Anoop Vs. State of Kerala

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Court : Kerala

Decided On : Jul-12-2006

Reported in : 2007CriLJ2968; 2006(3)KLT711

Judge : R. Basant, J.

Acts : Evidence Act - Sections 3 and 114; Indian Penal Code (IPC), 1860 - Sections 171(D) and 171(F)

Appeal No. : Crl. R.P. No. 2340 of 2006

Appellant : Anoop

Respondent : State of Kerala

Advocate for Def. : P.A. Raziya, Public Prosecutor

Advocate for Pet/Ap. : P.V. Surendranath and; V.A. Abdul Jaleel, Advs.

Judgement :

ORDER

R. Basant, J.

1. This revision petition is directed against a concurrent verdict of guilty and conviction in a prosecution under Section 171(F) of the Indian Penal Code. The prosecution alleged that the petitioner appeared before the officers in charge of the polling station at Mokeri Government U.P School in Peringalam constituency at 3 pm on 11.9.99 and personated himself as one Kuttikkattu Pavithran in the said booth No. 30. He claimed a ballot paper to facilitate him to exercise his franchise. He was not the said Pavithran. He was not a voter in that booth or constituency. The prosecution thereby alleged that the petitioner had committed the offence punishable under Section 171(D) IPC - of applying for a voting paper in the name of any other person.

2. The proceedings commenced with Ext.P1 F.I statement, which is a report submitted by PW1, the principal officer of the polling booth to the police. The petitioner had allegedly handed over Ext.P2 slip to facilitate his claim to be the said Pavithran. Ext.P2 was also submitted to the police along with Ext.P1 report/F.I statement. Ext.P3 F.I.R was registered on the basis of Ext.Pl F.I statement. Investigation commenced and had culminated with the final report submitted by PW9.

3. The prosecution examined PWs. 1 to 9 and proved Exts.P 1 to P4. The accused did not take up any specific defence. In the course of cross examination of PWs. 1 to 4, officers who were discharging duties in the polling booth and PWs 5 & 6 who are polling agents of some of the political parties present in the booth, it would appear that a defence of total denial was taken. In the course of 313 examination, a new defence was taken up that the petitioner had gone to the polling both along with an old lady to help her to cast her vote. No defence evidence whatsoever was adduced. Courts below concurrently came to the conclusion that the prosecution has succeeded in establishing all ingredients of the offence defined under Section 171(D)

punishable under Section 171(F) of the I.P.C. Accordingly they proceeded to pass the impugned concurrent judgments. The petitioner is sentenced to undergo simple imprisonment for a period of 6 months.

4. Called upon to explain the nature of the challenge which the petitioner wants to mount against the impugned concurrent judgments, the learned Counsel for the petitioner submits that the evidence even if believed in toto is not sufficient to establish the elements/ingredients of the offence defined under Section 171 D punishable under Section 171(F). He contends that even if the entire evidence of the prosecution were accepted, the only conclusion possible is that the petitioner went into the polling booth and handed over to the officials there, a slip that is Ext.P2. The said slip or the conduct of the petitioner does not at all show that he had applied for a ballot paper. Evidence does not also show at all that the petitioner had represented himself to be Pavithran to whom the number in the slip Ext.P2 relates. The learned Counsel for the petitioner in these circumstances relies on the decision of the Orissa High Court in State of Orissa v. Gokul : AIR1959Ori97 to contend that the proved conduct of the petitioner falls short of the requirement of law in Section 171(F) that the indictee must have 'applied for' the ballot paper.

5. I have been taken through the evidence of all witnesses. It shocks me to note that PWs 1 to 4 who are public officials charged with the onerous responsibility of properly conducting the duties in relation to election at that booth for the Parliamentary Election have conducted themselves in a most irresponsible and objectionable manner. All four of them very conveniently admitted that an incident had taken place and that a person had claimed a ballot paper falsely. They admitted that he was apprehended and that he was handed over to the police along with Ext.P1 complaint enclosing Ezt.P2 slip. But shamelessly and totally abdicating their responsibility as polling officers charged with the onerous duty of proper conduct of the election they went on to state that they cannot identify the petitioner as the person concerned. We have the evidence of PW6, polling agent of a political party and PW8 police constable, who detained the petitioner at the booth immediately after the occurrence as also PW9-C.I to whom the petitioner was handed over at the booth when he reached there by PW1 along with Ext. P 1 complaint and Ext.P2 slip. It does not require the wisdom of Solomon to conclude that PWs 1 to 4 -either are out of fear or out of affection is not speaking the truth in refusing to identify the petitioner. Their refusal to identify is of no avail at all in this prosecution so far as the complicity of the petitioner is concerned. We have the evidence of PW6 of what happened in the booth. We also have the evidence of PWs 8 & 9 that the person who misconducted himself as alleged by PWs 1 to 4 was detained and handed over to PW9 and that person is the petitioner himself. Not a scintilla of doubt is raised in the mind of this Court about the complicity of the petitioner - that he was the one who allegedly misconducted himself as alleged by PWs 1 to 4.I shall later consider what steps ought to be taken so far as such irresponsible conduct of PWs. 1 to 4 is concerned.

6. Coming to the complicity of the petitioner, the learned Counsel for the petitioner relying on the decision of the Orissa High Court supra contends that in having entered the polling booth and in having allegedly handed over Ext.P2 slip to the officials at the polling station, the petitioner cannot be said to have 'applied for' issue of ballot paper. That is the crucial question to be considered in this case. I shall extract the Section 171D and 171F - the relevant portion.

171-D. Personation at elections:-Whoever at an election applies for a voting paper or 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:

17-F. Punishment or undue influence or personation at an election:Whoever commits the offence of undue influence orpersonation at an electionshall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.

emphasis supplied

7. What is to be proved in a prosecution for the offence under Section 171 D is that the indictee 'applied for

voting (ballot) paper' in the name of any person. It is not the law that it must be proved invariably that he had voted or had attempted to vote in the election. All that need be proved is that the indictee had applied for a voting paper. The legislature appears to have carefully worded the statutory provision. The laborious arguments advanced as to whether the conduct would amount to an attempt to commit the offence of voting need not appeal to this Court considering the precise nature of the offence defined under Section 171 D.

8. The indictee must have applied for a ballot paper. Only voting takes place inside the booth and a person who enters the booth against whom an allegation is raised that he had applied for the voting paper, I think must certainly be saddled with the responsibility at least under Section 114 of the Evidence Act to explain why he entered the polling booth and for what purpose. If he hands over a slip showing the name of a voter other than himself the irresistable inference to a prudent mind can only be that he was applying for voting paper in the name of such person. Courts cannot be oblivious to life and real life situations while appreciating oral evidence. Section 114 of the Evidence Act permits and mandates courts to draw reasonable inferences based on their experience of men and matters in life. It would be puerile for a court to look for specific evidence of the indictee entering the polling booth and making a ceremonial declaration in writing or in words that he is applying for a voting paper. That would be an unreasonable and perverse approach to the evidence tendered. That would not be the standards of an ordinarily prudent person which, law in Section 3 of the Evidence Act, mandates the courts to follow. Yes, there is no evidence to show that the petitioner made a formal declaration that he is Pavithran. He has not made any application in writing for any ballot paper. According to me the conclusion of fact which must be drawn by a prudent mind on the materials available is that the accused had entered the booth and had applied for a ballot paper. If his version that he had entered the booth along with an aged lady to help her to cast her vote were shown to be probable and the slip revealed the name of such a lady voter, the petitioner could have claimed the benefit of doubt. But significantly during the course of cross examination of PWs 1 to 4, there is not a whisper of a challenge of their evidence on the ground that he had entered the booth along with an old lady, who could not cast her vote by herself. The theory belatedly advanced in the course of 313 examination that he may have entered the booth for that purpose must fall to the ground and cannot succeed in generating any reasonable doubt in the mind of the Court.

9. The learned Counsel for the petitioner places reliance on the decision of the Orissa High Court in State of Orissa v. Gokul : AIR1959Ori97 . A later decision of the Gujarat High Court in State of Gujarat v. Chandulal : AIR1965Guj83 considered the acceptability of that decision. In a polling booth there are many officials. They call themselves the first polling officer, second polling officer, etc. The division of labour in a booth among the officials can have no bearing on the question as to whether the indictee had applied for a voting paper. A process has to take place in the polling booth. A person must enter the polling booth. Normally, he enters the booth only for casting his vote, unless he has a valid explanation otherwise. Admittedly, the petitioner has not offered any such explanation. Such a person may represent before any official that he has come to cast his vote. The fact that the polling agents of candidates had or had not raised any objection is irrelevant in deciding whether he had applied for a vote. When he applies for a vote, the polling agents could raise objections. That is exactly what happened in this case also as revealed from the evidence of PWs. 1 to 6. To say that before the first poling officer, the indictee had only mentioned his name; that when he appeared before the second polling officer, he had only wanted the officer to verify whether the vote had already been cast or whether his name is there in the voters list and that ultimately when he appears before the officer who hands over the ballot paper alone he can be said to have applied for ballot paper is to miss the woods for the trees. That would be an unreasonable and perverse approach. The mischief which the law seeks to prevent cannot be lost sight of. No artificial interpretation to the words 'applies for' can be imported merely because there is plurality of officials entrusted with the responsibility of considering an application by a voter for issue of ballot paper to him.

10. To me, it appears to be crucial that the petitioner has no case that he has a vote to be cast in that booth or any other neighbouring booth. He has no case that he erroneously and accidentally walked into this booth, whereas he really has a right to vote in another neighbouring booth. His conduct of appearing before the

polling officials and handing over the slip which does not relate to him, according to me, is sufficient declaration of his intention to apply for vote. The challenge against the conclusion of the court below cannot succeed. 1 agree with the courts below that the interpretation given by the Orissa High Court cannot respectfuly be accepted and the decision of the Gujarat High Court has to be preferred on the strength of the reasons and considering the purpose which the statutory provision seeks to achieve. No other contentions are raised on merits. The challenge on merit must in these circumstances fail.

11. The learned Counsel for the petitioner then contends that the sentence imposed is excessive. The courts below have sentenced the petitioner to undergo simple imprisonment for a period of 6 months. Under Section 171-F which I have already quoted above, the maximum sentence that can be imposed is imprisonment for a period of one year or fine or both. The learned Counsel for the petitioner prays that leniency may be shown on the question of sentence and the deterrent substantive sentence of imprisonment may be avoided.

12. I have anxiously considered this contention. I am unable to agree with the learned Counsel for the petitioner that the offence committed by the petitioner is not one which should attract a deterrent substantive sentence of imprisonment The pride of India is that its democratic structure has been maintained without any major dent from the date of its independence in 1947. While democracy has floundered all around in the neighbourhood, the Indian democracy has lived and survived all along though not ideally. Any attempt to undermine the democratic process must be frowned upon in unmistakable terms. There can be no place for misuse or abuse of the right to vote in a democracy. The petitioner has violated that very specific right. He may be prompted by lesser motives. It is possible that the lure for money alone may have prompted him. But I am not persuaded to agree that the petitioner deserves to be spared of any sentence of imprisonment.

13. The petitioner faces imprisonment for 6 months. I am inclined to consider the submission of the learned Counsel for the petitioner that an unduly long period of incarceration in prison has no penological objective to be achieved in a case like the instant one. The abhorrence of the enlightened polity to the crime must be expressed by the sentence imposed by the Court. The length of the period which the offender spends behind the bars need not be reckoned as vitally relevant. I am satisfied that a deterrent sentence of fine can be imposed along with substantive sentence of imprisonment for a reasonable period. Challenge can succeed only to the above extent.

14. In the result:

(a) This Crl. R.P is allowed in part:

(b) The impugned verdict of guilty and conviction of the petitioner under Section 171-F of the I.P.C are upheld:

(c) But the sentence imposed is modified and reduced. In supersession of the sentence imposed on the petitioner by the courts below, he is sentenced to undergo simple imprisonment for a period of 3 months and to pay an amount of Rs. 10,000/- as fine and in default to undergo simple imprisonment for a further period of 2 months.

15. The petitioner shall appear before the learned Magistrate on or before 31.08.2006 to serve the modified sentence hereby imposed. If the petitioner does not so appear, the learned Magistrate shall thereafter take necessary steps to execute the modified sentence hereby imposed.

16. Now comes the question whether any action deserves to be taken against PWs 1 to 4. Before deciding that question I feel it apposite that notice must be given to PWs. 1 to 4 and they should be heard on the question of further steps to be taken if any. The Registry shall register a Criminal Miscellaneous Case and issue notice to the learned Public Prosecutor, the Standing Counsel for the Election Commission and to PWs. 1 to 4. They shall appear before this Court on 31.08.2006 to continue the proceedings.

17. Call on 31.8.2006.