

(1965) 09 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 12E of 1964

Sadhu Singh S. Jiwan Singh

APPELLANT

Vs

Shamsher Singh Josh and Others

RESPONDENT

Date of Decision : 26-09-1965

Acts Referred:

Representation of the People Act, 1951 — Section 116

Citation : AIR 1965 P&H 457

Hon'ble Judges : I.D. Dua, J;A.N. Graver, J

Bench : Division Bench

Judgement

Dua, J.

(1) This appeal has been preferred by Shri Sadhu Singh under S. 116A of the Representation of the people Act, 1951, and is directed against the order of the Election Tribunal, Ambala, dated 26-9-64 dismissing the appellant's election petition. This matter had come to this Court on an earlier occasion as well when a Bench of this Court of which I was a member on 17-7-1964 allowed Sadhu Singh's appeal in part and setting aside the decision of the Election Tribunal on issues Nos. 4, 5, 6, 7 and 7-A, sent the case back for a fresh decision after recording some more evidence. In pursuance of that order further evidence has been recorded and the learned Election Tribunal has after considering the fresh evidence along with the evidence already on the record, again come to their conclusion against the election petitioner-appellant.

(2) The first point canvassed by the appellant relates to issues Nos. 7 and 7-A. These issues are in the following terms:

"7. Whether respondent No. 1 got poster "B" titled Sikh Voters Noon Appeal" printed and published throughout the constituency and whether the contents of the poster contained an exhortation amounting to corrupt practice ? If so its effect on the election?"

"7-A Whether poster "B" was got printed by the election petitioner after the

election with a view to fabricate false evidence?"

Both these issues were considered together by the learned Tribunal. The impugned poster which was published in Punjab has been translated into English as follows:

" An appeal to the Sikh Voters. Khalsa Ji, if you intend to get the real happiness of Shri Guru Kalgi Sahib Dewan you should act upon the appeal of Panth Rattan Master Tara Singh and Sant Baba Fateh Singh and vote in favour of Sardar Shamsher Singh Josh who has got the full support of Akali Dal. Those who cast their votes in favour of S. Shamsher Singh Josh, they will get true happiness of the Guru and make the foundation of the Punjabi Suba strong. Khalsa J you should remember at Shri Guru Kalgidhar, the tenth Guru demands your votes for protection of the Sikhism and for getting Punjab Suba. If Punjab Suba is obtained you will get true happiness of the Guru as well as his kindness and favour. If Punjabi Suba is not obtained Sikhism will be finished therefore to vote against Congress you will get double advantage i. e. heavenly and worldly."

At this stage it is desirable to refer to the election petition on the basis of which these issues have been framed. In paragraph 11, it has been pleaded that an each village and also in Rupar two posters attached as Annexures "B" and "C" with the election petition were circulated and distributed to the public. These posters were also placed on the prominent places throughout the constituency by Shamsher Singh and his workers and helpers. They were in addition distributed amongst the audience on the 12th/13th of February, 1963, in the Bhatta Sahib Gurdwara, Singh Sabja Gurdwara, Rupar, and Sada Barat Gurdwara in the Diwans referred to in the earlier paragraphs. Admittedly Annexure "B" is the poster Exhibit P. 22. In paragraph 12 of the petition, it is averred that poster "B" headed as "Sikh Votran Noon Appeal", was got printed and published by Shamsher Singh throughout the constituency. Then the allegation recites the appeal made in the poster and concludes with the averment that the posters were distributed by Shamsher Singh in the Gurdwara, Bhata Sahib and Gurdwara Sada Barat also on 22-2-1962 and 23-2-1962 in the Diwans, It is pertinent to note that in paragraph 12, apart from the reference to the distribution of the posters in Gurdwara Bhata Sahib and Gurdwara Sada Barat also on 22-2-1962 and 23-2-1962 in the Diwans, no other details as to time or place is mentioned about the distribution. In the statement made by the appellant as P. W. 46, it has been asserted that three different Diwans were held by the Akalis to help Shamsher Singh Josh in the election. In Gourdware Sada Barat it was held on 13-1-1962d, in Gurdwara Bhatta Sahib on 12-2-1962. and in Gurdwara Singh Sabha Rupar on 13-2-1962. The appellant was, however, not present in any of these Diwans.

It has been very forcefully urged on behalf of the respondent that an election petition must contain a concise statement of the material facts on which the election petitioner relies and full particulars of corrupt practices which are alleged must be set forth including as full a statement as possible of the names of the

parties alleged to have committed them and the date and place of the commission of such practices. In the case hand, it is emphasised that in the election petition the only dates relating to the publication of the poster Exhibit P. 22 in the Diwans have been mentioned to be 22-2-1962 and 23-2-1962. There being no mention of the other precise dates in the petition, it has been contended that we should decline to look at the evidence relating to the Diwans alleged to have been held on 13-1-1962 and 12-2-1962 and 13-2-1962. As against this contention, Shri Sachar has submitted that the appellant had been given information about the Diwans in Gurdwara Bhatta Sahib and Gurdwara Sada Barat to have been held on 22-2-1962 and 23-2-1962, but merely because this information turns out to be incorrect, it does not mean that the evidence in regard to the Diwans held on earlier dates should be disbelieved. It has also been stressed that evidence on these points was admitted without any objection. This poster, according to the appellant, was printed at the Bharat Press Rupar and according to Amar Nath P. W. 6 it was printed on the basis of a draft, Exhibit P. 22/1 produced before the Tribunal by this witness. It was pointed at other instance of Shri Mohinder Singh Pardhan Sadabari Gurdwara. The printed material was collected by somebody in the absence of the witness, with the result that he could not say as to who had taken away the printed posters. The cost of printing was received by the witness on 28-3-1962. The date of printing of the poster exhibit P. 22 is stated by the witness to be mentioned on the relevant bill in the book but no such book containing a foil or counterfoil was produced before the Tribunal. On the bill itself, however, admittedly, the date of printing is not given, though it has been asserted that the bills are prepared on the same day on which printing is done. No record showing the date of printing of various documents is maintained by the witness. He has, however, categorically denied the suggestion that the date of printing of Exhibit P. 22 was added on the bill afterwards and it has been asserted that it was simultaneously written on the foil and the counterfoil. The witness's attention during cross examination was drawn to some impression on the counterfoil for the purpose of suggesting that there was some interpolation thereon. To a Court question, the witness has stated that the counter foil of bill No. 3396 which corresponds to poster Exhibit P. 22 is Exhibit C. 1 and the immediately preceding bill is Exhibit C. 2 and the immediately following bill is Exhibit C. 3.

(3) It is strongly argued that Amar Nath is a straightforward witness and his testimony, looked at from a practical point of view, is impressive and trustworthy. It is emphasised that according to Shri Shamsher Singh Josh, who has appeared as R. W. 22, Atma Sarup compositor of the Bharat Press, Rupar, had informed him before the filing of his written statement to the election petition that the poster Exhibit P. 22 had been got printed by Sadhu Singh through Mohinder Singh on or about the 27th or 28th February, 1962, in order to create evidence to support the election petition, but no suggestion regarding this aspect was put to Amar Nath when he was in the witness box. This, according to Shri Sachar, is a strong factor suggesting the falsity of Shri Josh's version; Shri Josh it is

stressed did not even care to ask Amar Nath as to which compositor had actually composed the in question. These aspects, coupled with the fact that Mohinder Singh who is a Veteran Akali worker, as P. W. 1c6 frankly deposed that the Akali party had helped Shri Shamsheer Singh Josh in his election and it was for this purpose that the draft of this poster had been brought to him by Shri Josh and got signed by him, and also after getting the same printed gave some of its copies to him (P. W. 16), constitute the main plank of Shri Sachar's arguments. The suggestion by Shri Josh that Mohinder Singh was siding with the election petitioner Shri Sadhu Singh and is, therefore, now deposing falsely to help his favorite candidate is according to Shri Sachar incredible and the reason that Shri Sadhu Singh was in 1955 a counsel for Mohinder Singh's son--even if true--is too far-fetched to carry conviction.

(4) In my view though the respondents' version of the poster in question having been got printed after the election for creating evidence to support the allegations in the election petition is far from convincing and is extremely difficult to uphold, and the evidence of the appellant appears to be relatively more plausible, it is unnecessary to express any considered opinion on it, because the evidence regarding publication outside the pleadings contained in the election petition cannot be accepted and relied upon for setting aside the election. In the trial of election petitions, the rules as to pleadings as embodied in the CPC are attracted and since the standard of proof in establishing corrupt practices is similar to that required in criminal trials, namely, proof beyond reasonable doubt, considerable importance is attached to the case as made out in the election petition itself. It is not possible to take into consideration evidence of corrupt practice which is not founded on the allegations contained in the election petition. I am, therefore, of the view that on the present record the appellant has failed to substantiate issues Nos. 7 and 7A.

(5) The contention that the impugned poster in any case falls within the ambit of the corrupt practice of undue influence defined in S. 123, sub-s (2)(a)(ii) is still more difficult to sustain at this stage,. This was not the case pressed any stage and it is not a pure question of law which arises on admitted or properly established facts on the record after notice to the parties affected; and, at any rate, no law or convincing argument has been brought to our notice which should preside us to consider this contention. It is note worthy that this specific point does not even figure in terms in the memorandum of appeal.

(6) Considerable argument has also been addressed on the question whether the poster Exhibit P. 22 offends the law of corrupt practices and our attention has been invited by the counsel to two recent decisions of the Supreme Court since reported as Kultar Singh Vs. Mukhtiar Singh, and Jagdev Singh Sidhanti Vs. Pratap Singh Daulta, . The appellant's learned counsel has contended that Shri Shamsheer Singh Josh being a Sikh, if he had propagated that Sikh if, he had propagated that Sikh religion would be preserved in case he was given votes then the appeal for securing votes was in essence on the basis of religion; it is

pointed out that a large number of voters in this constituency were Sikhs. It has further been urged that on the earlier occasion on appeal in the High Court the respondent had conceded that the poster Exhibit P. 22 was hit by S. 123(3) of the Representation of the people Act and that for this reason he is now estopped from urging to the contrary.

(7) The respondent has, on the other hand, contended that what S. 123(3) of the Representation of the people Act obits at is an appeal to vote or to refrain from voting on the ground of the candidate's religion, community or language etc, and not merely on the ground of preserving a religion or language which may be common to both the contesting candidates. It is in this connection strongly emphasised that both the candidates before us are Sikhs by religion, only their political ideology being different, one being a congressite and the other a communist, though the latter had secured the support of a communal sectarian body like the Akali party for some time during the election campaign. It has been denied that there was any clear concession on the earlier occasion in this Court, and it has been submitted that, in any case, no concession on a question of law could be held binding.

(8) It is of course not possible to deny or to minimise the importance of elimination or removal of communalism as a political motive from out election process and of and of persuading all citizens to look at the problems of the country and the nation from a larger national point of view because all citizens of this Republic whatever their religious profession-and indeed even those who do not choose to profess any religious faith and even an atheist-have been clothed with equal rights and of course with equal obligations towards the country and the nation as a whole. According to out set-up apparent or real conflict on the basis of religion or language is not allowed to intrude into politics if it tends or is calculated to harm the larger interests of national oneness of the Indian people as a whole. Every citizens in this Republic is a useful unit interested in the general progress of the country as a whole, every one is a partner and sharer in the overall national prosperity. This being the true position, accepted by the nation generally, there is no place for communal or religious elections in our set-up. But we are here only concerned with the intention of the parliament in enacting S. 123(3) of the Representation of the people Act, and this provision only taboos appeal for a vote on the ground of the candidate's religion or language, and if the appeal does not encroach on the prohibited territory it may not be open to the Election Tribunal to interfere with the elections In the case in hand, in view of the earlier finding on the question of publication, it is not necessary to express any final and considered opinion, though prima facie the Supreme Court decisions do to an extent support the respondents' submission.

(9) Coming now to issues Nos. 4, 5 and 6, they relate to the Diwans alleged to have been held on 12-1f-1962, 12-2-1962 and 13-2-1f962 at various places. The appellant's learned counsel has taken us through the relevant evidence relating to these Diwans particularly through the testimony of P. W. 8, P. W. 11, P. W. 12,

P. W. 16, P. W. 27, P. W. 40 and P. W. 41. We have also been taken through the relevant portion of the judgment of the learned Tribunal. After going through the evidence and the judgment of the learned Tribunal, I find no cogent ground for differing from the conclusion of the learned Tribunal. After going through the evidence and the judgment of the learned Tribunal. In common with Courts of appeal this Court also under S. 116A of the Representation of the people Act does not reverse conclusions of fact based on oral evidence merely on the ground that a different conclusion than the one arrived at by the Election Tribunal might well have been possible on the evidence. There must be a distinct balance of probability in favour of the alternative conclusion before that of the Tribunal can be reversed or varied. Equal possibility of either conclusion being recorded on the evidence is not enough. The onus of showing that the conclusion of the Tribunal is erroneous in this sense that the correct conclusion suggested on appeal is more probable is undoubtedly on the appellant. In the case in hand, we are not satisfied that such is the position.

(10) In the result, this appeal fails and is hereby dismissed with costs.

A.N. Graver, J.

(11) I agree.

(12) Appeal dismissed.