

(2017) 04 CHH CK 0024
In the Chhattisgarh High Court
Case No : 53 of 2017

Indian National Congress

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-04-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Evidence Act, 1872, Section 63, Section 65 -
Representation of People Act, 1951, Section 123

Citation : (2017) 04 CHH CK 0024

Hon'ble Judges : Goutam Bhaduri

Bench : Single Bench

Advocate : S.C. Verma, ?J.K. Gilda, ?N.K. Vyas

Final Decision : Dismissed

Judgement

1. This writ petition has been filed by the Indian National Congress, a registered national political party under the relevant provisions of Representation of People Act, 1951, under Article 226/227 of the Constitution of India for issuance of writ inter-alia to register FIR and investigate the conspiracy hatched by respondents 4 to 9 regarding withdrawal of nomination paper by respondent no.7 Mantu Ram Pawar, in the by-election of Antagarh Constituency for Legislative Assembly of State of Chhattisgarh through any agency under the direct control of the High Court.

2. The petitioner has averred, in a nutshell, that respondent no.7 had filed his nomination paper in by-election of Constituency no.79 Antagarh of Legislative Assembly of State of Chhattisgarh as candidate of Indian National Congress Party as the same was vacated by the then returned candidate Shri Vikram Usendi in the year 2014 due to his election as member of Parliament. It is further averred that the last date of withdrawal of nomination papers was 30.08.2014, however,

respondent No.7 has withdrawn his nomination paper on 29.08.2014 without consultation with the petitioner. The effect of such withdrawal was to provide a go-by to the ruling and main opposite party i.e., Bhartiya Janta Party. Since the last date of filing of nomination paper was 27.08.2014, as such, there was no occasion and opportunity left for the petitioner to introduce new candidature.

3. It is alleged that respondent no.4 is the Chief Minister of the State of Chhattisgarh and respondents 5 to 9 are closely related to him. Respondent no.8 is the son-in-law of Dr. Raman Singh, the Chief Minister; respondent no.5 Ajit Pramod Jogi was the first Chief Minister of the State of Chhattisgarh and his son respondent no.6 had hatched conspiracy along-with respondent no.9, the returned candidate to force respondent no.7 to withdraw his nomination paper from the said by-election and succeeded in their efforts.

4. It is also averred that Mantu Ram Pawar respondent no.7 was the member of the petitioner Congress Party for more than 23 years and was also elected MLA from Antagarh Assembly Constituency and has never shifted his loyalty or gone with other political party. Since the constituency of Antagarh is Maoist affected region and political activists require full support of the State's agencies, therefore, respondent No.4 has misused the State agencies and put up illegal pressure upon respondent No.7 through other respondents. It is also averred that out of 11 candidates, 10 have withdrawn their respective nomination papers in the same by-election. Shri Rupdhar Pudo, who remained in the fray, has filed election petition after loosing the election, stating therein that he was also offered money and political gains benefits by respondents 4 to 6, 8 & 9, which is pending consideration before this High Court.

5. It is stated that though the Bhartiya Janata Party had won last two assembly polls from the same region, however, the margin of victory was not so huge as is this time i.e., 51,383 votes. It is further averred that the entire conspiracy was hatched through telephonic conversation held between respondents 4 and 8, respondents 5 & 6 with respondent no.7 and with respondent no.6 and respondent no.8 from the date of submission of nomination papers and post date of withdrawal of nomination papers. It is stated that some telephonic conversation was also held among respondents 4 to 8 regarding fulfilment of certain remaining promises apart from payment of bribe. It is also averred that such telephonic conversations took place on telephone numbers held by the respondents at the relevant point of time and on some other occasions by their close acquaintances. The audio tapes containing such conversations were published by the Daily Newspapers namely Indian Express and Nav Bharat which are the genuine and authentic and it can be relied upon by any court of law. It is further averred that the report published on 30.08.2014 in daily Newspapers Nav Bharat and Nai Dunia with regard to withdrawal of nomination paper by respondent no.7 makes it evident that withdrawal was resultant of conspiracy by respondents 5 & 6 and top persons of ruling party of the State i.e., BJP. The conspiracy so held was not only related to the withdrawal of nomination paper of

respondent no.7 but also for withdrawal of 11 other candidates. It is also stated that respondent no.7 was so keen to fight the election on behalf of the petitioner that he also got the nomination paper filled up by his wife Savita Pawar, however, the same was rejected being not supported with Form-B issued in her favour by the petitioner. As such, sudden change of mind of respondent no.7 itself suffice to suggest criminal conspiracy hatched in this regard.

6. I have heard learned counsel for the parties present and have also meticulously gone through the documents appended with the writ petition.

7. Learned counsel for the petitioner vehemently argued that the alleged overt act of the respondents is not only offensive in nature but frustrated the object of the Constitution and faith of the people having free and impartial election, which is their fundamental as well as constitutional right. It further contended by the petitioner that the way the operations have been carried out jointly by the respondents would show that they played fraud with constitution and thereby committed offence. Learned counsel placed reliance on a case law reported in (2014) 2 SCC Lalita Kumari Vs. Government of Uttar Pradesh and would submit that in view of the principles laid down in such judgment, the FIR should be directed to be registered on the basis of documents which is part of the petition and further submits that a high level enquiry under the supervision of the High Court should be carried out. It is also further prayed that on the basis of newspaper reports, the audio & video clippings contained in compact disk should be sent for proper chemical and forensic laboratory examination after taking voice sample of the concerned person and accordingly the FIR be registered.

8. Perused bulky documents attached with the petition. A perusal of the documents would show that along-with this petition, a copy of the Election Petition filed by Rupdhar Pudo bearing E.P. No.16/2014 is also attached. At para 8.8 of such petition it is alleged that while Rudhar Pudo was visiting the house of Arjun Singh Thakur, the National General Secretary of Ambedkarite Party of India at Nandgaon, Distt. Rajnandgaon he received phone call on his mobile from one O.P. Gupta, Raipur, who introduced him as member of Bhartiya Janta Party and allured Rupdhar Pudo with offer of money and that if Roopdhar Pudo withdraws his candidature, he would be paid accordingly. Thereafter, the said petitioner Rupdhar Pudo received Phone calls 3-4 times from the member of BJP thereby allurements were made and influence and pressure was created, but he refused to succumb to it. It was further informed that the candidate from Indian National Congress has also withdrawn and as such Rupdhar Pudo was also pressurized to withdraw his candidature which amounts to corrupt practice u/s 123 of the Representation of People Act, 1951. Perusal of the document would show that the petitioner is other than the person who has filed the election petition. The petitioner has placed reliance over the pleadings made by third person in his petition to take cognizance to direct the investigation. No substantial facts are placed to prove such allegations. It appears that similar allegation has already been raised in the said election petition, however, again the same has been tried

to be agitated in this writ petition.

9. Reading of the allegations would show that allurements of payment of money was made which is one of the basic grounds of the said election petition filed by Rupdhar Pudo. Therefore, the issue has already been raised which is to be adjudicated in such election petition after evidence of the parties. Any finding at this stage only on hearsay pleading would prima facie amount to giving a finding of corrupt practice without adjudication of the said election petition giving finality to it.

10. Further perusal of the documents along-with the petition would project that the bunch of newspaper clippings have been placed. In such bunch of newspapers, certain news clippings have been attached and the copies of the same are attached. Reading of one of the newspaper clippings would show the candidate who withdrew his candidature i.e., Manturam Pawar stated that he has not received any amount. One of the newspaper clippings which is claimed to be of Nav Bharat refers to a news published by Indian Express and the news would show that personal statements have been recorded in such news and not any fact. Further in the news clipping, the allegations have been made by Rupdhar Pudo that he was offered money for withdrawal of his candidature. In all the newspapers, personal interviews and statements of third parties have been published. Therefore, the question arises whether such news-clippings can be accepted to be absolute truth to be believed. At this stage, this Court is guided by the law laid down in AIR 1988 S.C. 1274 Laxmi Raj Shetty Vs. State of Tamil Nadu to the effect that judicial notice of facts stated in the news items are in nature of hear-say evidence. A newspaper is not the document referred to in section 78(2) of the Evidence Act. The presumption of genuineness of attached under Section 81 of Evidence Act to a newspaper report cannot be treated as proved of the facts reported in such newspaper. This proposition was further followed by the Supreme Court in 1994 Supp (3) SCC Page 5 - Quamarul Islam Vs. S.K. Kanta. Therefore, by application of the aforesaid proposition, the prayer made by the petitioner to take action against the respondents cannot be appreciated being completely hear-say facts. It is also important to note that the candidate who has made the allegation in newspaper has already filed an Election Petition, therefore, this petitioner cannot use the statement made by that candidate to newspaper to use it as a ladder to achieve the objective.

11. The transcriptions of audio clippings along-with C.D., is also filed with the petition. Admittedly along with such C.D., no certificate u/s 65-B(4) of the Evidence Act has been filed. Therefore, prima facie it appears that there is noncompliance of mandatory requirement of aforesaid election. The Supreme Court in a case law reported in 2014 10 SCC 473 - Anvar P.K. Vs. P.K. Basheer & others which was further followed in Harpal Singh alias Chhota Vs. State of Punjab 2017 (1) SCC 734 has laid down that electronic evidence in nature of secondary evidence cannot be admitted unless requirements of section 65-B are satisfied. In the present case, certain call details with CD and transcription has

been placed in respect of purporting conversation between the two third parties. Therefore, in absence of certificate, the evidence relating to electronic record being special provision, the general law on secondary evidence under sections 63 & 65 of the Evidence Act would have to yield to it.

12. Even if the entire audio clipping and the C.D., which are without any certificate u/s 65-B of the Evidence Act are gone through along-with transcription, *prima facie*, it cannot be made out that in what context the conversation took place and the money as alleged was offered. It is completely vague. The conversation of various CDs are not by themselves sufficient to charge any person with a liability, the reason being that a man cannot be allowed to make evidence for himself by what he chose to say in his own words behind the back of parties. There must be independent evidence or admission admissible in evidence of any mandatory transaction and if the entire allegations are totally based on such CD conversation, it cannot be blatantly relied upon.

13. The reading of conversation do not further point out that the transcriptions were in accordance with the facts of allegations. Therefore, those conversations cannot alone be sufficient evidence to charge any person with the liability. The conversation appears to be cryptic not clear on what subject the conversation is being made and only presumption has to be drawn in favour of the petitioner without there being any reason for it. The conversation between Manturam Pawar and Ajit Jogi is also alleged to have been filed. Reading the conversation is not clear that on what subject the conversation took place and whether it was of the parties and in whose name it is alleged, therefore, it is apparent from the record that the newspaper clipping and conversation which is filed are fully irrelevant as the evidence are not admissible being ambiguous and foreign to the entire allegations.

14. Recently it has been laid by the Supreme Court in AIR 2017 SC 540 - Common Cause (A Registered Society) and others v. Union of India) that the Court has to be on guard while ordering investigation against constitutional functionaries, officers or any person in the absence of some cogent legally cognizable material. The Court further held that when the material on the basis of which investigation is sought is itself irrelevant to constitute evidence and not admissible in evidence and it would not be safe to even initiate investigation. It is held that in case the investigation is ordered against any person whosoever high in integrity on the basis of irrelevant or inadmissible document and the evidence it would lead to illegality.

15. A reading of entire bunch of papers would show that the allegations have been made on the basis of certain newspaper clippings and the audio CD conversation. It is not clear by whom it was made. The news apparently shows that it is a hearsay, no admission of the respondents is recorded in the entire newspaper clippings which is filed. Therefore, *prima facie* the evidence appears to be unreliable and is only based on self-created conversation of few of third persons. *Prima facie*, if such prayer is admitted, it would lead to investigation at

the behest of few of persons and no functionary can survive in case the investigations are likely set in motion on the basis of newspaper clippings and the so called telephonic conversation of few parties in the CD. The examination of the documents would show that the entire bunch of documents are completely irrelevant, inadmissible and prima-facie appears to be not genuine having no evidentiary value and further the computer print out and the CD do not comply with the requirement of Indian Evidence Act and as such are inadmissible in evidence.

16. The reliance placed by the petitioner in case of *Lalita Kumari Vs. Govt. of U.P.* (2014) 2 SCC 1 is also of no help since prima facie examination of the documents would show that the documents are completely irrelevant, hearsay and inadmissible in evidence. Therefore, on the basis of those material, per-se cognizance cannot be taken and as no cognizable offence appears to have been made out under the law as piece of evidence being inadmissible in the facts of the case. Therefore, the roving enquiry cannot be ordered on such unsustainable material.

17. Further following the principles laid down in AIR 1992 SCC 604, *State of Haryana vs. Bhajan Lal* when the prepositions are applied in the set of given facts and material, the conversation of CD and paper clippings on the face value do not prima facie constitute any offence and the complaint which is made by Kiranmai Naik and one Vikas Upadhyay on 08.01.2016 and 16.01.2016 only levels the allegations, the same is also not made by the petitioner and reading of such complaints would show that it is so absurd and inherently vague and on the basis of that, no cognizance could have been taken for proceeding against the respondents.

18. Therefore, taking into totality of the facts and circumstances, the materials in question are not good enough to constitute the offence and to direct the registration of FIR and investigation therein. The material should qualify to the test of admissibility which is completely hearsay in this case and vague allegations have been levelled by a self-created evidence. In the given facts of this case, the Court is of the opinion that it is not proper and legally justified to direct investigation in view of the principles laid down in AIR 2017 S.C. 540 - *Common Cause (A registered Society) Vs. Union of India*.

19. Lastly this Court feels that the petitions of like nature if are entertained, the Courts would be the means of political battle field to redress the political grievances and necessarily the Court has to be on its guards.

20. In view of the foregoing discussion, the petition has no merit and it is dismissed.