P. C. PURUSHOTHAMA REDDIAR A

v.

S. PERUMAL

December 2, 1971

[K. S. HEGDE, A. N. GROVER AND A. N. RAY, JJ.] B

Representation of the People Act 1951—*S.* 123(6)—*When corrupt practice—Evidence Act—S.* 35—*When police report admissible in evidence where the officer concerned not examined personally.*

The appellant challenged the validity of the election of the respondent to the Pondicherry Lagislature Assembly on various grounds including corrupt practices. The High Court dismissed the election petition. In the appeal to this Court, the appellant contended C

(i) that the appellant's amendment application of the election petition giving some more particulars of meetings held by the respondent was wrongfully rejected by the Trial Court on the sole ground that it sought to include additional grounds of corrupt practice and

(ii) that the respondent had actually incurred expenses in connection with 4 more meetings thereby exceeding the prescribed limit. D

The respondent, on the other hand, contended that the various police reports about the meetings relied on by the appellant were not admissible in evidence as the head constable who covered the meetings had not been examined in the case; that even if the reports were admissible, the Court could not look into the contents of those documents and that the evidence afforded by the police reports was not relevant.
Allowing the appeal, E

HELD : (i) The incurring or authorising of an expenditure in contravention of s. 77 of the Act is one single corrupt practice. The incurring or authorising of an expenditure in connection with the election is not by itself a corrupt practice. The corrupt practice is the incurring or authorising the expenditure of more than the prescribed limit. Hence, the Trial Court erred in thinking that each item of expenditure is a corrupt practice by itself. The particulars of corrupt practice falling under sections 123(6) of the Act may, in an appropriate case, be introduced by amendment. By doing so, no additional ground of corrupt practice can be said to have been introduced. [650 H] F

D. P. Misra and Anr. v. *Kamal Narayan Sharma and Anr.* [1971] 1 S.C.R. 8, referred to.

(ii) As regards the number of meetings held by the respondent, although he denied having held any meeting at all however admitted in his evidence that he had arranged seven meetings between, February 27, 1969 to March 6, 1969. The appellant, however, had been able to prove that the respondent had held four more meetings between February 23, 1968 to March 6, 1969. In support of his claim, the appellant examined a number of witnesses and their evidence was corroborated by a number of applications (which the respondent made to the Inspector of Police asking permission to hold the meetings) and by the police reports (which the Head constablels made to their superior after attending the meetings). Therefore, on an average, if the respondent spent Rs. 32/- per meeting (which he admitted), the total for the 4 extra meetings must have cost the Respondent Rs. 128/-. If this expense was added to the sum of Rs. 18,86.09 which the respondent had spent for his entire election, the G H

A total expenditure would exceed the prescribed limit of Rs. 2,000/-. Hence, the respondent was clearly guilty of corrupt practices mentioned in S. 123(6). [652 H]

(iii) The police reports were marked without any objection. Hence, it was not open to the respondent to object to their admissibility at a later stage.

B *Bhagat Ram* v. *Khetu Ram and Anr.*, A.I.R. 1929 P.C. 110, referred to.

(iv) Further as regards the contents of the document, once a document is properly admitted the contents of that document are also admitted in evidence although the contents may not be conclusive evidence. [654 F]

C (v) The first part of S. 35 of the Evidence Act says that an entry in any public record stating a fact in issue or relevant fact made by a public servant in discharge of his official duties is relevant evidence. Quite clearly the reports in question were made by public servants in discharge of their official duty.

The issue before the Court was whether the respondent had arranged certain election meetings on certain dates. The police reports in question were extremely relevant to establish that fact. Hence, it came within the D ambit of the first part of S. 35 of the Evidence Act. [655 B]

Naveneetha Krishna Thelavar v. *Ramesway Pandia Thelavar*, I.L.R. 40, Madras 871, approved.

In the present case, the police reports in question were by government officials who were not shown to be inimically disposed towards the respondent or his party. They were made when there was no dispute and the dispute E in question would not have been anticipated. Therefore, such reports carry greatest possible weight and could not be dismissed lightly. [656 D]

Arjuno Naiko and Ors. v. *Modonomohono Naiko & Ors.*, A.I.R. 1940, P.C. 153, referred to.

CIVIL APPELLATE JURISDICTION : C.A. No. 1239 of 1970.

F Appeal under Section 116-A of the Representation of the People Act, 1951 from the judgment and order dated February 13, 1970 of the Madras High Court in Election Petition No. 1 of 1969.

K. K. Venugopal, R. Gopalakrishnan and *T. L. Garg,* for the Appellant.

M. K. Ramamurthi, Vineet Kumar, S. S. Khanduja and *N.* G *Natrajan,* for the Respondent.

The Judgment of the Court was delivered by

Hegde, J. This is an election appeal arising from a judgment of the Madras High Court. It relates to the Election to the Ariyankuppam Assembly constituency of the Pondicherry Legis- H lative Assembly. The said election was held on March 9, 1969. In that election, the appellant as well as the respondent contested. The appellant was the Congress nominee and the respondent was the nominee of the D.M.K. After the counting of votes, the respondent was declared elected as having obtained 3774 votes as against 3758 obtained by the appellant. The appellant challenged the validity of the election of the respondent on various grounds. In his election petition he alleged that the respondent was guilty of canvassing votes on the basis of his caste, that he had bribed the voters, that the election was not conducted properly, that there was improper reception of void votes and lastly that he had incurred expenditure more than the prescribed limit. The charge of bribery was not pressed at the time of the trial. The other grounds pleaded on behalf of the appellant were rejected by the High Court and the election petition was dismissed.

After hearing the Counsel for the parties regarding the allegation relating to the contravention of s. 123(6) of the Representation of the People Act, 1951 (to be hereinafter referred to as the Act), we have come to the conclusion that the respondent was guilty of an offence falling within that section as he is proved to have incurred expenditure more than the prescribed limit. We therefore thought that it was not necessary to go into the other charges levelled against the respondent. The limit of expenditure prescribed for the constituency was Rs. 2,000/-. In his election return, the respondent had stated that he had incurred an expenditure of Rs. 1865/59 P. The trial court came to the conclusion, which conclusion was not challenged before us, that he had incurred a further expenditure of Rs. 20/50 P. Hence if the appellant is able to establish that the respondent had incurred at least a further expenditure of Rs. 113/92 P., then the election of the respondent will have to be set aside under s. 100(1)(b) of the Act on the ground that the respondent was guilty of the corrupt practice falling under s. 123(6).

The appellant had alleged in his election petition that the respondent had suppressed in the return submitted by him expenditure incurred under various heads such as, expenditures incurred in connection with, the holding of election meetings, hire paid for the cars used in connection with the elections as well as the price of petrol used for the cars used in that connection.

We shall first take up the question of expenditure said to have been incurred in connection with the holding of meetings. The allegation as regards the same is found in paragraph 8(v) of the election petition. The material portion of that allegation reads :

> "The total expenditure incurred or authorised by the respondent herein in connection with the election exceeded the limit prescribed under the Act and the Rules made thereunder. The accounts submitted by the respondent to the Special Officer (Election), Pondicherry showing a sum of of Rs. 1,865/59 are false

A and unrelated to the actual expenditure incurred or authorised by the respondent for his purposes. In his election account the respondent has failed to show the following items of expenditure :

. . . . . .

B (v) The respondent held a large number of election meetings and all these election meetings were conducted in a pandal where a dias was constructed for the speakers. All these meetings were installed with loudspeakers, tube-lights and other electrical fittings were also provided. The construction of the pandal and dais and the installation of loudspeakers and other electrical equipment such as lights etc. would have at least
C cost Rs. 100/- for each meeting except for the meeting at Ariyankuppam on 5-3-69 at 7.30 p.m. when Shri V. R. Nedunchezian presided in which meeting several loudspeakers and extra light fittings were provided costing over Rs. 200. The dates, the time and the
D place of the meetings are as follows :

"(i) On 5-3-1969 at about 8.30 p.m. at Poornamukuppam.

(ii) On 6-3-1969 at about 10.00 p.m. at Nonamkuppam.

(iii) On 28-2-69 at about 8.00 p.m. at Manaveli.

E (iv) On 5-3-69 at about 9.00 p.m. at Manaveli.

(v) On 27-2-1969 at about 7.30 p.m. at Ariyankuppam.

Three other election meetings at Ariyankuppam and one meeting at Periaveerampatinam were also held at
F the instance of the respondent.

(vi) On 23-2-1969 at about 8.00 p.m. at Ariyankuppam.

(vii) On 24-2-1969 at about 8.00 p.m. at Ariyankuppam.

(viii) On 26-2-1969 at about 8.00 p.m. at Veeram-
G pattinam."

The respondent's plea relating to those allegations are found in paragraph 17 of his written statement. Therein he averred :

"The allegations made in paragraph 8 of the petition are totally false and they are hereby denied. Every one of the allegations made therein are factually in-
H correct and false. None of the expenditure alleged therein was incurred by the Respondent or under his authority."

This is a general denial. The respondent did not deal with the various facts stated in the election petition. From those averments, it is clear that the respondent denied having arranged any of the meeting mentioned in the election petition.

After the respondent filed his written statement, the appellant applied for and obtained permission of the court to amend cetrain clerical mistakes that had crept into the election petition. After those amendments were carried out, the respondent filed an additional written statement. In paragraph 3 of that statement he averred thus :

> "I state that no public meeting took place either on 27-2-1969 or on 28-2-1969 in the manner as alleged by the petitioner in paragraph 4(iii) and 4(iv) of the Election Petition. Consequently, the allegations as amended in paragraph 8(v)(iii) and 8(v)(v) are also not correct. I further state that no meeting took place on 5-3-69 at Ariyankuppam in the manner as alleged by the petitioner in the amendment application No. 2204 of 1969".

On October 13, 1969, the appellant applied for amendment of the election petition by giving some more particulars of the meetings held by the respondent. By that application he sought to give particulars of about six other meetings in addition to what he had already stated in his election petition, said to have been arranged by the respondent. The court rejected that application on the ground that by that application, additional grounds of corrupt practice were sought to be included in the election petition and the same cannot be permitted to be done after the period prescribed for filing the election petition was over. It may be noted that the trial of the case started on January 9, 1970. In the order rejecting the amendment application though the court referred to the delay in filing the application, it did not reject it on the ground of laches, nor did it reject the application on the ground that it was not a *bona fide* one. The sole ground on which it was rejected was that it was not maintainable as it sought to include additional grounds of corrupt practice.

In our opinion, the High Court was wholly wrong in coming to the conclusion that the amendment application moved on behalf of the appellant sought to add any new corrupt practice. The incurring or authorising of an expenditure in contravention of s. 77 of the Act is one single corrupt practice. The incurring or authorising of an expenditure in connection with the election is not by itself a corrupt practice. The corrupt practice is the incurring or authorising the expenditure of more than the prescribed limit. Hence the trial court erred in thinking that each item of expenditure is a corrupt practice by itself. This position is obvious from the language of the section itself. This Court had occasion to go into that question in *D. P. Mishra and anr.* v. *Kamal Narayan Sharma and anr.*(1). In that case this Court came to the conclusion that the particulars of a corrupt practice falling under s. 123(6) may in an appropriate case be introduced by amendment. By doing so, no additional ground of corrupt practice can be said to have been introduced. If it had been necessary for the case, we would have allowed that amendment application and sent back the case for further trial. But for the reasons to be presently stated, we have thought it unnecessary to do so.

In dealing with the expenditure incurred in connection with the election meetings, the first and the important question that has to be decided is as to when the election campaign of the respondent commenced. According to the appellant, it commenced on February 23, 1969. But according to the respondent it commenced on February 27, 1969. Decision on this question has great bearing on the other points arising for decision. Hence we shall first address ourselves to that question. The learned trial judge did not give any positive finding on this question. In the course of his judgment he doubted the evidence of the respondent on this point but by taking a facile view of the evidence on record, he just rejected the evidence of the appellant as unacceptable and wholly accepted the evidence of the respondent as regards the number of meetings held though he felt that the respondent has not come forward with a truthful version.

It is true that in election cases oral evidence has to be examined with great deal of care because of the partisan atmosphere continuing even after the election. But it will be wrong on the part of courts to just brush aside the oral evidence even when the evidence is highly probable and the same is corroborated by unimpeachable documentary evidence. As mentioned earlier, according to the appellant, the respondent started his election campaign with a well attended meeting on February 23, 1969 at Ariyankuppam. In support of that version he examined P.Ws. 3, 4, 7, 13, 16 and 19. Their evidence was corroborated by Exhts. P. 15 and P. 35. But the learned trial judge rejected this evidence without examining them. He came to the conclusion that the witnesses examined are partisan witnesses. Therefore much reliance cannot be placed on their testimony. But he failed to attach sufficient importance to the tell-tale evidence

(1) [1971] 1 S.C.R. 8.

afforded by Exhts. P. 17 and P. 35. Ex. P. 15 is an application made by the respondent to the Inspector of Police, 'C' Circle, Pondicherry. Therein the respondent stated :

> "Please grant me permission to hold a public meeting at Ariyankuppam Cuddalore Road in front of market, on the occasion of inauguration of my electoral office on 23-2-1969 from 9 to 12 a.m. and to make use of loud-speakers."

The permission sought for was granted by the Inspector. The Inspector, P.W. 24 deposed that he deputed a Head-constable to cover that meeting and report about the same. It is gathered from the evidence of P.W. 24, that in Pondicherry, before holding a meeting, permission of the police will have to be obtained and it is the usual practice there to depute a police officer to cover the meetings and report about the speeches made by the speakers, P.W. 24, further says that he deputed a Head-constable to cover the meeting to be held in conection with the inauguration of the election campaign of the respondent and in that connection the Head-constable in question submitted to him the report Exh. P-35. The report in question was proved through the Inspector without any objection. The report says that the election campaign of the respondent was inaugurated by holding a public meeting on February 23, 1969 and that meeting was addressed by as many as eight persons in addition to the respondent. This report was received by the Inspector on the 25th of February. Despite this clinching evidence afforded by Exhts. P. 15 and P. 35, the respondent made bold to deny the factum of having held a meeting on the 23rd. In view of this documentary evidence, the learned trial judge was unable accept the evidence of the respondent. All the same he opined that it was immaterial whether the election campaign was inaugurated on the 23rd or on the 27th, since he was inclined to accept the evidence of the respondent that he had held only seven meetings and not more. This, in our opinion, is an erroneous approach. As seen earlier, the respondent has denied having held any meeting on February 23. But this denial cannot be accepted as true. For the reasons already mentioned we feel satisfied that the respondent's election campaign commenced on the 23rd February 1969 and in that connection a meeting was held in Ariyankuppam on that date.

Before proceeding further, we may at this stage mention that though in his written statement, respondent denied having held any meeting at all—a statement which on the face of it cannot be true—in his evidence he admitted having arranged seven meetings. This he had to admit in view of the receipts that he had produced along with his return. In his evidence he admitted that he held meetings on February 27, 1969, March 5. 1969 and March 6, 1969 at Ariyankuppam. He also admitted that he held a meeting on March 5, 1969 at Poornamukuppam and on March 6. 1969 at Manaveli and again on the same day at Veerampatnam. Hence admittedly he held seven meetings. Let us now proceed to see whether the appellant has satisfactorily proved that the respondent had held any more meetings. We have earlier come to the conclusion that he had held a meeting at Ariyankuppam on February 23, 1969.

The appellant alleged that the respondent had held one more meeting at Ariyankuppam on February 24, 1969. To prove this fact he had examined P.Ws. 3 and 4. Their evidence is corroborated by Exh. P-16, an application admittedly given by the respondent to the police for permission for holding a meeting on that day and Ex. P.36, the police report sent in that connection. The learned trial judge did not accept the contention of the respondent that he had not hold a meeting on Ariyankuppam on February 24, 1969. Then we come to the meeting alleged to have been held on February 26, 1969 at Veerampatinam. On this question the trial court has come to the conclusion that the respondent had held a meeting at Veerampattinam on February 26, 1969. On this point the oral evidence adduced by the appellant is corroborated by Ex. P. 17, the application made by the respondent to the police for permission to hold that meeting and P. 38, the report made by the police. Then we come to the meeting said to have been held at Manaveli on February 28, 1969. The respondent himself admitted in his evidence that he did arrange a meeting at Manaveli on that date.

In his evidence the respondent admitted as having arranged a meeting at Ariyankuppam on March 6, 1969. According to him he arranged that meeting but curiously the learned trial judge came to the conclusion, despite that admission of the respondent that P.W. 6 arranged that meeting as that witness in his evidence claimed that he arranged that meeting and spent for the same. The learned trial judge over-looked the fact that no such plea was taken by the respondent in his written statement nor was it his case in his evidence that that meefing was arranged for P.W. 6.

For the reasons mentioned above, we are satisfied that in addition to the seven election meetings which the respondent admitted having arranged, the appelant has been able to satisfactorily prove that the respondent had arranged at least four more meetings.

Now coming to the question as to the expenditure incurred in conection with those meetings, it is no doubt for the appellant to prove the same. According to the respondent he had not maintained any accounts in connection with his election. The expenditure incurred for his election is specially within the knowledge of the respondent. He has not adduced any evidence in that connection. He has totally denied having held those meetings. That denial for the reasons already mentioned cannot be accepted. Therefore we have now to find out what would have been the reasonable expenditure incurred in connection with those meetings. Even according to the respondent for the seven meetings held by him, he incurred an expenditure of more than Rs. 225/-. That means on an average he had incurred an expense of about Rs. 32/- per meeting. This is clearly an underestimate. But even if we accept that to be correct, for the four meetings referred to earlier, he would have incurred an expenditure of Rs. 128/-. If this expense is added to the sum of Rs. 1886/9 p., referred to earlier, the total expenditure incurred exceeds the prescribed limit of Rs. 2,000/-. Hence the respondent is clearly guilty of the corrupt practice mentioned in s. 123(6).

Before leaving this case it is necessary to refer to one of the contentions taken by Mr. Ramamurthi, learned Counsel for the respondent. He contended that the police reports referred to earlier are inadmissible in evidence as the Head-constables who covered those meetings have not been examined in the case. Those reports were marked without any objection. Hence it is not open to the respondent now to object to their admissibility—see *Bhagat Ram* v. *Khetu Ram and anr.*(1).

It was next urged that even if the reports in question are admissible, we cannot look into the contents of those documents. This contention is again unacceptable. Once a document is properly admitted, the contents of that document are also admitted in evidence though those contents may not be conclusive evidence.

It was lastly contended that the evidence afforded by the police reports is not relevant. This again is untenable contention. Reports in question were made by government officials in the discharge of their official duties. Those officers had been deputed by their superiors to cover the meetings in question. Obviously they were deputed in connection with the maintenance of law and order which is the special responsibility of the police. Hence, the question whether those reports were made in compliance with any particular provision of law is irrelevant.

The first part of s. 35 of the Evidence Act says that an entry in any public record stating a fact in issue or relevant fact and

(1) A.I.R. 1929 P. C. 110.

made by a public servant in the discharge of his official duty is relevant evidence. Quite clearly the reports in question were made by public servants in discharge of their official duty.

The issue before the court is whether the respondent had arranged certain election meetings on certain dates. The police reports in question are extremely relevant to establish that fact. Hence they come within the ambit of the 1st part of s. 35, of the Evidence Act. In this connection we would like to refer to the decision of the Madras High Court in *Navaneetha Krishna Thevar* v. *Ramaswami Pandia Thalavar*(1). Therein the learned judges observed thus :

> "As however the case may not stop here, we think it right to allow the petitioners in Civil Miscellaneous Petitions Nos. 845 and 1655 of 1915 for the admission of certain documents rejected by the Subordinate Judge, namely (1) the decree of the Zilah Court of Tinnevelly, dated 31st May 1859 in Original Suit No. 4 of 1859, (2) the Takid of the Collector to the Muzumdar on the death of the raja in 1850, (3) the reply of the Muzumdar and (4) the Collector's Takid in 1853 on the complaint of the zamindar's widow as to the conduct of Maruthappa Thevar who according to the plaintiff's case was the father of Gnanapurani's mother. They will accordingly be marked as Exhibits XXXIV, XXXV, XXXVI and XXXVII respectively and incorporated in the record. The learned Advocate-General did not support the exclusion of the last three on the ground that the copies of correspondence kept in the Collector's and taluk offices were not signed but contended that they were not admissible under section 35 of the Indian Evidence Act. We think however that copies of actual letters made in registers of official correspondence kept for reference and record are admissible under section 35 as reports and records of acts done by public officers in the course of their official duty and of statements made to them, and that in the words of their Lordships in *Rajah Muttu Ramalinga Setupati* v. *Periyanayagam Pillai*(2), they are entitled to great consideration in so far as they supply information of material facts and also in so far as they are relevant to the conduct and acts of the parties in relation to the proceedings of Government founded upon them."

We are in agreement with the view taken by the Madras High Court in that case.

---

(1) I.L.R. 40 Mad. 871 at 678 & 870. (2) [1974] L. R. 1 I.A. 209, p. 238.

Now coming to the value to be attached to the evidence afforded by those reports, we may usefully refer to the decision of the Judicial Committee in *Arjuno Naiko and ors.* v. *Modonomohono Naiko and ors.*(1). In fact case a person brought a suit for establishing that he was the adopted son of a dismissed Sirdar and as such entitled to succeed to the Sirdarship. In evidence documents coming from official sources recording statements as to adoption made to the officials in the locality not merely by the plaintiff himself in the presence of others but also by other member and by the dismissed Sirdar himself were produced. These statements were made at a time when no disputes had arisen and were made in connexion with a matter of local interest *viz.* the appointment of a new Sirdar. The Judicial Committee held that the documents carried greatest possible weight and could not be dismissed as mere self-assertions.

Similarly in this case, the police reports in question were made by the government officials who are not shown to be inimically disposed towards the respondent or his party. They were made when there was no dispute and the dispute in question could not have been anticipated.

In view of the above conclusion, it is not necessary to go to the other contentions advanced on behalf of the appellant.

In the result we allow this appeal, set aside the order of the High Court, accept the election petition of the appellant and set aside the election of the respondent. The respondent shall pay the costs of the appellant both in this Court as well as in the High Court.

S.C. *Appeal allowed.*

(1) A.I.R. 1940 P. C. 153.