

(1978) 02 SC CK 0047

In the Supreme Court Of India

Case No : Civil Appeal No. 670 of 1976

Ramanbhai Nagjibhai Patel

APPELLANT

Vs

Jashvant Singh Udesingh and Others

RESPONDENT

Date of Decision : 28-02-1978

Acts Referred:

Representation of the People Act, 1951 — Section 116A, 123(1)(A), 83(1)

Citation : AIR 1978 SC 1162 : (1978) 19 GLR 833 : (1978) 19 GLR 33 : (1978) 3 SCC 142 : (1978) 10 UJ 340

Hon'ble Judges : V. D. Tulzapurkar, J;N. L. Untwalia, J

Bench : Division Bench

Advocate : V.M. Tarkunde, Manik Tarkunde, I. C. Shroff, H.S. Pariher and R.P. Kapur, for the Appellant; M.K. Ramamurthi J. Ramamurthi and R. Vaigal, for the Respondent

Final Decision : Allowed

Judgement

N.L. Untwalia, J.—This is an appeal u/s 116A of the Representation of the People Act, 1951 hereinafter called the Act, by a person who was elected from Mahemdabad Constituency, District Kaira at the general elections held in June, 1975 to the Gujarat Legislative Assembly. The first respondent in this appeal is the election petitioner at whose instance the election of the appellant was set aside by the Gujarat High Court. Respondents 2 to 6 are the unsuccessful candidates at the said election. The appellant was impleaded as respondent No. 1 in the election petition. Respondents 2 to 6 were respondents 2 to 6 in the election petition also. The appellant contested the election as an Independent candidate and out of the unsuccessful candidates, respondent No. 3 was a candidate set up by the Congress Party then known as the Ruling Congress. The election petition to all intents and purposes seems to have been filed at the instance and for the benefit of respondent No 3.

2. The polling took place on the 8th of June, 1975. The results were declared on the 12th June, 1975. The appellant was declared elected to the Gujarat Assembly

from the Constituency aforesaid. Election Petition No 7 of 1975 was tiled by one Ramabhai Punjabhai. But this election petition was not proceeded with Respondent No. 1 filed Election Petition No. 8 of 1975 on the 28th of July, 1975. The High Court, by its judgment under appeal, allowed the said election petition and set aside the election of the appellant finding, him guilty of having committed a corrupt practice within the meaning of Section 123(1)(a)(b) of the Act. There were several allegations in the election petition alleging commission of several corrupt practices by the appellant. But all were decided in his favour except the one which will be alluded to hereinafter. On behalf of the first respondent, the judgment of the High Court was also endeavored to be supported by attacking its finding in regard to the incurring or authorising of expenditure by the appellant in contravention of Section 77 of the Act. The respondent combated the argument of the appellant on the point decided against him (appellant) by the High Court and further submitted that she finding of the High Court in respect of the election expenses was erroneous; the appellant has also committed a corrupt practice within the meaning of Section 123(6) of the Act by incurring an excess expenditure of Rs. 15/- over the permissible limit. We shall, therefore, deal with these two point only in this appeal.

3. The allegation of corrupt practice which has been found against the appellant is contained in paragraph 9 of the election petition which reads as follows:

The petitioner further, states that the 1st respondent and/or his election agent and/or his son Somabhai Ramanbhai Patel with the consent of the 1st respondent or the consent of his election agent had paid Rs. 500/-, by way of gift or gratification to the Sarpanch and/or the Gram Panchayat of Moti Abdoli with the object of inducing the Sarpanch, the members of the Gram Panchayat and other voters of the said village under their influence to vote for the 1st respondent. The 1st respondent and/or his election agent and/or his son above-named with the consent of the 1st respondent and/or his election agent has committed corrupt practice within the meaning of Section 123(1) of the Act.

The extra expenditure alleged to have been incurred by the appellant (in paragraph 6 of the election petition consisted of 21 items the total of which was Rs. 14,269/-. Item 20 was the sum of Rs. 500/- mentioned in paragraph 9 as having been paid for inducing the voters of Moti Abdoli. This sum was alleged to have been paid on 4.6.1975. The election petitioner filed an affidavit in support of the allegations made in the election petition and vis-a-vis the statement in paragraph 9 the assertion was that the particulars of corrupt practice given in paragraph 9 "are true to my information.

4. In evidence, it was sought to be proved that the appellant visited Moti Abdoli on 5.6.1975 alongwith P.W. 10, Sarpanch of Mani Abdoli-another village situated at some distance from Moti Abdoli. The appellant is said to have gone in a motor car and reached Mani Abdoli at about noon. Since no body was present there, he proceeded to Moti Abdoli in the company of P.W. 10. On reaching the chora of Moti Abdoli, he found about 15 persons including some voters present there. The

persons present complained to him that no body was taking care for the welfare of the village after the election was held. The School building required repair and re-construction. Thereupon the appellant is said to have promised before the persons present in the chora that he would try to get the work done if he was elected. Shortly thereafter, he took the Sarpanch of Moti Abdoli aside and paid him a sum of Rs. 501/- on 5.6.1975 for the purpose of the School. The said Sarpanch in the afternoon passed on that money to the Talati of the village, examined as P.W. 9, P.W. 9 prepared a receipt for Rs. 501/-, the carbon copy of which was produced and marked as Ext. 32. It was signed by P.W. 9 as also by the Sarpanch of Moti Abdoli P.W. 9 made an entry an 5.6.1975 in the Rojmel, which entry also was signed by she Sarpanch. The said entry was marked Ext. 31. Thus the negation is that the appellant on the eye of the election paid a sum of Rs. 501/- on 5.6.1975 to the Sarpanch of Moti Abdoli for the purpose of the School in order to induce the voters of that village to vote for him.

5. The High Court has believed the oral and the documentary evidence in regard to the allegation of payment of Rs. 501/- with the object of Inducing the voters to cast their votes in favour of the appellant. Mr. V.M. Tarkunde, learned Counsel for the appellant, in the first instance, attacked the finding of the High Court on the question of payment of Rs. 501/-. Secondly, on the basis of the authorities of this Court in Ghasi Ram Vs. Dal Singh and Others, in Dev Raj Anand Vs. Bhagwandas and Another, ; in Abdul Hussain Mir Vs. Shamsul Huda and Another, ; in S.P. Watel and Others Vs. State of U.P., and in Harisingh Pratapsingh Chawda Vs. Popatlal Mulshanker Joshi and Others, the submitted that the evidence adduced in the case, even as it was, did not establish the charge of corrupt practice within the meaning of Section 123(1)(A)(b) of the Act. Mr. M.K. Ramamurthy appearing for respondent No. 1, the election petitioner, contested the argument of the appellant Since we are of the view that the finding of fact recorded by the High Court is wholly erroneous, we think it u neither necessary nor advisable to advert to the discussion of the question of law.

6. The High Court found:

- (1) Exts. 32 and 31 are genuine documents;
- (2) That although Rojmel was cot maintained from day to day and P.W. 9 was shaken in cross examination in regard to an entry of interest alleged to have been made on 10.6.1975 in the Rojmel, the disputed entry dated 5.6.1975 was genuine and made on that date;
- (3) Petrol Voucher No. 7/1 (12) dated 5.6.1975 contained in Ext. 18, the Return of expenses submitted by the appellant, bore the name of the Sarpanch of Moti Abdoli on its back and that lent support to the other pieces of evidence in this case;
- (4) That the appellant visited Nani and Moti Abdolis on 5.6.1975; and
- (5) That the evidence of P.W. 9 and 10 could not be shown to be of interested

persons, it was credible and proved the payment of Rs. 501/- by the appellant for the alleged purpose and the object.

7. In our opinion the judgment of the High Court suffers from such Infirmities that we have no hesitation in upsetting the finding recorded therein even though, this Court, ordinarily and generally, is reluctant to do so. But where a charge of corrupt practice is held to have been proved beyond doubt against a person by the High Court, this Court cannot lightly uphold that finding when it finds that it is not sustainable.

8. It is not necessary to give a list of all the cases and to discuss them in each and every election appeal decided by this Court. On the basis of the decisions of this Court in *Rahim Khan v. Khurshid Ahmed and Ors.* 1975 .SCR 64(SIC); *D. Venkata Reddy Vs. R. Sultan and Others*, *Ramji Prasad Singh Vs. Ram Bilas Jha and Others*, we may state that the charge of bribery is in the nature of a criminal charge and has got to be proved beyond doubt. The standard of proof required is that of proving a criminal or a quasi-criminal charge. A clear cut evidence, wholly credible and reliable, is required to prove the charge beyond doubt. Evidence merely prohibiting and endeavoring to prove the fact on the basis of preponderance of probability is not sufficient to establish such a charge.

9. Mr. Tarkunde leveled several criticisms against the evidence adduced by respondent No. 1 to prove the charge of bribery against the appellant. We shall notice only the salient ones in our judgment which, in our opinion, shakes the foundation of the charge to such an extent that the whole structure falls to the ground. To start with, the allegation in the election petition was too vague and indefinite. The date mentioned was 4.6.1975; the amount stated was Rs. 500/- was paid on 5.6.1975. In the election petition the election petitioner was not sure as to who had paid that amount. In the evidence of P.W. 10, it was sought to be asserted that it was only the appellant who had paid the amount. Neither his election agent nor his son is said to have been present at that time. The affidavit in support of the statements made in paragraph 9 of the election petition was wholly inadequate and wrong. To say that the statement was true to the information of the election petitioner was neither a correct form of an affidavit nor did it fulfill the requirement of disclosing the source of information. In evidence the election petitioner who was examined as P.W. 1 stated that he had received this information from Ramabhai Punjabhai who had filed the other election petition. Ramabhai was not examined in this case. The High Court has not noticed and attached due importance to these discrepancies.

10. P.W. 9 admitted in his deposition that the sum of Rs. 501/- paid on 5.6.1975 was handed back by him to the Sarpanch of Moti Abdoli on the same day, But it was deposited in the Bank along with the sum of Rs. 681/22 days later i.e. on 27.6.1975. There was no explanation given as to why the Sarpanch kept this money all these days. P.W. 9 also admitted that a representative of Gram Panchayat used to go to the Bank on the 10th and 25th of each month for deposit of the revenue collections in the Bank. The, Rules of Gujarat Gram and

Nagar Panchayats (Custody of Gram and Nagar Funds Rules, 1963 did not permit the retention of any sum of money exceeding Rs. 300/- as cash in hand. The Sarpanch of the village was not examined. There may or may not be good reason for his non examination. But the fact remains that no explanation was given as to why the sum of Rs. 501/- was not deposited in the Bank within a day or two of its alleged payment.

11. The entry Ext. 31 in the Rojmel was wholly unreliable. As found by the High Court, the Rojmel was not written and kept from day to day to regular course of business. But that apart the High Court has committed a serious error in brushing aside the evidence of P.W. 9 in regard to the interest entry made on 10.6.1975 in the Rojmel. The said entry was not claimed to have been made on the basis of any slip sent by the Bank. The definite evidence of P.W. 9 was that it was made on the basis of the entry in the Pass Book, which entry was made on 27.6.1975. If that was so, then the entry purported to have been made on 10.6.1975 was clearly an ante dated entry, yet the High Court thought that entries made on 10.6.1975 in the Rojmel were made on the day they purported to have been made. It, therefore, does, create a serious doubt in our mind whether the money said to have been paid on 5.6.1975 by the appellant was actually paid at all. The entry in the Rojmel is very suspicious, the keeping of the money for about three weeks without sending it to the bank makes it all the more suspicious. It has to be remembered that the result of the election was declared on 12.6.1975 and in about two weeks time it was not at all difficult to hatch up a plan to challenge the election by forging some receipts or entries in the papers of the Gram Panchayat.

12. The carbon copy of the receipt Ext. 32 cannot be relied upon to prove the alleged payment of Rs. 501/- by the appellant. It is not signed by him. If the entry Ext. 31 could be signed by the Sarpanch of Moti Abdoli, an entry which has been held to be very suspicious by us, is it possible to place any reliance upon the receipt said to bear the signature of the Sarpanch, part from the signature of P.W. 9? The original receipt is said to have been sent to the appellant by post under a certificate of posting. The said certificate of posting was not produced nor the entry relating to the expenses of sending the letter said to have been made by P.W. 9 in the Rojmel was got exhibited. It is difficult to found the charge of corrupt practice on the basis of the receipt which has a close connection with the suspicious entry in the Rojmel.

13. Petrol Voucher No. 7/1(12) dated 5.6.1975 contained in Ext. 18 apparently contains the following writing on its back, "Moti Abdali" Bachubhai" "Sarpanch" Mr. Ramamurthy on the basis of the decision of this Court in P.C. Purushothama Reddiar Vs. S. Perumal, submitted that if the entire document was produced and exhibited on behalf of a party, then whatever was contained therein was exhibited and it was for that party to prove and explain the circumstances under which the endorsement on the back of the Petrol Voucher was made. Counsel submitted that, as held by the High Court, it did lend support to the story of

respondent No. 1 that the appellant had gone to Moti Abdoli and met the Sarpanch on 5.6.1975. We are not impressed by this argument. The endorsement became a disputed one when in cross examination the appellant did not admit that it was there from before. The cross examining lawyer was not instructed with certainty as to in whose handwriting the endorsement was. First the suggestion was that it was in the handwriting of the appellant himself. Then the suggestion was that it was in the handwriting of Somabhai alias Sureshbhai- the son of the appellant. The appellant denied both the suggestion. There was no proof or any evidence on behalf of the election petitioner as to in whose handwriting the disputed endorsement was. In our opinion, therefore, the endorsement remained unproved, and not only that, it was a suspicious one also. The Petrol Voucher showed that petrol was taken in a car which belonged to the appellant himself. But the evidence of P.W. 10 was that the appellant had gone to Nani and Moti Abdolis on 5.6.1975 in a taxi.

14. The evidence on the question of actual payment of the money consists only of P.W. 10. Support was lent to his evidence by that of P.W. 9 who had proved Exts. 32 and 31. The High Court says that apparently there was no reason as to why these two persons would come to depose against the appellant and in favour of respondent No. 1. Mr. Tarkunde submitted that both belong to Kchatriya caste to which caste the real person behind this election dispute, namely, respondents, belonged. Majority of voters in Moti Abdoli belong to this caste. Counsel, therefore, submitted that P.Ws 9 and 10 were highly interested in respondent No. 3. Although the explanation so given seems to be plausible, howsoever unfortunate it may be to take notice of such facts, we have thought it better not to find the inter-estedness of P.Ws 9 and 10 on the basis of the caste. But the very nature of their evidence, and when read as a whole, leaves an impression in our mind that they were out to support the interest of respondent No. 3 and hence deposed against the appellant. Any way, the question of their specific interest is not very vital when their intrinsic evidence is not reliable. Out of the 15 persons said to be present in the chora, including some voters of village Moti Abdoli, none has been examined to prove the payment of the money or the talk which preceded it. We are, therefore, of the view that the finding of the High Court on the question of payment of Rs. 501/- with the alleged object of inducing the voters of Moti Abdoli to cast votes in the appellant's favour is corroneous. The High Court committed an error in holding that the story was proved beyond doubt.

15. On the question of the election expenses only one item of Rs. 100/- was pressed before us, which if proved, would have exceeded the permissible limit by a paltry sum of Rs. 15/- only. But the paltry sum does not matter. What matters is whether the payment of Rs. 2,100/- at the hire of taxi car No. GTG 9291 was proved to have been made to Rahimbhai, P.W. 4. According to the appellant's case, this taxi was engaged only for three days i.e. from 6.6.1975 to 8.6.1975 @ Rs. 100/- per day. The hire charges of Rs. 300/- was paid to Jayrambhai examined as a Court witness. The High Court has found:

(1) That Rahimbhai was the owner of the taxi and he plied it Jayrambhai had no connection with it.

(2) That the charges fixed for the taxi were Rs. 150/- per day.

(3) But the evidence of Rahimbhai that his taxi was engaged for full 14 days and that a sum of Rs. 2,100/- was paid to him was not quite reliable and it did not prove beyond doubt that the election expense of Rs. 2,100/- as against Rs. 300/- shown in the Election Return, was incurred.

16. We do not propose to examine the correctness of the finding of the High Court whether Jayrambhai had any connection with taxi car. No. GTG 9291 or not. Although we do not feel confident about the correctness of the High Court's finding that the charges fixed for taxi were Rs. 150/- per day, we do not think it necessary to upset this finding either. But having heard Mr. Ramamurthy on the question of payments of Rs. 100/- as hire charges for this taxi, we find that there will be no justification at all to upset the finding of the High Court in this regard. Taxis at Nadiad were engaged in the earlier period of the election campaign. Taxi from Anand to which stand the taxi in question belonged was requisitioned only at the fag end of the campaign. This taxi, therefore could not have been pressed into service on and from 26.5.1975 upto 8.6.1975. The appellant's story that this taxi was engaged only for three days seems to be correct. Rahimbhai had to pay a monthly installment of Rs. 600/- to the Bank on account of the money advanced to him against the security of this taxi. He could not have remained without payment of a single farthing for the period of all the said two week if really he was plying the taxi during the whole of that period. He claims to have received the entire sum of Rs. 2,100/ on or about the 15th June, 1975 No receipt, or any other documentary evidence, or any supporting witness was produced in regard to the alleged payment of Rs. 2,100/- to Rahimbhai. We find no substance in the argument put forward on behalf of respondent No. 1. attacking the finding of the High Court in this regard.

17. For the reasons stated above, this appeal is allowed the judgment of the High Court in so far as it is against the appellant is set aside; the election petition filed by respondent No. 1. is dismissed. The appellant must get his costs in this Court as also in the High Court from respondent No. 1, the election petitioner.