A

EBRAHIM SULAIMAN SAIT

v.

M. C. MUHAMMAD AND ANR.

November 7, 1979

B

[A. C. GUPTA AND P. S. KAILASAM, JJ.]

Corrupt practice—Full text of the alleged speech of the returned candidate to show that his election speech was an attempt to promote feelings of enmity between different classes of citizens of India on grounds of religion not reported by the Press, but admitted by him in evidence that "the reporter's version of the speech does more or less tally"—Reliability in evidence regarding corrupt C *practice within the meaning of Section 123(3A) of the Representation of the People Act 1951.*

Representation of the People Act, 1951, Section 123(3A) scope and application of—Provisions of Section 125 are not relevant to ascertain the scope and application of Section 123(3A) of the Act.

D *Representation of the People Act, 1951, Section 123(3A), whether violative of Article 19(1)(a) of the Constitution.*

The election of the appellant to Lok Sabha from the Manjeri Parliamentary Constituency in Kerala was declared void by the High Court of Kerala on an election petition presented on May 3, 1977 by the first respondent who was an elector in that Constituency on the ground that the returned candidate E was guilty of Corrupt practice mentioned in sub-section (3A) of Section 123 of the Representation of the People Act, 1951. The allegation was that during the election campaign the appellant made a speech in English at a place called Pullickal within the said constituency and a report of this speech translated into Malayalam appeared in the local daily CHANDRIKA in its issue of March 17, 1977 which, fell within the mischief of Section 123(3A) of the Act.

F

Allowing the appeal, the Court,

HELD : 1. Even though the full text of the alleged speech of the returned candidate to show that his election speech was an attempt to promote feelings of enmity between different classes of citizens of India on grounds of religion was not reported by the Press, the press report could be relied on when there G was not even a distant suggestion that for want of production of the entire speech such report should not be relied on and more particularly when, as in the instant case, the appellant himself admits that it was not possible for him at "this distance of time to recall what exactly he had stated in speech" and that reporter's version of the speech "does more or less tally". [1151B-C]

2. The provisions of Section 125 are not relevant to ascertain the scope H and application of Section 123(3A) of the Representation of the People Act. It is true that the act that is called a corrupt practice in Section 123(3A) is also what constitutes an electoral offence under section 125, but to attract section 123(3A) the act must be done by the candidate or his agent or any

other person with the consent of the candidate or his agent and for the furtherance of the election of that candidate or for prejudicially affecting the election of any candidate, but under section 125 any person is punishable who is guilty of such an act and the motive behind the act is not stated to be an ingredient of the offence. Section 123(3A) and section 125 need not be read together to ascertain the scope and effect of Section 123(3A). [1152D-F] A

Kedar Nath Singh v. *State of Bihar,* [1962] Suppl. 2 SCR 769, distinguished. B

3. Section 123(3A) of the Representation of the People Act, 1951 is not violative of Article 19(1)(a) of the Constitution. [1153A]

Jamuna Prasad Mukhariya and Ors. v. *Lachhi Ram and Ors.,* [1955] 1 SCR 608; relied on.

4. A speech, though its immediate target is a political party, may yet be such as to promote feelings of enmity or hatred between different classes of citizens. It is the likely effect of the speech on the voters that has to be considered.[1153H, 1154A] C

5. To come under the purview of the provisions of Section 123(3A), the fact that the election petitioner and the returned candidate belonged to the same religion is immaterial. [1154A-B] D

Kultar Singh v. *Mukhtiar Singh,* [1964] 7 SCR 790 applied.

6. Truth is not an answer to a charge of corrupt practice under section 123(3A); what is relevant is whether the speech promoted or sought to promote feelings of enmity or hatred as mentioned in that provision. If it is found that it was so, then it is immaterial whether what was said was based on facts or not. [1154F-G] E

In the instant case, it cannot be said that the speech falls within the mischief of section 123(3A) of the Act. No doubt, the tone of the speech was communal, but in this country communal parties are allowed to function in politics. The law also does not place any bar on describing a party as irreligious. The speech sought to criticise only the wrong policy of the Muslim League (opposition) in aligning with parties that were responsible for atrocities against the Muslims and not just to emphasise the atrocities. [1155B, 1156A-B] F

Kanti Prasad Jayashankar Yagnik v. *Purshottamdas Ranchhoddas Patel and Ors.,* [1969] 3 SCR 400; referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11 of 1978.

From the Judgment and Order dated 6-12-77 of the Kerala High Court in Election Petition No. 18/77. G

F. S. Nariman, Anil B. Diwan, K. J. John, A. N. Haksar, Shakil Ahmed and *Manzil Kumar* for the Appellant.

P. Govindan Nair and *N. Sudhakaran* for the Respondent.

The Judgment of the Court was delivered by H

GUPTA, J.—This is an appeal under section 116A of the Representation of the People Act, 1951.

A The election of the appellant to Lok Sabha from the Manjeri Parliamentary constituency in Kerala was declared void by the High Court of Kerala at Ernakulam on an election petition presented on May 3, 1977 by the first respondent who was an elector in that constituency on the ground that the returned candidate was guilty of corrupt practice mentioned in sub-section (3A) of section 123 of the Act. B The appellant was a candidate of the Muslim League; the second respondent before us contested the election as a nominee of a dissident group of the Muslim League described as "Muslim League (Opposition)" supported by, as stated in the election petition, "Janata Party and Marxist Party".

C Section 123 (3A) reads :

> "123. *Corrupt practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act :—
>
> x x x
>
> D (3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate E for prejudicially affecting the election of any candidate."

It is said that during the election campaign the appellant made a speech in English at a place called Pullickal within the said constituency and a report of this speech translated into Malayalam appeared in the local daily CHANDRIKA in its issue of March 17, 1977 which, it is alleged, F falls within the mischief of section 123(3A). The election petition contains several other allegations but as the decision of the High Court is based on this ground only, it is not necessary to refer to them. As already stated, the report of the speech (Ext. P-6) is a translated version in Malayalam of the substance of the speech delivered in English.

G Mr. Nariman appearing for the appellant contended that as the full text of the speech was not available, it would be unsafe to draw any conclusion from the speech as reported. This contention which was also raised before the High Court is in our opinion, adequately answered in the impugned judgment. The High Court says :

H

> "It is true that Ext. P-6 does not purport to contain the full speech, but the important aspect which has to be noted is that no contention has been raised in the written statement

to the effect that there were other portions in the speech of the first respondent which mitigated the evil contained in Ext. P-6. . . . When the 1st respondent gave evidence as R.W.1 there was not even a distant suggestion that for want of production of the entire speech Ext. P-6 could not be relied on. Again, when the petitioner gave evidence as P.W.1 no question was asked to him regarding the other matters, if any, spoken by the first respondent."

The first respondent in High Court is the appellant before us. In this affidavit answering the allegations made in the election petition, the appellant admits that though it was not possible for him "at this distance of time to recall" what exactly he had stated in the speech, "the reporter's version of the speech does more or less tally" with the views expressed by the appellant in the meeting. We are therefore unable to agree that the report of the speech, Ext. P-6, cannot be relied on.

The speech as reported in CHANDRIKA is as follows :

"The Indian Union Muslim League President Sulaiman Sait said at Pullickal today that the Society will never forgive the anti-religious league people. It is because these people had helped the Jansangh which had killed many Muslims in Northern India and at Tellicherry and had burnt the sacred mosques. There people have also been leading the poor Muslims towards the camp of communal reactionaries and therefore Society can never forgive them.

He said that these anti-religious people were by spreading lies and false propaganda blackening the faces of the leaders and giving away the secrets of our society to marxists and the Hindu leaders. He reminded the anti-religious league that by doing this they were destroying that institution which was fed and brought up by Marhyum Khaede Millat Ismail Sahib and Bafaki Thangal.

He continued that Janata Party, which is formed under the guidance of Jansangh is an orphanage of all those political leaders who did not secure any seats or who had separated from their original party. These parties, he said, will not be allowed to see the assembly or parliament. He made it very clear that the anti-religious parties must not entertain the fat hopes of securing the votes of any Muslim, in whose head the Islam's blood was flowing.

Janab Sait Sahib was addressing a large gathering at the public meeting of the united front held at Pullickal. The

A meeting was presided over by Cherukavu Panchayat President P. P. Abdul Gafoor Moulavi. The meeting was inaugurated by P. P. Ummarkoya."

Mr. Nariman submitted that it was necessary to ascertain the true scope and effect of sub-section (3A) of section 123 before considering whether the speech fell within the mischief of that sub-section and for that purpose, according to Mr. Nariman, section 123(3A) must be read with section 125 of the Act. Part VII of the Representation of the People Act, 1951 deals with "Corrupt Practices and Electoral Offences". Section 123 is in Chapter I of Part VII which catalogues the Corrupt Practices and section 125 is in chapter III of that Part which lists the Electoral Offences. Section 125 provides :

> "125. *Promoting enmity between classes in connection with election.*—Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both."

It is true that the act that is called a corrupt practice in section 123(3A) is also what constitutes an electoral offence under section 125 but to attract 123 (3A) the act must be done by the candidate or his agent or any other person with the consent of the candidate or his agent and for the furtherance of the election of that candidate or for prejudicially affecting the election of any candidate, but under section 125 any person is punishable who is guilty of such an act and the motive behind the act is not stated to be an ingredient of the offence. We do not find any reason why the two provisions, section 123(3A) and section 125, must be read together to ascertain the scope and effect of section 123(3A). Mr. Nariman's contention is that reading section 123(3A) in the light of section 125 we should hold that incitement to violence or likelihood of public disorder is one of the requirement of the corrupt practice mentioned in section 123(3A) and that in the absence of any evidence in this case on that aspect, the corrupt practice alleged against the appellant cannot be said to have been established. Mr. Nariman referred to *Kedar Nath Singh* v. *State of Bihar*(1) in support of his contention. In *Kedar Nath's* case, in order to save section 124A of the Indian Penal Code, (which makes sedition an offence) from being questioned as infringing the freedom of speech and

(1) [1962] Supp 2 S.C.R. 769

expression guaranteed by the Constitution, this Court limited the application of the provision to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence. Whether the electoral offence mentioned in section 125 of the Act should be read as requiring a similar ingredient does not arise for consideration in this case; in our opinion the provisions of section 125 are not relevant to ascertain the scope and application of section 123 (3A). As to whether section 123(3A) can be impugned on the ground that it violates Article 19(1)(a) of the Constitution, the question has been answered in *Jumuna Prasad Mukhariya and others* v. *Lachhi Ram and others.*(1) In that case this Court overruled the contention that section 123(5) and 124(5) of the Representation of the People Act, 1951, as the provisions stood at the time, were *ultra vires* Articles 19(1)(a) of the Constitution. Section 124(5) which made "systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion" a 'minor' corrupt practice is similar to section 123(3A) of the Act as it stands now. Bose J. speaking for the Court in *Jumuna Prasad's* case observed: "These laws do not stop a man from speaking. They merely prescribe conditions which must be observed if he wants to enter Parliament. The right to stand as a candidate and contest an election is not a common law right. It is a special right created by statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights chapter has no bearing on a right like this created by statute. The appellants have no fundamental right to be elected members of Parliament. If they want that they must observe the rules. If they prefer to exercise their right of free speech outside these rules, the impugned sections do not stop them. We hold that these sections are *intra vires.*" We are therefore unable to accept the construction of section 123(3A) as suggested by Mr. Nariman.

Mr. Nariman's next contention was that a political party could not be described as a "class" in the sense the expression "classes of the citizens of India" has been used in section 123(3A), that whatever the appellant had said in his speech was directed against a political party, Muslim League (Opposition), and therefore the speech did not fall within the mischief of that provision. We do not find it necessary to consider whether a political party is a 'class' within the meaning of section 123(3A). The question for decision is whether the speech delivered by the appellant promoted or attempted to promote feelings of enmity or hatred between different classes of the citizens of India on the ground of religion. A speech, though its immediate target is a political party, may yet be such as to promote feelings of enmity or

(1) [1955] 1 S.C.R. 608.

A hatred between different classes of citizens. It is the likely effect of the speech of the voters that has to be considered. We also find no substance in another contention urged by Mr. Nariman that section 123 (3A) was inapplicable to this case because the appellant and the candidate of the Muslim League (Opposition) were both Muslims. This Court in *Kultar Singh* v. *Mukhtiar Singh*(1) held that a corrupt practice under section 123 "can be committed by a candidate by appealing to the voters to vote for him on the ground of his religion even though his rival candidate may belong to the same religion".

The following portions of the speech reproduced above have been alleged as objectionable :

C The first paragraph of the speech as reported contains a statement that the society will not forgive the anti-religious League people, meaning the Muslim League (Opposition), because of their alliance with Jansangh that had killed many Muslims in Northern India and also at Tellicherry and had burnt mosques and, further, that these people had been driving the poor Muslims to the camp of the communal reactionaries. In the second paragraph of the report, it is alleged that these anti-religious people were giving away the secrets of "our society" to "Marxists and Hindu leaders". The third paragraph states that the speaker made it clear that these anti-religious parties must not entertain the hope of securing the votes of Muslims "in whose head the Islam's blood was flowing". Mr. Nariman submitted that the allegations as regards the killing of Muslims and the burning of mosques were based on facts and he referred to the report of the Commission of Inquiry that investigated the facts relating to the disturbances which took place in Tellicherry in 1971. In our opinion truth is not an answer to a charge of corrupt practice under section 123(3A); what is relevant is whether the speech promoted or sought to promote feelings of enmity or hatred as mentioned in that provision. If it is found that this was so, then it is immaterial whether what was said was based on facts or not, especially when in this case the events mentioned occurred years ago.

G Turning now to the speech, the allegations of killing of Muslims and burning of mosques appear to have been made against Jansangh which is a political party. It is not claimed that this is a party whose membership is restricted to Hindus only. The members of the Muslim League (Opposition) are described as "anti-religious people" but as held by this Court in *Kanti Prasad Jayshanker Yagnik* v. *Purshottamdas Ranchhoddas Patel and others*,(2) the law does not place any bar on

(1) [1964] 7 S.C.R. 790
(2) [1969] 3 S.C.R. 400.

describing a party as irreligious. Then it is said that these people were "giving away" the "secrets" of the Muslim society to "Marxists and the Hindu leaders". It is not clear what was the nature of the "secrets" which were being passed on to the Hindu leaders and to the Marxists. It is to be noted that the recipients of the information were not only the Hindu leaders but the Marxists as well. The speech appears to have ended with the assertion expressed in rather high flown language that the anti-religious parties had no hopes of securing the vote of any Muslim "in whose head the Islam's blood was flowing".

Reading the speech as a whole it cannot be denied that its tone is communal, but in this country communal parties are allowed to function in politics. That being so, how an appeal to the voters, such as the one made in the speech in question, should be viewed in the context of Corrupt Practices mentioned in the Act, has been explained by Gajendragadkar C.J. speaking for the Court in *Kultar Singh* v. *Mukhtiar Singh* (supra) :

> "It is well-known that there are several parties in this country which subscribe to different political and economic ideologies, but the membership of them is either confined to, or predominantly held by, members of particular communities or religions. So long as law does not prohibit the formation of such parties and in fact recognises them for the purpose of election and parliamentary life, it would be necessary to remember that an appeal made by such candidates of such parties for votes may, if successful, lead to their election and in an indirect way, may conceivably be influenced by consideration of religion, race, caste, community or language. This infirmity cannot perhaps be avoided so long as parties are allowed to function and are recognised, though their composition may be predominantly based on membership of particular communities or religion".

To indicate the effect of the speech on the minds of the ordinary voters, the electrion petitioner examined two witnesses. P.W. 2 and P.W. 4. P.W. 2 P. C. Mohammad said that after listening to the appellant's speech, "the Muslim voters looked with hatred at those people who stood against them", but when questioned as to which sentence in the speech attempted to promote the feeling of hatred, the witness referred to the first sentence and he himself went on to say that "what the sentence really means is that it is not proper to unite with Jansangh". P.W. 4 Hidre also said in the beginning that the speech was "intended to destroy communal harmony", but he himself admitted later in his testimony that the only effect of the speech was that after the meeting

A people were saying that "the Opposition League candidate must be defeated". It seems to us that the speech sought to criticise the wrong policy of the Muslim League (Opposition) in aligning with parties that were allegedly responsible for atrocities against the Muslims and not just to emphasise the atrocities. In our opinion it cannot be said that the speech falls within the mischief of section 123(3A) of the Act; we B have reached this conclusion keeping in mind the well established principle that the allegation of corrupt practice must be proved beyond reasonable doubt.

The appeal is allowed with costs and the election petition is dismissed.

V.D.K. *Appeal allowed.*