

S. BALDEV SINGH MANN
v.
S. GURCHARAN SINGH, MLA AND ORS.

FEBRUARY 5, 1996

[J.S. VERMA, N.P. SINGH AND FAIZAN UDDIN, JJ.]

Representation of People Act, 1951—Section 123 r/ws 135-A—Corrupt Practices—Standard of proof—Strict proof required.

Sections 123(8) & 135-A—Booth capturing—Offence of—Act of threatening polling agent of a candidate—Whether amounts to corrupt practice of booth capturing—Held, No.

Representation of the People Conduct of Election Rules, 1961—Rule 93—Inspection of marked copies of electoral rolls and packets of counterfoils of used ballot papers—Prayer for—Allegation of booth capturing not established—Non-compliance of P & H High Court Rules—Application for inspection liable to be dismissed.

The appellant challenged the election of the returned candidate, respondent No. 1 to the Punjab Legislative Assembly, by presenting an election petition under Part VI of the Representation of People Act, 1951, for declaring his election as void and to declare that the appellant was the duly elected candidate in place of the first respondent. The appellant questioned the election of the respondent on the allegations that he had indulged in the commission of the corrupt practice of booth capturing by himself and through his agents within the meaning of Section 123(B) r/ws 135-A of the Act and that the respondent No. 1 had spent over Rs. 2,00,000 on his election in violation of the ceiling limit on expenses provided u/s 77 of the Act r/w rule 90 and the return of expenses filed by the first respondent was totally false. The High Court dismissed the election petition while holding that the allegations of the corrupt practice levelled against the returned candidate were not only vague but indefinite and that the appellant had failed to substantiate the same against the first respondent. Hence this appeal.

The appellant submitted that there was sufficient and reliable evidence on record to establish the allegations of booth capturing by the

A respondent No. 1 himself and through his agents .

Dismissing the appeal, this Court

B HELD : 1.1. An allegation of corrupt practices within the meaning
of sub-sections (1) to (8) of section 123 of the Representation of People
Act, made in the election petition are regarded quasi-criminal in nature
requiring a strict proof of the same because the consequences are not only
very serious but also penal in nature. On the proof of any of the corrupt
practices as alleged in the election petition it is not only the election of the
returned candidate which is declared void and set aside but besides the
C dis-qualification of the returned candidate, the candidate himself or his
agent or any other person as the case may be, if found to have committed
corrupt practice may be punished with imprisonment under Section 135-A
of the Act. Therefore, the Court insists upon a strict proof of such
allegation of corrupt practice and not to decide the case on preponderance
or probabilities. The evidence has, therefore, to be judged having regard
D to these well settled principles. [105-B-D]

E 1.2. In the election petition the allegation made is that the respondent
No. 1 in the company of 50 supporters went to the polling booth and
threatened polling agent of the appellant in the presence of some electors
and asked him not to go inside the polling station and not to raise objections
regarding the identity of persons. The High Court took the view that
these allegations could not be treated to be a corrupt practice of booth
capturing. Appellant was unable to specify as to under which sub-section of
Section 123 these allegations amounted to a corrupt practice. The alleged
threat may be an offence but it does not fall within the ambit of corrupt
F practice as defined in sub-section (8) of Section 123. The election agent of
the appellant who was said to have been threatened was not examined by the
appellant as a witness to support this allegation. [105-E-G]

G 1.3. According to the allegations made in the election petition there
were incidents of a large number of booth capturing by the respondent No.
1, his agent and supporters who were alleged to be variously armed but
neither any oral nor a written complaint was made to the Returning
Officer, Presiding Officer, or other officers and police personnel who were
on election duty at the respective polling booths. The appellant did not
examine election agent as a witness to support the allegations who was
H supposed to have first hand information as to what was happening inside

the polling booth. The evidence of all the witnesses was found to be unconvincing and unreliable to establish the allegations. The appellant had miserably failed to bring home the allegations of corrupt practice either by the respondent No. 1, his agent or any other person with his consent or at his instance. On the contrary there was consistent, convincing and satisfactory evidence adduced by the respondent No. 1 to show that the polling was peaceful throughout the day and no complaint of any nature whatsoever oral or in writing was received from any quarter, in view of these facts and circumstances the High Court had taken a view consistent with the evidence on record and there were no reasons to take a different view. [106-C, 107-B-C]

1.4. The appellant could not establish the charge of over spending. The High Court made a detailed scrutiny of the evidence on record and arrived at a definite conclusion that the allegation was groundless. [107-F]

1.5. The appellant had failed to show even prima facie that there was any booth capturing and, therefore, the question of inspection of the desired electoral rolls and packets of counter foils did not arise at that stage of the case. The documents sought to be summoned also could not be allowed in view of the fact that the said application was made when the appellant had already concluded his evidence and the election petition was posted for respondent's evidence. The said application was not maintainable for non-compliance of the rules contained in Chapter 4-GG of the Rules and orders of Punjab & Haryana High Court, Volume V, of which prescribed rules of procedure on the non-compliance of which the documents sought to be summoned for purpose of cross examination can not be ordered. Therefore, the order of the High Court dated August 23, 1993 rejecting the application, under Rule 93 for inspection of marked copies of electoral rolls as well as the packets of counterfoil of used ballot papers, cannot be said to be erroneous. [108-B-D]

CIVIL APPELLATE JURISDICTION : Civil appeal No. 4616 of 1994.

From the Judgment and Order dated 8.11.93 of the Punjab & Haryana High Court in Election Petition No. 13 of 1992.

S.K. Dholakia, M.S. Khera, Ashish Dholakia, Ms. Promila Choudhary and Ms. Naresh Bakshi for the Appellant.

A Ashok Grover for the Respondents.

The Judgment of the Court was delivered by

FAIZAN UDDIN, J. 1. This appeal under Section 116-A of the Representation of People Act, 1951 (hereinafter referred to as the Act) has been directed against the judgment dated November 8, 1993 passed by the High Court of Punjab & Haryana at Chandigarh dismissing the Election Petition No. 13 of 1992 filed by the appellant herein challenging the election of the returned candidate S. Gurcharan Singh, the first respondent.

C 2. The election for Punjab Legislative Assembly was held in February, 1992. The appellant was sponsored by Shriromani Akali Dal as a candidate from 87-Dirba Constituency while the respondent No. 1 S. Gurcharan Singh was fielded by the Congress party and the respondent No. 2 Chet Singh was a candidate set up by Bahujan Samaj Party. The respondent No. 3 S. Amarjit Singh contested the election from the said constituency as an independent candidate. The date of polling was February 19, 1992 and the result was declared next date i.e. on February 20, 1992 according to which the respondent No. 1 secured the highest number of votes having polled 3072 votes while the appellant had secured only 2624 votes. The respondent No. 2 had polled 1925 votes and the respondent No. 3 polled only 75 votes. The respondent No. 1 having secured higher number of votes was declared elected from 87-Dirba Constituency.

F 3. The appellant challenged the election of the returned candidate, respondent No. 1 herein by presenting an election petition under Part VI of the Act for declaring his election as void and to declare the appellant himself as duly elected candidate for the said constituency in place of the first respondent. The appellant called in question the election of the respondent No. 1 on the allegations that he had indulged in the commission of the corrupt practice of booth capturing by himself and through his agents within the meaning of Section 123(8) read with Section 135-A of the Act. The details of the allegations with regard to various booth capturing are pleaded in sub-paras I, II, III, IV, V and VI of para 3 of the election petition which have also been reproduced verbatim by the High Court in the impugned judgment. It is, therefore, not necessary to catalogue all those allegations herein again.

4. The second ground on which the appellant based his election petition challenging the election of the first respondent was that the respondent No. 1 had in fact spent over Rs. 2.00 lacs on his election in violation of the ceiling limit on expenses provided under Section 77 of the Act read with rule 90, which also amounts to corrupt practice within the meaning of Section 123 (6) the Act. The appellant has alleged that the Return of expenses filed by the first respondent was totally false as bills filed by him were grossly under valued not representing the correct price and quantity of goods purchased and services hired by him. He also alleged that the first respondent concealed various expenses which were actually made from 31.1.1992 to 20.2.1992 but were not included in the Return. The details of alleged items of expenses which are alleged to be not included in the Return are stated in sub-paras 1, II, III, IV & V of para 4 of the election petition which have also been reproduced verbatim by the High Court in the impugned judgment and therefore it is not necessary to mention their details herein again.

5. The respondent No. 1 resisted the election petition by specially traversing all adverse allegations made against him. He specifically denied to have indulged or committed any of the corrupt practices of booth capturing either by himself or through his agents. He also denied the allegation with regard to the election expenses exceeding the prescribed limit or the under valuation of the bills or concealment or any expenses which were actually made by him or his election agent.

6. The High Court on the basis of the pleadings of the parties framed the following issues :

1. Whether the election of respondent No. 1 is liable to be declared void on the grounds pleaded in the petition?
2. Whether the petition is liable to be rejected for non-compliance of the provisions of Rules 12(f), Chapter 4-GG of the High Court Rules and Orders, Vol. V & Section 81(3) of the representation of People Act?
3. Whether the petition does not disclose any cause of action?
4. Relief.

Issues No. 2 and 3 reproduced above were decided on 28th November,

A 1993 by order dated January 28, 1993 as preliminary issues and were answered against the first respondent. Thus the impugned judgment deals with only issue No. 1 quoted above. On a close scrutiny and critical analysis of the parties' evidence on regard the High Court came to the conclusion that the allegations of the corrupt practice levelled against the returned candidate are not only vague but indefinite and that the appellant had failed to substantiate the same against the first respondent. The High Court also recorded the finding that from the evidence adduced by the appellant it could not be concluded that the first respondent made expenses beyond the prescribed limit. The High Court observed that the appellant had cooked up false please for setting aside the election of the returned candidate and that he fabricated evidence with impunity to support the allegations. The High Court, therefore, dismissed the election petition with costs by the impugned judgment against which this appeal has been directed.

D 7. Learned counsel appearing for the election petitioner/appellant submitted that there is sufficient and reliable evidence on record to establish the allegations of booth capturing by the respondent No. 1 himself and through his agents and, therefore, the negative findings recorded by the High Court are liable to be set aside. He also submitted that the High Court seriously erred in holding that the allegations contained in para 3(I) of the election petition do not constitute a corrupt practice. According to the petitioner/appellant the allegations as are set out in para 3(I) to (VI) relating to booth capturing amount to a corrupt practice within the meaning of sub-section (8) of Section 123 read with Section 135-A of the Act. Section 123 (8) reads thus :

F 123. *Corrupt Practices.* - The following shall be deemed to be corrupt practices for the purposes of this Act :

.....

G (8) *Booth capturing by a candidate or his agent or other person.*—

The relevant part of section 135-A reads as follows :

H 135-A *offence of booth capturing.* - Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which shall not be less than six months but which may extend

to two years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine."

8. It is well settled that an allegation of corrupt practices within the meaning of sub-sections (1) to (8) of Section 123 of the Act, made in the election petition are regarded quasi criminal in nature requiring a strict proof of the same because the consequences are not only very serious but also penal in nature. It may be pointed out that on the proof of any of the corrupt practices as alleged in the election petition it is not only the election of the returned candidate which is declared void and set aside but besides the dis-qualification of the returned candidate, the candidate himself or his agent or any other person as the case may be, if found to have committed corrupt practice may be punished with imprisonment under Section 135-A of the Act. It is for these reasons that the Court insists upon a strict proof of such allegation of corrupt practice and not to decide the case on preponderance or probabilities. The evidence has, therefore, to be judged having regard to these well settled principles.

9. In sub-para (1) of para 3 of the election petition the allegation made is that on 19.2.1992 at about 7.30 AM the respondent No. 1 in the company of 50 supporters went to the Government High School Building, Dirba Where polling booths No. 62 to 69 were located and threatened Joginder Singh, polling agent of the appellant in the presence of some electors and asked him not to go inside the polling station and not to raise objections regarding the identity of persons. The High Court took the view that these allegations cannot be treated to be a corrupt practice of booth capturing. Learned counsel for the appellant was unable to specify as to under which sub section of Section 123 these allegations amount to a corrupt practice. In our opinion the alleged threat may be an offence but certainly it does not fall within the ambit of corrupt practice as defined in sub-section (8) of Section 123. This apart it is interesting to note that Joginder Singh the election agent of the appellant who is said to have been threatened was not examined by the appellant as a witness to support the said allegation.

10. It may be noticed that to establish the allegations of booth capturing made in sub-paras II, III IV, V & VI of para 3 of the election

- A petition were sought to be proved by the appellant from the evidence of Zora Singh, PW 6, Sher Singh, PW 7, Kashmira Singh, PW 11, Saadha Singh, PW 12, Kapur Singh, PW 13, Tehsil Singh, PW 14 Jarnail Singh, PW 15 and Surjit Singh, PW 16. The evidence of all these witnesses has been minutely analysed and scrutinised by the High Court and found the same to be unconvincing and unreliable to establish the allegations. The most striking feature is that the appellant did not examine election agent Joginder Singh as a witness to support the allegations who is supposed to have first hand information as to what was happening inside the polling booth. According to the allegations made in the election petition there were incidents of a large number of booth capturing by the respondent No. 1, his agent and supporters who are alleged to be variously armed but surprisingly enough neither any oral nor a written complaint was made to the Returning Officer, Presiding Officers or other officers and police personnel who were on election duty at the respective polling booths. There was not even a whisper about the alleged incidents to the members of Central Reserve Police who according to the appellant's own evidence were very much present out-side the polling station. There is no contemporaneous materials or any record to indicate that the appellant or any one on his behalf had raised even a finger on any of any alleged incidents while admittedly the Returning Officer, Presiding Officers and the Senior Superintendent of Police were available to entertain the complaints if the respondent, his election agent or his supporters had committed acts of corrupt practice.

11. The respondent No. 1 has examined the Sub-Divisional Magistrate, Shri Meghraj, RW 2 who was the Returning Officer of Dirba Assembly constituency in the said election. The respondent also examined the Senior Superintendent of Police, Shri Jaswinder Singh, RW 16 who categorically deposed that the polling was peaceful throughout the day and there were proper security arrangements outside the polling booths. They also stated that there were absolutely no such incidents as are alleged by the appellant in any of the polling booths and no protest was lodged by any of the contesting candidates either with regard to the booth capturing or regarding illegal casting of votes. The respondent No. 1 had also examined Dayal Chand, RW 8, Gurmail Singh, RW 9, Ram Prakash, RW 10, Karam Singh, RW 11, Sohan Singh, RW 12, Chiranjit Julka, RW 13, Govinder Singh, RW 14 and Manjit Singh, RW 16 who were the Presiding Officers of the Polling booths No. 63 to 69. They all made a consistent and

categorical statement that the polling agents of all the contesting candidates were present inside the polling booths and none of them had disputed the identity of any elector who had come to cast their votes. They stated that the polling was peaceful and there was no untoward incidence. On a critical examination of the record and the impugned judgment of the High Court we find that the appellant had miserably failed to bring home the allegations of corrupt practice either by the respondent No. 1, his agent or any other person with his consent or at his instance. On the contrary there is consistent convincing and satisfactory evidence adduced by the respondent No. 1 to show that the polling was peaceful throughout the day and no complaint of any nature whatsoever oral or in writing was received from any quarter. In view of these facts and circumstances the High Court has taken a view consistent with the evidence on record and there are no reasons to take a different view.

12. Learned counsel for the appellant next urged that there is evidence to show that the returned candidate respondent No. 1 herein had made expenditure far beyond the permissible limit and the High Court fell in serious error in taking a different view. Rule 90 of Conduct of Election Rules, 1961 provides that the total expenditure of which account is to be maintained under Section 77 of the Act, and which is incurred in connection with an election, shall not exceed the amount as specified in the corresponding column of the table given therein. But on going through the evidence and the judgment of the High Court in that behalf, we find that there is absolutely no substance in this submission also. The High Court has made a detailed scrutiny of the evidence on record in this behalf and has arrived at a definite conclusion that the allegation is groundless. We have also gone through the relevant evidence and find that the evidence adduced by the appellant does not establish the charge of over spending.

13. Learned counsel for the appellant then urged that before recording of evidence an application was made on behalf of the appellant under Rule 93 of the Election Rules read with Section 151 C.P.C. for inspection of marked copies of electoral rolls as well as the packets of counterfoils of used ballot papers, in order to prove booth capturing and casting of bogus votes by persons in place of real electors, but it was obviously rejected by the High Court which caused great prejudice to the appellant's case. He also submitted that the appellant had also moved an application for summoning various documents for purposes of cross-examining the respondent

- A No. 1 but it was also unreasonably rejected by the High Court. We have perused the orders of the High Court dated 14th May, 1993 and 23rd August, 1993 and find that the High Court was fully justified in rejecting both the applications for valid and sound reasons. The appellant had failed to show even *prima facie* that there was any booth capturing and, therefore,
- B the question of inspection of the desired electoral rolls and packets of counterfoils did not arise at that stage of the case. The documents sought to be summoned also could not be allowed in view of the fact that the said application was made when the appellant had already concluded his evidence and the election petition was posted for respondent's evidence. Secondly, the said application was not maintainable for non-compliance of
- C the rules contained in Chapter 4-GG of the Rules and orders of Punjab & Haryana High Court, volume v, of which prescribes rules of procedure on the non-compliance of which the documents sought to be summoned for purpose of cross-examination cannot be ordered. In this view of the matter, the order of the High Court dated August 23, 1993 rejecting the applica-
- D tion, cannot be said to be erroneous. As discussed above, the appellant has miserably failed to prove the allegations made in the election petition and the evidence adduced by the appellant has been found to be unworthy or placing any reliance, the appeal deserves to be dismissed.

- E 14. For the reasons stated above the appeal fails and is hereby dismissed with costs. Rs. 3000 to be paid to respondent No. 1.

R.A.

Appeal dismissed.