
(2016) 02 MP CK 0012
In the Madhya Pradesh High Court
Case No : E.P. No. 15 of 2014

Antar Singh Darbar	Vs	APPELLANT
Shri Kailash Vijayvargiya and others		RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Citation : (2016) 2 JabLJ 154 : (2016) 3 MPLJ 170

Hon'ble Judges : Mr. Alok Verma, J.

Bench : Single Bench

Advocate : Shri R.S. Chhabra and Shri Vibhor Khandelwal, learned Counsel, for the Appellant; Shri S. Bhargav, learned Senior Counsel with Shri Vivek Patwa, learned Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

1. Shri R.S. Chhabra and Shri Vibhor Khandelwal, learned counsel for the petitioner.

Shri S. Bhargav, learned Senior Counsel with Shri Vivek Patwa, learned counsel for the respondent.

2. This order shall govern disposal of I.A. No. 9282/2015 and the objection raised by the counsel for the respondent against issuance of notice under Section 99 of Representation of the People Act, 1951 (hereinafter referred to as "R.P. Act, 1951" in short) to Shri Shivraj Singh Chouhan.

3. I.A. No. 9282/2015 has been filed under Section 151 of Civil Procedure Code read with section 35 of Indian Evidence Act.

4. According to the petitioner, this court vide order dated 11.09.2015 allowed the application (I.A. No. 6303/2015) filed by the petitioner under Order 7, Rule 14 (3) read with Section 151 C.P.C. whereby the documents annexed with the application were allowed to be taken on record. Thereafter, on 23.11.2015, the court allowed another application (I.A. No. 7510/2015) filed under Order 7, Rule

14 read with Section 151 C.P.C. whereby the additional documents annexed with the application were permitted to be taken on record. Copies of the documents which were taken on record were given to the petitioner under the provisions of Right to Information Act, 2005, and thus, such documents being certified copies of their respective original documents need not be compared with the original documents and also examination of their authors is not necessary. The aforesaid documents are permissible under Section 35 of Indian Evidence Act. Accordingly, it is prayed that the documents produced by the petitioner may be allowed to be marked as exhibits in this election petition treating the same as admissible in the evidence. The application is supported by an affidavit.

5. Counsel for the respondent opposed the application on the ground that if such documents are permitted to be admitted in the evidence, this would be against the provisions of Indian Evidence Act.

6. Counsel for the petitioner relied upon a judgment of Hon'ble Apex Court in case of "Harpal Singh and another v. State of Himachal Pradesh reported at (1981) 1 SCC 560" in which the age of the prosecutrix was to be decided by the court. In this case, entries in the birth register, even in the absence of officers/ chowkidar who recorded them, held admissible under Section 35 of Indian Evidence Act, as they were made by the concerning officers in discharge of their official duties. On this point, he also relied upon a judgment passed by Co-ordinate Bench of this court in case of "Narayan Singh v. Kallaram @ Kalluram Kushwaha & others reported at 2015 (II) M.P.W.N. 31" in which it was held that the certified copies of documents obtained from Right to Information Act can be admitted as secondary evidence and needs not to compare the same from original.

7. The Co-ordinate Bench of this court in case of Narayan Singh (supra) referred to Section 65 Clause-(e) and (f) of Indian Evidence Act and held that if copies are obtained under Right to Information Act then such copies are admissible.

8. To see whether all the copies of documents which are obtained under Right to Information Act is admissible without examining the author of such documents and without comparing them with the original, the relevant provisions of Indian Evidence Act may be referred to here. In this regard, counsel for the petitioner has quoted Section 35 of Indian Evidence Act which may read as under :-

"35. Relevancy of entry in public [record or an electronic record] made in performance of duty. - An entry in any public or other official book, register or [record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or [record or an electronic record] is kept, is itself a relevant fact."

9. It is apparent that this section provides the relevancy of facts as a part of Chapter-2 of the Indian Evidence Act. However, it does not say that every document whether it is a public document or a private document can be

admissible in evidence, if copy of this document is given under the provisions of any Act or any other law in force in India under Clause-(f) of section 65 of Indian Evidence Act.

10. Section 63 describes the secondary evidence, which is reproduced below:-

"63. Secondary evidence. - Secondary evidence means and includes -

- (1) Certified copies given under the provisions hereinafter contained;
- (2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;
- (3) Copies made from or compared with the original;
- (4) Counterparts of documents as against the parties who did not execute them;
- (5) Oral accounts of the contents of a document given by some person who has himself seen it."

11. Other relevant provisions quoted by Co-ordinate Bench of this court in case of Narayan Singh (supra) is section 65 clause-(e) and (f) which may also be reproduced below :-

"65. Cases in which secondary evidence relating to documents may be given. - Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-

- (a)
- (b)
- (c)
- (d)
- (e) when the original is a public document within the meaning of section 74;
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India] to be given in evidence;"
- (g)

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible."

12. It may be seen that in clause-(f) of section 65 of Indian Evidence Act, the copies should be given to the petitioner to be given in evidence before any court. The Banker's Books Evidence Act, 1891 comes under this category. This clause does not provide that any other document copy of which is not given under any Act or law in force in India which are not provided to the petitioner for giving it an evidence.

13. "Right of information" as defined in the Right to Information Act, 2005

means the right to information accessible under this Act which is held by or under the control of any public authority and includes. (section 2 (j)).

14. Thus, purpose of Right to Information Act is to provide information which are kept in form of document or otherwise by any public authority. This provision does not override the provisions of Evidence Act.

15. Copies of public documents are provided under Section 76 of Indian Evidence Act, which may read as under :-

"76. Certified copies of public documents. - Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal; and such copies so certified shall be called certified copies."

16. Taking these provisions of Indian Evidence Act into consideration, it is apparent that certified copies whether given under section 76 of Indian Evidence Act or under the provisions of Right to Information Act can only be admitted in evidence without examining the author of the documents and without comparing them with the original. For rest of the documents which are not public document, the original should be called before the court and the persons in whose possession such documents are kept, should be called for evidence. So far as the principles laid down in case of Narayan Singh (supra), the question before the Co-ordinate Bench of this court was whether a copy obtained under Right to Information Act should be admitted for evidence. In that case, document was a public document. It was a map of the house and building construction permission from the Nagar Nigam. This document falls under the category of the public document, and therefore, the principles laid down in case of Narayan Singh (supra) cannot be applied on all the documents in derogation of provisions of Indian Evidence Act.

17. Accordingly, this application is disposed of with the observation that all the documents which are taken on record by the earlier order of this court referred to above shall be admitted and proved in evidence depending upon their nature whether they are public documents or private documents under the relevant provisions of Evidence Act.

18. This brought us to the objections raised by the counsel for the respondent against issuance of notice to Shri Shivraj Singh Chouhan the then Chief Minister and leader of Bhartiya Janta Party in the year 2013 when the Vidhan Sabha election took place. The main objection appears to be that the examination of petitioner's witness is still in progress and there is nothing in evidence so far recorded which would justify the naming of any person under Section 99 of R.P. Act, 1951.

19. This apart, witnesses of respondent are yet to be examined. Thus, at this stage, issuance of notice under Section 99 of R.P. Act is not called for, and therefore, it is prayed that the issuance of notice may be postponed till recording of evidence.

20. Counsel for the petitioner, however, submits that there are specific allegations against Shri Shivraj Singh Chouhan who gave a speech in a public meeting in which the respondent-Kailash Vijaywargiya was also present on the stage along with Shri Shivraj Singh Chouhan, and therefore, he has likely to be named under section 99 of the Act, and therefore, notice should be given at this stage so that he may have an opportunity to cross-examine the witnesses produced by the petitioner.

21. The question whether the notice is to be issued under section 99 of R.P. Act after conclusion of trial or during the trial was decided by this court in E.P. No. 23/2014 vide order dated 20.10.2015. In this order after referring to various judgments of Hon"ble Apex Court, it was held that notices are to be issued during the trial and not at the conclusion of the trial, and therefore, if at all, the notice is to be issued to Shri Shivraj Singh Chouhan, it has to be issued at this stage so that the proceedings are concluded simultaneously.

22. The petitioner pleaded following allegations against Shri Shivraj Singh Chouhan in Para 27 of petition. The relevant portion of his pleadings may read as under :-

27. That, the Chief Minister of the State Shri Shivraj Singh Chouhan had addressed a public meeting on 20.11.2013 between 12.00 noon to 3.00 p.m. in Padmashree Shankar Laxman Stadium, Mhow. Thousands of persons were present in such public meeting. During his speech in such public meeting, the Chief Minister had declared that a Metro train would be provided from Mhow to Indore. He further made a declaration that the poor persons would be provided "patta" of the land and thereby they would be made Bhumiswamis. The aforesaid acts amount to an offer or promise by the Chief Minister to the electors of the Constituency for inducing them to vote for the Bhartiya Janta Party candidate i.e. respondent No. 1 in the elections. The respondent no. 1 was also present on the stage along with the Chief Minister in such public meeting. The respondent no. 1 was thus a consenting party to the offer or promise or inducement made by the Chief Minister of the State to the voters of the Constituency for inducing them to vote for him. Such offer or promise made by the Chief Minister with the consent of the respondent no. 1 amounts to committing corrupt practise as defined under Section 123 of the Act, therefore, the election of the respondent no. 1 deserves to be set aside on this ground also.

23. Counsel for the petitioner submits that sub-section 1 of section 123 of R.P. Act, 1951 describes bribery. The act alleged against Shri Shivraj Singh Chouhan falls within the definition of sub-clause (b) of clause (A) of sub-section 1 of Section 123 of R.P. Act. The relevant sub-section 1 of section 123 of R.P. Act,

1951 may read as under :-

(1) "Bribery", that is to say, -

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing -

(a) a person to stand or not to stand as, or [to withdraw or not to withdraw] from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to -

(i) a person for having so stood or not stood, or for [having withdrawn or not having withdrawn] his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward -

(a) by a person for standing or not standing as, or for [withdrawing or not withdrawing] from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate [to withdraw or not to withdraw] his candidature.

24. Whether the act alleged in the petition falls within the purview of above provisions of Act needs not be decided and it may be decided at the end of the trial. If at this stage, any inference is given, this may affect decision of this court on merit, and therefore, presently, there appears to be no harm in issuing the notice to Shri Shivraj Singh Chouhan, who may cross-examine the witnesses produced by the petitioner who spoke against him in this petition. In this view of the matter, the objections raised by the counsel for the respondent are rejected. It is directed that the notice under section 99 of R.P. Act be issued on payment of necessary process fee as per law and supply copy of relevant portion of the petition by the petitioner to Shri Shivraj Singh Chouhan by Hamdast as well as by regular mode.