

(1996) 07 GUJ CK 0016
In the Gujarat High Court

Narabhai Veljibhai Chaudhary

APPELLANT

Vs

R.S. Vaghela and Others

RESPONDENT

Date of Decision : 11-07-1996

Acts Referred:

Bombay Police Act, 1951 — Section 135
Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324

Citation : (1997) 1 GLR 599

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Judgement

N.N. Mathur, J.—This Special Civil Application under Article 226 of the Constitution of India has been filed seeking direction to quash the order dated 28-10-1995 passed by the Addl. Development Commissioner, State of Gujarat, whereby he set aside the order passed by the respondent No. 2 District Development Officer, Mehsana suspending the respondent No. 3 Akbarbhai Rahimbhai Momin from the office of Sarpanch under the provisions of Section 59(1) of the Gujarat Panchayats Act, 1993.

2. The short facts of the case are that the petitioner lodged First Information Report at Sidhpur Police Station on 20-2-1995 stating inter-alia that on the said day the respondent No. 3 alongwith about 7 persons arrived on the spot armed with Dharia and other weapons and attacked on him and others. It is also stated that respondent No. 3 Sarpanch inflicted injuries on his person. On this information, the police registered a case against the respondent and others for offence under Sections 147, 148, 149, 324, 323, 504 and 506(2) of I.P.C. As the respondent No. 3 was holding the office of Sarpanch, the proceeding u/s 59(1) of the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act") were initiated. After notice, the District Development Officer, Mehsana suspended the respondent No. 3 by order dated 18-9-1995. The suspended Sarpanch-respondent No. 3 preferred an appeal to the State Government against the said order. The appellate authority considering the facts of the case, nature of the

offence and also having formed the opinion that Sarpanch was implicated on account of political rivalry set aside the order of the District Development Officer.

3. It is contended by the learned Counsel for the petitioner that there are serious allegations against the respondent No. 3 inasmuch as, that he attacked on the petitioner with deadly weapons like Dharia and caused hurt to him. This act of the respondent No. 3 on the facts of the case constitutes an offence of moral turpitude and as such the respondent No. 1 has exceeded jurisdiction in interfering with the order of the respondent No. 2 District Development Officer. The learned Counsel for the petitioner placed reliance on a decision of this Court reported in *Jorabhai Hirabhai Rabari Vs. District Development Officer, Mehsana and Another*, . I have gone through the judgment. this Court has held that whether an offence involves moral turpitude or not cannot always be judged in isolation and merely with reference to the ingredients of an offence. The learned Judge explaining the earlier decision of this Court in the case of *Thakor Bhagabhai v. D.D.O. Sural and Anr.* reported in 1980 (XXI) GLR 966 observed thus:

Therefore, the observations which have been made by the Hon'ble Mr. Justice B.K. Mehta in *Thakorbhai Bhagabha (supra)* to the effect that it cannot be said that the alleged offences under Sections 323, 324, 149, 147 and I.P.C. of Section 135 of the Bombay Police Act were offences involving moral turpitude in the sense that the alleged acts can be said to be a conduct which is contrary to honesty, good morals or unethical since at the most it was on incident of some scuffle between the petitioner and other persons alleged to be involved in the incident, are to be read in context of the facts of that case and did not lay down a strait-jacket formula that irrespective of the manner in which these offences are committed or against whom they are committed and the circumstances under which they are committed, i.e., even without reference to the facts of the case they should be treated as offences involving moral turpitude.

Thus, Sarpanch cannot be suspended just on institution of Criminal Case. Whether the act constitute an offence of moral turpitude, there cannot be a strait-jacket formula. It depends on various factors including the manner and circumstances in which the offence alleged to have been committed. The rule of suspension of a person holding public office is based on a public policy to maintain purity in public life. A person facing charge of offence of moral turpitude should be barred from holding public office. However, this power in current aggressive competitive politics must be exercised with great circumspection. While criminalisation in public life is not unknown, the false implication has also become hazards of public life. This has put more pressure on the Judiciary to scrutinise such cases with more care and caution. It is true that it will not be for the Court to enter into the merits of the case, but still it is desirable to undertake brief scrutiny of the facts to rule out any chance of false implication.

4. In the case on hand positive case of the complainant is that respondent No. 3 attacked on him with a Dharia and caused injury on the head. In order to satisfy

the truthfulness of the version, I have looked at the injury report which shows that there is no corresponding injury of a sharp edged weapon on the head. Thus, the oral version does not find corroboration from the medical evidence. It rather suggests that oral version may not be true. It is difficult to understand that an unlawful assembly of several persons armed with deadly weapons would have caused only one injury simple in nature. These facts are sufficient to improbabilise the complainant's case for the limited purpose of proceedings u/s 59 of the Act. It is not desirable to further express any opinion as it may prejudice the criminal case. Suffice it to say that on the test of broad probabilities the allegations does not inspire confidence, so as to oust a person of elected office.

5. The case of the respondent No. 3 before the State Government was that the petitioner and his nephew had decided to be the candidates for the election of Sarpanch for village Samoda, however, the move was opposed by the people and efforts were made to find out a consensus candidate. The choice ultimately fell on the respondent No. 3. All the villagers put pressure on the respondent No. 3 to be the candidate for Sarpanch and in this way he was elected unanimously as Sarpanch of the said Panchayat. This was not liked by the complainant-petitioner. On earlier occasion also efforts were made at the instance of the petitioner to make the Panchayat non-functioning by obtaining the resignation of certain Panchas. During the Assembly Election also they were supporting the candidates of different political parties. In such a situation, the finding arrived at by the Additional Development Commissioner cannot be said to be perverse or erroneous which may call for interference by this Court under Article 226 or 227 of the Constitution of India.

In view of the aforesaid, I find no merits in this Special Civil Application and the same is dismissed. Rule is discharged.