

**State of Orissa Vs. Gokul Barik**

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**Court :** Orissa

**Decided On :** Nov-20-1958

**Reported in :** AIR1959Ori97; 1959CriLJ752

**Judge :** G.C. Das, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 171D and 171F; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 196; [Representation of the People Act, 1951](#) - Sections 138

**Appeal No. :** Govt. Appeal No. 1 of 1958

**Appellant :** State of Orissa

**Respondent :** Gokul Barik

**Advocate for Def. :** Biseswar Mohanty, Adv.

**Advocate for Pet/Ap. :** S.C. Das, Adv. for ;Govt. Adv.

**Disposition :** Appeal dismissed

**Judgement :**

G.C. Das, J.

1. In this appeal the State of Orissa had challenged the order of acquittal recorded by Sri I. C. Misra, Sessions Judge, Bolangir-Kalaliandi, dated 19-10-1957. The simple question in this case is whether the respondent, Gokul Barik, is guilty of an offence under Section 171D of the Indian Penal Code. The facts leading upto this prosecution were that the respondent on the date of poll falsely personated himself at the polling station of Ghasian of the Patnagarh Assembly Constituency.

The defence was that he was otherwise known in the village as 'Ghuma Barik' and since the name of Ghuma appeared in the electoral roll, he in the bona fide belief that he had the right to vote, went to the polling station to cast his vote. His defence, however, was not accepted by the learned Magistrate who tried him at the first instance and convicted him under Section 171F and sentenced him to pay a fine of Rs. 100/-, in default to undergo Rule I. for three months. The respondent against this order carried an appeal to the learned Sessions Judge and was acquitted by him as stated above.

2. Mr. S. C. Das, appearing on behalf of the learned Government Advocate contended before this Court that the offence under Section 171D was complete since the respondent went to the polling station and falsely personated himself with the intent to vote on behalf of that person; and the learned Judge is wrong in acquitting him of the charge under Section 171D, I.P.C., as also of the charge under Section 171F.

Section 171D provides that whoever at an election applied for a voting paper on votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election

applies at the same election for a voting paper in his own name and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

Thus, the first element to be proved by the prosecution is that if the respondent had applied for a voting paper at the election in question. In order to constitute an offence under Section 171D, it is necessary to prove that the accused in doing that act with which he is charged was actuated by corrupt motive. It is admitted that the accused had not actually voted at the election.

The evidence in this case is that the respondent is also known as Ghuma Barik and he attempted, if at all, to cast the vote on behalf of Ghutna son of Nirakar (Vide the evidence of P.W. 4). It cannot be ruled out in this case that he was not acting under a mistaken belief. The 1st polling officer, P.W. 2 stated in his evidence that on the date of occurrence that is, 12-3-57, he was the 1st polling officer of Chasian polling station during the re-poll.

The respondent came to him with a chit (Ext. 1) and said that his name is Ghuma and that he is the son of Nirakar. When he found such a name in the electoral roll he issued the identity slip (Ext. 2), but in his cross-examination although he admitted to have said that the respondent gave his name falsely, towards the end he was constrained to admit that the respondent replied in the affirmative when he asked him if his father's name was Nirakar. P.W. 6 is the second polling officer.

He speaks about the challenge made by the agent of the candidate to the respondent casting his vote, He clearly admits in his cross-examination that 'I cannot remember the name of the voter and his father's name, with reference to the electoral roll on receipt of Ext. 2.' He further admitted that the accused did not cast his vote nor did he go to the second polling officer which is evidently a mistake for the third polling officer. because according to the practice it is the second polling officer whose duty it was to compare the entries as mentioned by the 1st polling officer in the identity slip with reference to the printed electoral roll and mark the fingers of the voters with indelible ink,

It is only then that the identity slip is issued by the second polling officer and the voter with the help of the identity slip as issued by the second polling officer gets the ballot paper; Thus, until the voter does not approach the third polling officer for purposes of getting the ballot paper, it cannot be said that he had applied for a voting paper within the meaning of Section 171D, I. P. C.

His approach to the second polling officer may, at best, as has been remarked by the learned Judge, amount to some preparation on his part for the commission of the offence; but preparation is not an attempt within the meaning of Section 511, Indian Penal Code. Hence the respondent cannot be convicted under that section or under Section 171D. I am supported in this view of mine by a decision of the Allahabad High Court reported in Malkhan Singh v. Emperor, AIR 1925 All 226. Mr. Das relied upon two decisions reported in Muichand v. Emperor, AIR 1937 Sind 21, and Emperor v. Ahmcd Haji Sidik, AIR 1941 Sind 109.

The facts in those cases are clearly distinguishable, where the finding was that the voter applied for a voting paper in false name. Hence he was clearly guilty under Section 171F, I. P. C. Similarly is the decision in the case in Mahomed Din v. Emperor, AIR 1929 Lah 52. The learned judge however while discussing the conviction under Section 171F, J. P. C. was of the opinion that since Section. 196, Cr. P. C. provides that no Court shall take cognizance of any offence punishable under Chapter IXA of the Indian Penal Code, unless upon complaint made by order of or under authority from the State Government or some officer empowered by the State Government in this behalf, and no sanction having been obtained in the instant case, the learned Magistrate should not have taken cognizance of the case of an offence under Section 171F and accordingly he was of the opinion that the entire trial was void ab initio due to lack of requisite sanction under Section 196, Cr. P. C.

Probably the attention of the learned Judge was not drawn to section 138 of the Representation of the People Act (Act 43 of 1950) which provides that in the Code of Criminal Procedure, 1898 after the word and figures'-

'Section 171F so far as it relates to the offence of personation' shall be inserted. True, no corresponding amendment has been made in the Criminal Procedure Code, but the Representation of the People Act having omitted the inclusion of Section 171F under Section 196 of the Cr. P. C., the learned Judge is clearly on the wrong in holding that the trial was void ab initio due to lack of requisite sanction under section 196 Cr. P. C.

3. Now in order to sustain a conviction under Section 171F, the prosecution must prove that there was an offence of undue influence or personation at the election committed by the respondent, in other words, the prosecution must prove that the accused voluntarily interfered or attempted to interfere with the free exercise of the electoral right or that the accused threatened any candidate or voter or any person in whom the candidate or the voter was interested with injury of any kind or that the accused induced or attempted to induce a candidate or a voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure. The prosecution has proved neither. Hence the conviction on the evidence as recorded in this case cannot be sustained under Section 171F, I. P. C. Accordingly in my opinion the learned Judge was quite correct in acquitting the respondent. The appeal is accordingly dismissed.

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