SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

J. Devaiah Vs. Nagappa and ors.

J. Devaiah Vs. Nagappa and ors.

SooperKanoon Citation : sooperkanoon.com/374311

Court : Karnataka

Decided On : Apr-14-1964

Reported in : AIR1965Kant102; AIR1965Mys102; (1964)1MysLJ488

Judge : K.S. Hegde and ;G.K. Govinda Bhat, JJ.

Acts : Representation of the People Act, 1951 - Sections 116-A and 123(4); Code of Civil Procedure (CPC), 1908 - Order 6, Rule 17

Appeal No. : M.F. No. 142 of 1963

Appellant : J. Devaiah

Respondent : Nagappa and ors.

Judgement :

(1) This is an appeal under Section 116-A of the Representation of the People Act, 1951, to be hereinafter referred to as the 'Act'. It arised from the decision of the Election Tribunal, Mysore, in Election Petition No. 48/62 on its file.

(2) The appellant is the returned candidate in the general elections held in 1962, from the Mandya Constituency to the Mysore State Legislative Assembly. The first respondent herein was the petitioner before the Tribunal. He is one of the voters in that Constituency. The second respondent was one of the defeated candidates. He was the Congress nominee. The third respondent was yet another candidate who contested the general elections without success. The tribunal set aside the

election of the appellant on the ground that he was guilty of corrupt practices falling under Section 123(4) of the 'Act' during the Election. It declared the second respondents having been elected despite the fact that he had secured less voters than the appellant. Aggrieved by the decision of the Tribunal, the appellant has come up in appeal to this Court.

(3) Polling in the Mandya Constituency took place on 22-2-1962. The results of the elections were announced on 26-2-1962. The appellant secured 23,299 votes, the second respondent 22,639 and the third respondent 3,304. Consequently, the appellant was declared elected. The first respondent herein, who is a voter in that Constituency, filed the election petition challenging the validity of the election of the appellant on various grounds.

(4) The Tribunal rejected all the grounds put forward on behalf of the petitioner excepting on. It upheld the petitioner's contention that the appellant and his supporters with his consent had published during the election Exhibit P-1, which according to the Tribunal contained a false statement viz., that the second respondent worked against the congress nominee in the Mandya Constituency in 1957 general election. The Tribunal further held that the appellant believed that statement to be false or at any rate he did not believe it to be true. It also held that the statement in question related to the personal character or conduct of the second respondent and the same was reasonably calculated to prejudice the prospects of the second Respondents election. It is this finding that is challenged before this Court. The other grounds put forward in the Election Petition were found against the petitioner. These findings were not challenged in this court.

(5) Though the Tribunal had declared the Second respondent as having been duly elected, Sri E.S. Venkataramaih, his learned Counsel, very appropriately did not support that part of the facts found the second respondent could not have been declared as elected. In view of this concession, it is unnecessary to go into that aspect of the case. All that we have to see is whether the Tribunal's finding as regards the corrupt practice mentioned above is legally sustainable.

(6) Sri. M.K. Nambiar, the learned Counsel for the appellant, urged that the allegations contained in the Election Petition as originally filed were wholly

insufficient to make out the corrupt practice found against his client and consequently Issue No. 2 should not have been raised by the Tribunal. That issue reads:

'Does the petitioner prove that the Pamphlet enclosure No. 1 (Ex. P-1) to election petition was published by the persons mentioned in Schedule 'A' of the election Petition and thereby the said person committed corrupt practice coming under Section 123(4) of the R.P. Act, 1951?'

(7) The allegations relating to Exhibit P-1 are found in paragraph-9 of the Election Petition. Before the amendment they read thus :

'The first act of the first respondent and his friends were, his agents in the course of election(as they all had worked for him with his consent and approval) was to publish pamphlets containing false and defamatory statements calculated to bring the second respondent into ridicule and in the eye of the voters. Enclosure No. 1 (Ex. P-1) is one of the pamphlets so published over the name of Sri. M.V. Srinivasa Setty, the Ex-President of Mandya Municipality. It is submitted that from 16th February 1962 upto the date of election copies of the above pamphlets were being distributed all over the Constituency and the petitioner has seen that the said pamphlet was being distributed on 18th February 1962 at B. Gowdagere village and on 19th February 1962 at Mandya. The petitioner has also heard from others that the said pamphlet from 16th February 1962 upto the date of election. It is learnt that thousands of pamphlets were thus distributed. Particulars of the said corrupt practice is given in Schedule 'A' below. It is submitted that the said pamphlet appears to be an extract of an article which is stated to have been published in a periodical called 'Jagrithi' in October 1960. It contains false and defamatory statements in so far as it concerns respondent No. 2. For example, that it is not true that the second respondent canvassed against the congress candidate in the 1957 election... The said pamphlet states that the second respondent was dishonest towards congress organisation and that he lacked discretion. Publication of the said pamphlet which has been done with the consent and knowledge of the first respondent by one of his friends M.S. Srinvasa Setty and others in furtherance of the prospects of the election of the first respondent

and his friends have indulged in character assassination of a candidate and they have committed an act falling under section 123(4) of the R.P. Act, 1951. The said act was one which was calculated to prejudice the prospects of election of respondent No. 2'

The relevant particulars are found at Schedule 'A:. That schedule reads:

'On 18th February 1962 M.D. Siddaramiah son of J. Deviah distributed copies of enclosure No. 1 at B. Gowdagere village with the assistance of H. Puttaswamiah, son of Honnegowda while canvassing on behalf of respondent No. 1

2. On 19th February 1962, M.V. Srinvasa Setty was distributing copies of Enclosure No. 1 at Mandya in Bazar Street.

3.On 18th February 1962, M.H. Boriah distributed copies of Enclosure No. I at Budanur (old and new) village Hanakere Village and Kannah villages.

4. On 20th February 1962 and 21st February 1962 respondent No. I and M.V. Srinivasa Setty distributed copies of Enclosure No. 1 at Mandya Town.'

The only statement of fact in Exhibit P-I found to be false by the Tribunal is the statement that the second respondent worked against the congress nominee in 1957 General Election. Hence it is the unnecessary to deal with the other statements of fact found in Exhibit P-I.

(8) Reverting back to the contention of Sri. Nambiar that the allegations made in the Election Petition do not constitute the corrupt practice mentioned in Sect 123(4), it may be seen that the in the averments made in paragraph-9 of the Election Petition, there is no allegation that the appellant or M.V. Srinivasa Setty either believed the allegation that the second respondent worked against the congress nominee in 1957 General Election to be false or they did not believe it to be true. The ingredients of the corrupt practice dealt with in sub-section (4) of Section 123 of the 'Act' are :

(1) The Publication by a candidate or his agent or by any other person of any statement of fact which is false;

(2) the statement in question is either believed to be false or at any rate is not believed to be true by the person who makes the statement;

(3) the statement of fact must touch the character or conduct of any candidate or in relation to the candidature, or withdrawal, or retirement from contest, of any candidate; and

(4) it must be a statement reasonably calculated to prejudice the prospects of that candidate's election.

(9) From the above analysis, it follows that one of the essential ingredients of the corrupt practice coming under Section 123(4) is that the person who published a statement of fact must have believed that statement to be false or at any rate should not have believed it to be true. The burden of proving each one of these ingredients is on the person who challenges the validity of the election. Corrupt practices have to be proved more or less in the same manner as an offence has to be proved in a criminal case. If the material facts stated in the Election Petition, assuming all of them to be true, do not make out a corrupt practice, then the court ought not to raise an issue on the facts alleged nor should it permit the petitioner to adduce evidence on that aspect of the case. Any amount of evidence cannot be a good substitute for want of necessary pleadings. The election of the appellant was set aside under section 100(1)(b) which says that the election of a returned candidate is liable to be set aside if it is proved that any corrupt practice has been committed by him or his election agent or by any other person with his consent or with the consent of his election agent. In addition to alleging and proving the ingredients of the corrupt practice intended to be established the petitioner has to fulfill the requirements of this provision also.

(10) Section 83(1) of the 'Act' specifically requires that an Election Petition should contain a concise statement of the material facts on which the petitioner relies. He cannot rely on facts not mentioned in the Election Petition.

(11) As mentioned earlier the results of the election were declared on 26-2-1962. The Election Petition was filed on 7-4-1962, within the time prescribed in section 81 of the 'Act' which provides that an election petition calling in question any

election has to be filed within 45 days from the date of election of the returned candidate. The appellant filed is objection-statement to the Election Petition on 18-7-1962. In that statement, he contended that the facts alleged do not constitute a corrupt practice under Section 123(4) of the 'Act'.

(12) On 27-7-1962, long after the period fixed under Section 81, the petitioner filed an application to amend his Election Petition and add the following to paragraph-9 of the Petition:

'The publication of Enclosure No. 1 by the first respondent and the other persons as set out in Schedule 'A' given below with the consent of the first respondent containing statements of fact which are false and which they either believed to be false or did not believe to be true in relation to personal character and conduct of the second respondent being statements reasonably calculated to prejudice the prospects of the Election of the second respondent. This publications amounts to a corrupt practice under Section 123(4) of the R.P. Act, 1951 which vitiates the Election of respondent No. 1'.

The appellant resisted that application. But the Tribunal allowed the same on 8-8-1962 and permitted the amendment prayed for. One of the main questions for decision in this appeal is whether the Tribunal was competent to permit the amendment prayed for.

(13) It was contended on behalf of the appellant that the Tribunal had no jurisdiction to permit the petitioner after the expiry of the period of limitation fixed in section 81. Before examining this contention, it is better to dispose of one of the arguments advanced by Sri. E.S. Venkataramiah, the learned Counsel for the first respondent, namely that the appellant's learned counsel before the Tribunal having accepted the costs allowed in I.A. No. 1, the appellant must be deemed to have waived his right to question the legality of the order made. He contended that the appellant should not be allowed to approbate and reprobate. In support of that contention, Sri. E.S. Venkataramiah relied on the decisions in Shriram Sardarmal Didwani v. Gourishankar, : AIR1961 Bom136 and Baliram Narayan v. Bapurao Walalaji, AIR 1955 Nag 222. These decisions have no application to the facts of the present case. The order in I.A. No. 1 is not a conditional order. I.A. No. 1 was

allowed without any condition. But in that I.A. costs were granted to the contesting respondent therein. This is how the last portion of the order reads:

'Hence, I allow I.A. No. 1, in the circumstances, I direct the petitioner to pay Rs. 25/- as costs to the first respondent.'

In view of that order no choice was left to the appellant. He had no opportunity to waive his right to question the validity or correctness of the order. It is true that costs were granted to the appellant. Costs are within the discretion of the court. The court is not debarred from awarding costs to an unsuccessful respondent, if the facts of a particular case justify such a course. Curiously enough contrary to what is stated in the order in I.A. No. 1 in the order sheet the Tribunal noted 'Order on I.A. No. 1 pronounced. Petition be amended on payment of costs.' This is not a correct summary of the order made. The note made in the order sheet is not correct. That note cannot affect the terms of the order. It is not the practice of the courts, to the extent we are aware, to read out the order sheet entries when those entries are based on Orders dictated or read out in Court. It is not proved that the appellant's learned counsel who received the costs was aware of the order sheet entry in question. The party who pleads waiver must establish clearly the facts necessary to establish that plea. No such proof is forthcoming in this case. In this view, it is unnecessary to consider the contention of Sri. Nambiar that the doctrine of 'approbation and reprobation' is not applicable to a case like the present, where a Tribunal had no jurisdiction or power to pass the order impugned though that contention prima facie appears to be well founded. See the decision of the Supreme Court in Bhau Ram v. Baij Nath Singh, AIR 1961 SC 1327.

(14) Sri. Nambiar pointed out that in the absence of an averment in the Election Petition that the publisher of the statement either believed the allegation that the second respondent canvassed against the congress nominee in the general election in 1957 to be false or did not believe it to be true, there was no case to go for trial; on that point no issue could have been raised and no evidence led. According to him, the petitioner had built his castle in the mid-air with no foundation to rest. On the other hand, it was urged on behalf of the contesting respondents that the court should not look at the allegations in an Election Petition

in a technical or pedantic manner; it should look to the substance of the matter and not the form and if so looked at, it would be evident that what was complained of is a corrupt practice falling under Section 123(4). The contention of Sri. E.S. Venkataramaiah and the learned Advocate General who appeared for the second respondent was that the amendment incorporated made obvious what was otherwise implicit. We are unable to agree with the learned Counsel for the contesting respondents on this point. It is well settled by the catena of decisions, that the right to question the validity of the election is a statutory right. It can only be exercised in accordance with the provisions of the Statute, which conferred that right. The limitation imposed and the restrictions placed by that Statute cannot be ignored as being non-essential. Charges of corrupt practice being quasi-criminal in character, the allegations relating thereto must be sufficiently clear and precise to bring home the same to the candidates. If the allegations in the Election Petition taken as a whole do not constitute a corrupt practice, then there is no point in urging that the petitioner intended to say something which by mistake he omitted to say and therefore, he must be permitted to prove what he intended to say but in fact failed to do so. The law of pleading is by no means an unwanted luxury. It is important in all proceedings before courts of law and more so in an Election Petition.

(15) Our view in this regard finds support from the decision of the Supreme Court in Harish Chandra Bajpai v. Triloksingh, : [1957]1SCR370 . Therein the petitioner alleged 'that respondents 1 and 2 could in furtherance of their election enlist the support of certain Government servants'. 'After the period of limitation the petitioner sought to amend the petition by substituting the averment 'that respondents 1 and 2 did in furtherance of their election enlist the support of certain Government servants.' The Tribunal, by majority, allowed the amendment prayed for. But the Supreme Court allowed the appeal of respondents 1 and 2 and held that the amendment prayed should not have been allowed.

(16) The decision of the Madras High Court in M.A. Muthaih Chettiar v. Sa. Ganesan, 14 Ele L R 432: (AIR 1958 Mad 533) in line with the above decision. In that case it was laid down that in the absence of necessary averments, the Tribunal had no competence to investigate into the charge of bribery made by the

petitioner despite even a categorical assertion in the election petition that the alleged acts constituted the corrupt practice of bribery.

(17) Similar view was taken by the Allahabad High Court in Ram Abhilakh Tewari v. Election Tribunal, Gonda : AIR1958 All663 . This decision highlights the importance of pleadings in Election Petitions. Therein it was laid down that in a petition under Section 100(1)(d)(iv) of the 'Act' there must be a clear allegation the court has no jurisdiction to enquire into the allegations made.

(18) The same view was reiterated by the Allahabad High Court in Savithri Devi v. Prabhawati Misra 15 Ele L R 358 (All).

(19) No decision taking a contrary view was read to us.

(20) It is not possible to accept the contention of the learned Advocate General that the mere allegation in the Election Petition that the returned candidate had committed a corrupt practice falling under Section 123(4) is sufficient compliance with the requirements of the law. This contention overlooks the provision contained in Section 83 of the 'Act' requiring that the Election Petition 'shall contain a concise statement of the material facts on which the petitioner relies. Decided cases referred to earlier do not countenance the contention advanced by the learned Advocate General.

(21) We have no doubt in our mind that the allegations made in the Election Petition are insufficient to make out a corrupt practice under section 123(4) of the 'Act'.

(22) This takes us to the question whether the court was competent to allow the amendment prayed for after the period of limitation fixed in section 81 of the 'Act'.

(23)At one stage, it was contented on behalf of the contesting respondents that the amendment in question was allowed under Section 90(5) of the 'Act', which says:

'The Tribunal may, upon such terms as to costs and otherwise as it may deem fit, 'allow the particulars of any corrupt practice alleged in the petition to be amended or amplified' in such manner as may in its opinion be necessary for ensuring a fair

and effective trial of the petition, but shall not allow any amendment of the petition, which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(Underlining (here in '.') is ours).

(24) Under Section 90(5) only the particular given in an Election Petition can be amended or amplified. What was sought to be amended in this case was not the particulars given in Schedule 'A' annexed to the Election Petition but the material facts mentioned in paragraph-9 of the petition. There is fundamental difference between the material facts constituting a corrupt practice and the particulars of that corrupt practice. The petitioner himself stated in his Election Petition that he has given the particulars in Schedule 'A'. Even otherwise, there can be hardly any doubt that the ingredients of a corrupt practice can under no circumstance be considered as the particulars of that corrupt practice. Hence there is no force in the contention that the amendment in question could have been allowed under sub-section (5) of Section 90 of the 'Act'. The Tribunal below was in error in thinking that the amendment prayed fell within the ambit of section 90 (5).

(25) But Section 90(5) is not exhaustive of the power of the tribunal to permit amendment of an Election Petition. Sub-Section (I) of Section 90 says:

'Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908), to the trial of suits.'

The effect of this provision is to attract the provisions of the Civil Procedure Code to the trial of an Election Petition but subject to the provisions contained in the 'Act' and any rules made thereunder. The provision of the Civil Procedure Code relating to amendment of pleadings enter into the trial of a suit or any other proceedings before the court. Therefore, the Tribunal gets power to permit the amendment of an Election Petition under Order VI, Rule 17 C.P.C. But, then that power is subject to the provisions of the 'Act' and the rules made thereunder. So far as the amendment of the particulars mentioned in an Election Petition are concerned,

that field is covered by section 90(5). The power given under that provision is very wide. Therefore, it is neither necessary nor permissible to invoke order VI, Rule 17 C.P.C. for amending the particulars given. Hence the need for relying on Order VI, Rule 17, C.P.C. during the trial of an Election Petition arises only when it is necessary to amend the material facts stated in the petition. It is no more doubted that generally speaking, the Tribunal has powers to allow an amendment of the material facts stated in the Election Petition under Order VI, Rule 17, C.P.C. but that power is subject to the limitations already mentioned. One of the provisions of the 'Act' which limits the power of the Tribunal in the matter of allowing amendments is S. 81 of the 'Act' which says that an election petition calling in question the election of a returned candidate must be presented within forty-five days from the date of election of the returned candidate.

An election petition which does not disclose a cause of action is no Election Petition under law. In order to become an Election Petition under the 'Act', it must contain a concise statement of the material facts on which the petitioner relies. By the guise of an amendment the petitioner cannot be permitted to introduce a corrupt practice after the period of limitation, which corrupt practice had not been put forward earlier. If a petitioner is permitted to plead a corrupt practice which he had not pleaded in the petition after the period of limitation, in effect, he is permitted to file a new Election Petition. The Tribunal has no jurisdiction to condone any delay in filing an Election Petition. Therefore, it cannot do indirectly what it cannot do directly. The leading case on point under consideration is the decision of the Supreme Court in Harish Chandra Bajpai's Case, : [1957]1SCR370 referred to earlier wherein it was held that the Tribunal has also power under order VI, Rule 17 C.P.C. to order amendment of an Election Petition but that power cannot be exercised so as to permit new grounds or charges to be raised or to as alter its character as to make it in substance a new petition, if a fresh petition on these allegations will then be time-barred. In the course of the Judgment, the court observed :

'It is next contended for the appellants that even if Section 83(3) (its present counter-part is section 90 (5)) does no exclude the application of Order VI, Rule 17 to the proceedings before the Tribunal the exercise of the power under that rule

must, nevertheless, be subject to the conditions prescribed by section 81 for presentation of an election petition, that one of those conditions was that it should be presented within the time allowed therefor, and that accordingly no amendment should be allowed therefor which would have the effect of defeating that provision. The decisions in Maude v. Lowly (1874) 9 C.P. 165 and Birkbeak v. Bullard, 1886-2 TLR 273 are relied on is support of this contention. In Maude v. Lowly the facts were that the successful candidate employed as paid canvassers, residents of the ward, and that the election was, in consequence, void. Then an application was filed for amending the petition by alleging that the residents of other wards were also similarly employed, and that was ordered by Baron Pollock. The correctness of this order was questioned on the ground that on the date of the application for amendment a fresh petition on those allegation would be barred and therefore, the court had no jurisdiction to pass the order which it did. In upholding this contention Lord Coleridge, C.J., observed that Section 21(5) gave power to the court to amend the petition, that that power was subject to the provisions was section 13(2) which prescribed the period within which an election petition could be filed, that the power of amendment could be exercised only subject to this provision, and that accordingly an amendment which raised a new charge should be rejected if a fresh petition on that charge would be barred on that date. He also observed that the matter was not one of discretion but of jurisdiction. this was followed in Clark v. Wallond (1883) 52 L.J. Q.B. 321. In 1886-2 T.L.R. 273, the application was to amend the petition by adding a new charge, and it was held that that could not be done after the expiry of the period of limitation fixed in the Act for filing election petition, and the decision was put on the ground that the power to grant amendment was subject to the provisions of the Act.

On these authorities, it is contended for the appellants that even if the Tribunal is held to possess a power to order amendments generally under order VI, Rule 17, an order under that rule cannot be made when a new ground or charge is raised, if the application is made beyond the period of limitation prescribed for filing election petitions. The Tribunal sought to get over this difficulty by relying on the principle well established with reference to amendments under order VI, Rule 17, that the fact that a suit on the claim sought to be raised would be barred on the date of the application would be material element in deciding whether it should be allowed or

not but would not affect the jurisdiction of the court to grant it in exceptional circumstances as laid down in Charan Das v. Amir Khan, 47 Ind App 255 : (AIR 1921 PC 50). But this is to ignore the restriction imposed by section 90(2) (at present Section 91) that the procedure of the court under the Code of Civil Procedure, in which Order VI, Rule 17, is comprised, is to apply subject to the provisions of the Act, and the rules, and there being no power conferred on the Tribunal to extend the period of limitation prescribed, an order of amendment permitting a new ground to be raised beyond the time limited by section 81 and Rule 119 must contravene those provisions and is in consequence beyond the ambit of authority conferred by section 90(2). We are accordingly of opinion that the contention of the appellants on this point is well founded and must be accepted as correct'.

This decision is fully applicable to the facts of the present case. It is binding on us. It is true that this decision was rendered under the provisions of the 'Act', as they stood prior to the amendment of the 'Act' in 1956. On the point under consideration, there has been no change in the law though the relevant provisions have been differently numbered.

(26) The same view has been taken by the Madras High Court in M.A. Muthiah Chettiar v. Saw Ganesan, 13 Ele LR 201 : (AIR 1958 Mad 187).

(27) For the reasons mentioned above, we hold that the Tribunal below had no jurisdiction to allow the amendment prayed for in I.A. No. 1 and consequently we must ignore the additional facts incorporated in the Election Petition as per the amendment ordered in that I.A. If we ignore those averments then on the remaining allegations, issue No. 2 could not have been raised. Consequently that issue must be deemed to be non-existing. The evidence led on the basis of that issue must also be ignored as being irrelevant. The resulting position is that the only ground found against the appellant disappears and consequently the Election Petition fails.

(28) This finding is sufficient to dispose of this case. But, as parties have addressed lengthy arguments on the merits of the finding on Issue No. 2, we shall consider those arguments.

(29) We have earlier set out the requirements of section 123(4) of 'Act'. We shall now consider how far those requirements are made out.

(30) The petitioner's case is that the objectionable pamphlet was got published by one Sri. Srinivasa Setty, a friend of the appellant. That Srinivasa Setty is admitted as well as proved to be a friend of the appellant. It is also satisfactorily proved that he had worked for the appellant's in election. He had also nominated him as a candidate. P.W. 9 (N. Narayana Raju), the printer of the pamphlet in question swears that Srinivasa Setty got the pamphlets printed. It is true that the bills maintained by the P.W. 9 are suspicious in character. But it is not proved, nor even suggested that he had any reason to depose falsely against the appellant. Srinvasa Setty had not stepped into the box to deny the fact deposed to by P.W. 9. There is no explanation for circumstances we have no reason to disbelieve the evidence of P.W. 9.

(31) P.Ws. 17, 18, 20, 21, 23, 24, 25, 26, 28 and 29 have spoken to the distribution of those pamphlets. We see no reason to disbelieve their evidence. But the allegation that the appellant himself had distributed those pamphlets is not proved not does it appear to be true. The only person who says that the appellant distributed the pamphlets in question is P.W. 29, the petitioner. He is an interested witness. That apart, according to his evidence, the appellant distributed pamphlets in Mandya Town on 19-2-1962. But in the particulars given by him in the Election Petition, he had stated that the appellant distributed those pamphlets in Mandya Town on the 20th and 21st of February 1962. These contradiction are not explained. There is no corroboration for P.W. 29's evidence on this point, except the vague statement of P.W. 23 that 'on the evening of the 20th also these handbills were distributed by them (persons mentioned by him earlier) and Devaiah (appellant) has also come then. The evidence adduced is insufficient to come to the conclusion that the appellant had distributed the pamphlets in question or that he had consented to their publication.

(32) The burden of proving that the statement referred to earlier is false and that the publisher of the statement believed it to be true is one of the petitioner. It has been laid down by this court in Anjaneya Reddy v. Gangi Reddy, 21 Ele LR 247

(Mys.) that in the cases like the present one as the petitioner is required to prove negative facts, the same has to be generally proved by placing the relevant circumstances before the court and leaving it to the court to draw necessary inference from the fact as it may not ordinarily be possible to prove those facts by evidence aliunde. The petitioner in this case complains that the statement in ex. P-I that the second respondent worked against the congress nominee in the Mandya Constituency in the 1957 general election is false. The question for decision is whether the petitioner has proved that statement to be false. The second respondent (R.W. 1) deposed that the had worked against the congress nominee in the Mandya Constituency in the 1957 elections. If that evidence is prima facie acceptable, then the burden of proving that that statement is true shifts to the appellant. But the question is whether on the facts and circumstances of this case, we can safely place reliance on the evidence of the second respondent when he says that he did not work against the congress nominee in 1957 general election. The second respondent is an interested witness. We have no doubt in our mind that the petitioner is only a name-lender for him. Therefore, the second respondent's evidence has to be scrutinised with care and accepted with caution. Admittedly after the general elections in 1957 some person accused the second respondent as having worked against the congress nominee in the Mandya Constituency. It is admitted that in that connection the Mysore Pradesh Congress Committee had constituted a Committee to enquire into the allegations made against the second respondent. It is proved that that committee had examined certain persons to find out the truth of the accusation made against him. The second respondent admits that some persons stated in the enquiry before that Committee that he had worked against the Congress nominee. But he says that he does not know what the conclusion of the Committee is. He contends himself by saying that the Committee did not take any disciplinary action against him. At the time of his examination before the Tribunal the second respondent was the Secretary of the Mysore Pradesh Congress Committee. Yet he did not choose to produce the report of the Committee. It is not his case that the Committee did not submit any report. The allegations made in the Exhibit P-I were previously published in a newspaper called 'Jagriti' in the year 1960. Admittedly the second respondent had not contradicted the accusations published in that newspaper. His

explanation for not contradicting those accusations is that he 'took no serious notice of it'. After taking into consideration all the available circumstances, we are unable to come to any definite conclusion as regards the truth or otherwise of the statement made in Exhibit P-I which means that the petitioner has failed to prove that the statement of fact in question is false. From this finding it follows that the petitioner has also failed to prove that the publisher of that statement believed that statement to be false or that he did not believe it to be true.

(33) Sri. Nambiar contended that the allegation complained of does not touch the personal character and conduct of the appellant and it is merely a criticism of his political activities. We are unable to accept this contention. The true implication of the allegation made is that the second respondent who was a traitor to his own party is unworthy of public support. In Anjaneya Reddy's case, 21 Ele LR 247 (Mys) referred to earlier, this Court laid down that when the false allegations of fact pierce the politician and touch the person of the candidate, they amount to allegations touching the character and conduct of the candidate. This is the position here.

(34) In view of the findings above, it is unnecessary to consider the true meaning of the expression 'being a statement reasonably calculated to prejudice the prospects of that candidate's election' though considerable arguments had been advanced at the Bar on that question. Judicial opinion is divided as regards the meaning to be given to that expression. We can conveniently postpone that question for future consideration.

(35) From the foregoing discussion, it follows that the petitioner has failed to prove his case. Hence this appeal is allowed, the order of the Tribunal is set aside and the Election Petition dismissed, with costs throughout. Advocate fee is fixed at Rs. 500/- (Five Hundred) in this Court as well as before the Tribunal.

(36) Appeal allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com