlier conclusions and his observation that from what he had stated earlier i.e. conclusion 1 to 6, he was clear in his mind that the poster was not printed before the poll is completely *non sequitur*. The learned Judge then goes on to say that the strongest reason for this conclusion is the absence of any complaint by respondent No. 2, and that the evidence as to the distribution of the poster is oral and untrustworthy. That is how he has disposed of the whole question regarding the printing of the poster. We are unable to agree that absence of complaint by respondent No. 2 necessarily leads to that conclusion. We are of opinion that the conclusion arrived at by the learned Judge is wholly unsustainable especially in view of his categorical findings recorded earlier.

E The 1st respondent's case was one of complete denial of the allegations in the petition regarding the printing of the poster. He did not plead that the manuscript which was used for printing the poster, Ext. P.W.1/4, was manufactured on a blank paper bearing his signature. He did not even plead that the pamphlet must or might have been brought into existence by the petitioners or the 2nd respondent after the date of the poll for the purpose of the election petition. There is very satisfactory evidence that the poster should have been printed on the 1st of March, 1972. Ext. C.W.1/1, which, as the learned Judge himself holds, has been brought into existence for the purpose of this petition bears that date. After carefully going through the evidence of C.W.1. Nichhatar Singh we are satisfied that he is a witness who is anxious to help the 1st respondent and has brought Ext. C.W.1/1 into existence for the purpose of helping him. Answers favourable to the petitioners had to be extracted out of his unwilling mouth by cross examination. Even he has put the date on Ext. C.W. 1/1 as 1st of March and his evidence is that it was printed on the 1st of March though he mentions only the name of C.W.2, Ram Singh. He also says that he had sent a letter, Ext. R.W.5/1, to the Sub-Divisional Magistrate. Whether that letter was sent on the 1st of March, as is spoken to by him, or on the 5th of March, the date which it bears, does not affect the substance of the question. This letter has been received by the Sub-Divisional Magistrate, Miss Deol on 12th March. The learned Judge himself finds that it was received on 12th March. We have care-

fully scrutinized it and are satisfied that it has been signed by the Sub-Divisional Magistrate on the 12th of March. That has been entered in the office diary on the 16th of March. Though it is true that the date 6th has been struck out and 16th has been put in, the 6th seems to have been put in due to a mistake. Looking into the entries in the diary on the previous pages as well as subsequent pages we have no doubt that the 16th is the correct date. The entries on this date contain a number of documents received from various Government offices which bear the date 6th March. We have no reason at all to doubt the genuineness of the entries in this diary. If Ext. R.W.5/1 was signed by the Sub-Divisional Magistrate on the 12th and entered in the diary on the 16th they probabalise the receipt of that document at least some days before the 12th. At no stage, except during the arguments before this Court, were the entries in this diary sought to be impugned. Indeed before the High Court it seems to have been urged on behalf of the 1st respondent that it was a diary maintained in the usual course of business. Taking therefore even Ext. C.W.1/1 as well as the evidence of C.W.1, Nichhatar Singh, into consideration we are satisfied that this pamphlet should have come into existence on the 1st of March. We have also compared the signature of the 1st respondent in Ext. P.W.1/4 with many of his admitted signatures and are satisfied that that signature is his and that is confirmed by the expert evidence of Mr. Puri. There being no satisfactory explanation on the part of the 1st respondent regarding the presence of his signature on Ext. P.W.1/4 it is to be concluded on the evidence of Nichhatar Singh and Jathedar Ram Singh taken together that the 1st respondent had come to C.W.1's press and given Ext. P.W.1/4 for printing. Conclusion No. 3 of the learned Judge also supports this finding. We are not quite sure about the presence of Bedi Ragbir Singh at that point of time. But we can see no cogent reason for disbelieving the evidence of C.W. 1 whose deposition clearly shows that he was anxious to help the 1st respondent. But in order to deny that Ext. P.W.1/4 was the manuscript which was used for printing the poster he also had to manufacture Ext. C.W.1/1. That evidence even taken at its face value establishes that the printing of the pamphlet was on the 1st of March. If so it could have been done only at the instance of the 1st respondent. It was not even put to C.W.1 that it was done after the poll. Why Ram Singh should have printed it if not at the instance of respondent No. 1 was never sought to be explained. Nor could respondent No. 2 have printed it.

We have bestowed our anxious consideration on how the 1st respondent came to sign Ext. P.W. 1/4. Though Jathedar Ram Singh tried to say that he did not know Nichhatar Singh C.W. 1 and therefore Nichhatar Singh wanted the 1st respondent to undertake the responsibility of paying for the printing of the poster, it is clear that Nichhatar Singh had known Jathedar Ram Singh for some time and there was no particular reason why even if the 1st respondent undertook to pay for the printing he should sign it. It is said that it was because the 1st respondent asked Nichhatar Singh to produce that paper in his office and get the payment. This reason does not seem to be a good enough one for the 1st respondent signing Ext. P.W.1/4. Be that as it may

- A we have no doubt that Ext. P.W.1/4 bears 1st respondent's signature and the whole evidence establishes beyond doubt that the 1st respondent got the pamphlet printed. He probably did not expect that the manuscript would reach the hands of the 2nd respondent.

- B It is in this connection that it is necessary to refer to the tape-recorded conversation. The 1st respondent had stated before the High Court that the transcript of the tape-recorded conversation can be taken as correct in so far as what he had spoken was concerned. The other person concerned in the tape-recorded conversation was Bhagwant Singh, the husband of the 2nd respondent, who was also her advocate before the High Court. Though he admitted his part in the conversation it would not be admissible in evidence because he was not examined as a witness. What he has stated there cannot be taken as an admission on behalf of the 2nd respondent. Such admission can only relate to matters in issue before the Court, admissions prejudicial to the case of the 2nd respondent. Leaving such questions aside for the moment one thing that is obvious is that Ext. P.W.1/4 had reached the hands of the 2nd respondent during the course of the trial and the evidence of Bedi Raghbir Singh that Nichhatar Singh gave it to him to be produced in the Court is not true. This conversation was relied upon by the learned advocate appearing on behalf of the 1st respondent as establishing that the 1st respondent was surprised and bewildered at the fact that Ext. P.W.1/4 bore his signature. We can see no such indication. It is to be remembered that when this conversation was being tape-recorded Bhagwant Singh was not aware of it and therefore was talking freely what was in his mind whereas the 1st respondent was quite conscious of what was going on and that he was merely laying a trap in order to trap Bhagwant Singh into saying something in his (1st respondent's) favour without being aware of it. The tape-recorded conversation is absolutely unhelpful to the 1st respondent's case.

- E Though there are certain suspicious features in this case which the learned advocate for the 1st respondent tried to magnify and blow out of all proportion so as to obscure the real picture, we are satisfied that the central point in the case as to the responsibility of the 1st respondent in getting the offending poster printed has been established beyond all reasonable doubt. Once that is done the question of distribution falls into its proper place.

- G According to the petitioners the posters were distributed in the villages Lalauchhi, Bakshiwal, Jhill, Dhanauri, Kutabanpur, Bhima Kheri, Saidipur, Rajla, Khuda Dadpur, Bathoi Kalan and Chhitera. The distribution in Lalauchhi is spoken to by P.W. 2, an advocate, Mr. Balwant Singh. His evidence is attacked on behalf of the 1st respondent by saying that he was the junior under the 2nd respondent's husband but it is seen that that was some time ago and he had even appeared against the husband of the 2nd respondent in a personal case. So his evidence cannot be attacked on this basis. The 1st respondent examined two advocates to prove that on the particular day when he was said to have distributed the poster in Lalauchhi he was in Patiala. Their evidence has been rightly disbelieved by the learned Judge. The learned Judge has stated that both these advocates have merely lent

themselves to prove a false plea of *alibi*. The only criticism which the learned Judge has made of the evidence of Mr. Balwant Singh is that he is an Akali and his testimony cannot be accepted at its face value as he would be the last person to support the Congress candidate. We are of opinion that this is the very reason why Mr. Balwant Singh's evidence should be accepted and not the contrary. We are therefore satisfied on evidence that the conclusion of the learned Judge on this point could not be accepted and the distribution in village Lalauchhi must be held to have been proved.

As regards the distribution in village Bakshiwala, it is spoken to by P.W. 3, an employee of the C.I.D. Punjab. His father owns land in that village. The 1st respondent produced R.W. 19 to show that Sucha Singh, P.W. 3, did not come to him and in support of this he produced his register. Ext. R. W. 19/1. The learned Judge's comment on this register is "The less said about this register the better". R.W. 19 also admitted that there was a scuffle in the village and Sucha Singh was injured. The learned Judge has held that R.W. 19's evidence is such that much reliance cannot be placed on him. R.W. 21 also admits about the injury to Sucha Singh. In this state of evidence the learned Judge has not recorded any finding about the distribution of the poster in village Bakshiwala. We are of opinion that the distribution has been satisfactorily established. We do not therefore feel it necessary to deal with the question of distribution in the other villages.

The 2nd respondent is a Hindu lady married to a Sikh gentleman. Such marriages between Hindus and Sikhs have been very common. Indeed it appears that till recent times the first son of most Hindu families in Punjab became a Sikh. Still politics has driven a wedge between brothers. It has led to unfortunate situations like the one in this case where because the 2nd respondent happens to be a Hindu lady it was sought to be taken advantage of by the 1st respondent for his election purposes, even though he and the 2nd respondent's husband would seem to have been good friends.

The appeal is allowed and the election of the 1st respondent is held void. The appellants will get their costs from the 1st respondent.

V.P.S.

Appeal allowed.