

Kalya Singh vs Genda Lal And Others on 28 February, 1975

Equivalent citations: 1975 AIR 1634, 1975 SCR (3) 783, AIR 1975 SUPREME COURT 1634, 1976 (1) SCC 304, 1976 2 SCJ 144, 1976 JABLJ 147, 1975 3 SCR 783

Author: N.L. Untwalia

Bench: N.L. Untwalia, A. Alagiriswami

PETITIONER:

KALYA SINGH

Vs.

RESPONDENT:

GENDA LAL AND OTHERS

DATE OF JUDGMENT 28/02/1975

BENCH:

UNTWALIA, N.L.

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UNTWALIA, N.L.

ALAGIRISWAMI, A.

CITATION:

1975 AIR 1634 1975 SCR (3) 783

1976 SCC (1) 304

CITATOR INFO :

RF 1976 SC 27 (12)

APR 1976 SC 271 (6)

RF 1978 SC 1162 (5)

R 1979 SC 734 (25)

ACT:

Representation of the People Act, 1951, S.
123(1)(A)(b)--Payment of money to a person to retire from
contest--Whether amounts to corrupt practice.

HEADNOTE:

Section 123(1)(A)(b) of the Representation of the People Act, 1951 defines bribery as 'any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person, whomsoever, with the object, directly or indirectly of inducing an elector to vote or

refrain from, voting at an election'. Respondent No. 1 filed an election petition challenging the election of the appellant that he had committed corrupt practice under s. 123(1)(A)(b) of the Act. The High Court declared the election void on the ground that the appellant, by paying a big sum in cash and promising payment of a similar sum by execution of a promissory note, made Respondent No. 3 to retire from the contest and publish a pamphlet that the electors should vote for the appellant and not for himself. Allowing the appeal to this Court,

HELD: 1 (a) It is not possible to sustain the judgment of the High Court holding the appellant guilty of corrupt practices within the meaning of. 123(1)(A)(b) of the Act. [790B]

(b) Mere payment of any gratification to a third person for securing or procuring some votes in favour of a particular candidate, without the establishment of any nexus between the money and the inducement to the voter, will of be sufficient to prove that the voter is indirectly induced on account of the payment of gratification to the third person. The gratification must have some connection or reflection, direct or indirect, in persuading the, voter to vote or refrain from voting atan election. If the inducement to the voter is not caused by the paymentof the gratification to a third person but by the persuasion or influence ofsuch third person it will not be possible to say that the gratification had any indirect inducement to the voter. [787F-11]

(c) Payment of any gratification to any person to work or canvass at an election is outside the ambit of the definition. [787H]

(d) If the inducement to the voter is free from the shade or colour of he gratification paid to the third person it will not be bribery. If, however, he inducement in a given case is Coloured or shaded by the payment of the ,ratification to a third person it would be an indirect inducement to the voter himself within the frame of the definition. In other words it is the fact of payment to the third person that must induce the voter. It is not enough that the third person induces the voter. The frame of any definition more often than not is capable of being made flexible. But the precision and certainty in law requires that it should not be made loose and kept tight as far s possible. [788A-B]

Ghashi Ram v. Dal Singh and others [1968] 3 S.C.R. 102 and Om Prabha in v. Abnash Chand & anr. [1968] 3 S.C.R. 111, followed.

Abdull Hussain mir v. Shamsul Huda & Anr. [1975] 3 S.C.R. 106 referred

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in the instant case money was not paid to the respondent as consideration for votes promised or as a bargain for getting votes but it was money paid to him to retire from the contest and to do propaganda and persuade the voters to vote

for the appellant. In spite of the propaganda and the appeal of the respondent no. 3 the voters were left free not to respond to his persuasion. [790A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 16(NCE) of 1973.

From the Judgment and order dated the 11th December, 1972 of the Madhya Pradesh High Court in Election Petition No. 22 of 1972.

G. L. Sanghi and D. N. Misra, for the appellant. S. S. Khanduja, for Respondent No. 1.

S. K. Gambhir, for Respondent No. 2.

The Judgment of the Court was delivered by UNTWALIA, J. There were three candidates to contest the election to the Legislative Assembly of Madhya Pradesh from the Bhainsdeshi Assembly (Reserved) Constituency in the last general elections. The appellant in this appeal under section 116A of the Representation of the People Act, 1951 hereinafter referred to as the Act, was declared elected to the seat defeating the other two candidates who are respondents 2 and 3. Respondent No. 1 filed an Election Petition in the Madhya Pradesh High Court challenging the election of the appellant on several grounds. The election of the appellant has been declared void by a learned single Judge of the High Court on one ground only. It has been held that he indulged in a corrupt practice within the meaning of Section 123 (1) (A) (b) of the Act. We shall confine the statement of facts in this case to the only ground on which the appellant's election has been set aside. Respondent No. 1 stated in paragraph 6 of his election petition "(iv) That after the date of withdrawal the respondent no.1 himself and through his aforesaid agents and workers with his consent was vehemently trying to induce the respondent no.3 to support the candidature of the respondent no. 1, and declare that the electors, should not vote for the respondent no.3, but should vote for the respondent no.1.

(v) That the respondent no.1, and his aforesaid agents and workers having failed in their attempt in inducing the respondent no.3 from either standing withdrawing or declaring to support the candidature of the respondent no.1, and the respondent no. 3, having started his election campaign in full swing. The respondent no.1 apprehended that if respondent no.3, remains in contest then, he had no chance of success. Therefore he made determined efforts, to see that the respondent no.3 makes an appeal to the electors of the constituency to the effect that the electors should vote for the respondent no. 1 and should from:

voting in favour of the respondent No. 3, and withdraws from the contest....."

(vii) That on 22-2-1972 at Paratwara respondent no.1 himself in the company of his agents and workers Shri N. K. P. Salve, Shive Bux Singh and Baboolal Pathak induced

the respondent no.3 to support the candidature of the respondent no.1 and offered to pay compensation to respondent no.3. The respondent no.3 agreed to support the candidature of the respondent no.1, and to publish a pamphlet to the effect that the electors should vote for the respondent no.1 and should refrain from voting the respondent no.3. The respondent no.1 offered a sum of Rs. 8,000/- to the respondent no.3 as compensation, which he had incurred in his election campaign.

On appreciation of evidence adduced before the High Court, on the relevant issues it recorded the following findings "ISSUE NO.1 (a) The respondent no.1 (Kalya Singh) asked respondent no.3 (Patiram) on the night intervening 22nd and 23rd February 1972 at Paratwara to withdraw from the contest and to support respondent no.1. Respondent no.1 also offered to pay Rs. 8,000/- as compensation to respondent no. 3 for the election expenses then incurred by him. ISSUE NO. 1 (b) The respondent no.3 agreed to support respondent no.1 and to issue a pamphlet requesting the voters to vote for respondent no. 1.

ISSUE NO. 1 (c) A sum of Rs. 4,000/- was paid in cash on 23rd February, 1972 by respondent no.1 to respondent no.3. A pronote for Rs. 4,000/- (Ex. P-3) executed by respondent No. 1 in favour of Shiv Darshan Singh was also handed over by respondent no. 1 to respondent no. 3. It was also agreed that in case the balance amount of Rs. 4,000/- was not paid by respondent no. 1, respondent no. 3 will hand over the pronote to Shiv Darshan Singh who will recover the amount from Respondent no. 1 and pay to respondent no. 3.

ISSUE NO. 1 (d) In the meeting held at Bhainsdeshi on 23rd February, 1972 it was announced by respondent no. 3 that he now supports the Congress. The said meeting was also addressed by respondent no.1, Shivbux Singh and Kawadkar. They also announced the withdrawal from the contest of respondent no.3, and asked the electors to vote for respondent no.1. ISSUE NO. 1 (e) The pamphlet (Ex. P-11) was distributed in the meeting of 23rd February, 1972."

Mr. G. L. Sanghi, learned counsel for the appellant in the first instance submitted that on the face of the pleadings in the Election Petition as also on the findings of fact recorded by the High Court it has gone wrong in law in holding that the appellant was guilty of having indulged in corrupt practice within the meaning of section 123 (1) (a)

(b) of the Act. He reserved his right to assail the findings by taking us through the evidence in case his contention in law were not found to be sound. Mr. S. S. Khanduja combated the argument put forward on behalf of the appellant and relied upon a decision of this Court in *Abdul Husain Mir v. Shamsul Huda & Anr.*(1) decided on 20th December 1974 to which one of us (A. Alagiriswami, J) was party. Mr. S. K. Ghambir appearing for respondent no.3 asked us, in the event of the appellant's success in the appeal to exonerate the said respondent of the charge of having indulged in a corrupt practice within the meaning of section 123(1)(B)(b) of the Act as found by the High Court. Since the point of law urged on behalf of the appellant was found to be sound, we did not proceed to examine the evidence in the case.

We may state in condensed form the findings recorded by the High Court against the appellant in the background of what was pleaded in the Election Petition. The appellant by paying a sum of Rs. 4,000/- in cash and promising payment of another sum of Rs. 4,000/- by execution of a promissory note made respondent no. 3 to retire from the contest, support, the candidature of the appellant find publish a pamphlet to the effect that the electors should vote for him and not for respondent no.3 Accordingly a pamphlet to that effect was published and distributed in a meeting held on 23rd February, 1972 at Bhainsdesi in which meeting the withdrawal from contest of respondent no. 3 was announced and the voters were asked to vote for respondent no. 1. The question for consideration is whether the findings aforesaid fit in the frame of definition of "Bribery" in section 123 (1) (A) (b) of the Act. The High Court has rightly pointed out that the case was not covered by sub-clause (a) of Clause (A) as respondent no. 3 was not made to withdraw from being a candidate at the election.

This view of the High Court is now squarely supported by the decision of this Court in Shri Umed v. Rai Singh and others⁽²⁾ which had over-turned a contrary view taken in the case of Mohd. Yunus saleem v. Shiv kumar Shastri and others⁽³⁾. We now proceed to read in full section 123 (1) (A) of the Act.

(1) Bribery', that is to say-

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing-

(1) [1975] 3 S.C.R. 106. (2) A.I.R. 1975 S.C. 43. (3) A.I.R. 1975 S.C. 1218.

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b)an elector to vote or refrain from voting at an election or as a reward to

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;"

We shall discuss the relevant law shorn of the addenda and the qualifying words in the above extract. Payment of any gratification by a candidate to any person not necessarily a person mentioned in sub-clause (a) or an elector mentioned in sub-clause (b) with the object of directly or indirectly inducing the person or an elector mentioned in those sub-clauses will make it a bribery within the meaning of the said word. It is significant to note from sub-clauses (i) and (ii) of clause (A) that post-facto payment-of any gratification as a reward will be bribery only if it is paid to the person or the elector mentioned in these sub-clauses. But does it lead to the

conclusion that payment of any gratification to any person other than an elector in all circumstances would be deemed to be with the object of indirectly inducing an elector to vote or refrain from voting at an election ? If money is paid to an elector to vote for a particular candidate undoubtedly it is a direct inducement to him to vote at an election. If money is paid to a third person in which payment of money an elector has got any direct or indirect interest and which induces him to vote at an election in favour of a particular candidate then also the inducement is brought about as a result of the payment of the gratification. But the point of difficulty may arise where any gratification is paid by or on behalf of a candidate to a third person for procuring some votes of some electors who may be under his (third person's) influence. Whether in such a case the payment has got any indirect inducement to an elector to vote at an election ? We are inclined to think that mere payment of any gratification to a third person for securing or procuring some votes in favour of a particular candidate without the establishment of any nexus between the money and the inducement to the voter will not be sufficient to prove that the voter is indirectly induced on account of the payment of gratification to the third person. The dictionary meaning of the word "induce" is to "prevail on, persuade." The gratification must have some connection or reflection, direct or indirect, in persuading the voter to vote or refrain from voting at an election. If the inducement to the voter is not caused by the payment of the gratification to a third person but by the persuasion or influence (not undue influence) of such third person it will not be possible to say that the gratification had any indirect inducement to the voter. Payment of any gratification to any person to work or canvass at an election is outside the ambit of the definition. It will make little difference if the worker or the canvasser on payment of gratification promises or indulges in tall-talk of securing or procuring some votes for a particular candidate. If the inducement to the voter is free from the shade or colour of the gratification paid to the third person, then it will not be bribery. If, however, the inducement in a given case is coloured or shaded by the payment of the gratification to a third person then it would be an indirect inducement to the voter himself within the frame of the definition. In other words it is the fact of payment to the third person that must induce the voter. It is not enough that the third person induces the voter. The frame of any definition, more often than not, is capable of being made flexible. But the precision and certainty in law requires that it should not be made loose and kept tight as far as possible.

On the facts found in this case respondent no. 3 after having retired from the contest merely canvassed to the voters some of whom may be his so called voters, to vote for the appellant Distribution 'on of the pamphlet and announcement in the meeting held on the 23rd February, 1972 to that and did not transgress the limit and made the act an indirect inducement to the voters to cast vote for the appellant on account of payment of the gratification by him to the third respondent.

In Ghasi Ram v. Dal Singh and others⁽¹⁾ followed in Om Prabha Jain v. Abnash Chand & Anr. ⁽²⁾ another decision in the same volume at page III, it was pointed out

by Hidayatullah J., as he then was, at page 110 "The money was not distributed among the voters directly but was given to Panchayats and the public at large. It was to be used for the good of those for and those against the candidate. No doubt they had the effect of pushing forward his claims but that was inevitable even if no money was spent, but good administration changed the people's condition. We cannot, therefore, hold that there was any corrupt practice. If there was good evidence that the Minister bargained directly or indirectly for votes, the result might have been different but there was no such evidence." It would thus be noticed that there must be a bargain for votes either directly with the voters or indirectly through some-one else., The voter may not be a direct party in the bargain but must be shown to have an indirect interest, in it. In Abdul Hussain Mir v. Shamsul Huda & Anr.(3) Krishna Iyer J. in his judgment delivered on his and on behalf of Sarkaria J. did not find the fact proved in that case to bring it within the ambit of section 123(1) (A) (b). The third learned Judge (A. Alagiriswami J.) did not record any finding to the contrary. Even so while interpreting the scope and ambit of section 123(1) of the Act certain observations were made in the majority judgment which were pressed into service by respondent No. 1 while the others were relied on by the appellant. Accepting the argument of Mr. Garg (vide page 1995 of the cyclostyled copy issued by the Supreme Court Bar Association) it was said "what the law aims at is a blow on the purchase of the franchise by direct or indirect methods. You may buy influence of important persons which is bad in morality but not yet in law."

Another passage (vide page 1996 of the cyclostyled copy) which (1) [1968] (3) S.C.R. 102.

(3) [1975] 3 S.C.R. 106.

(2) [1968] (3) S.C.R. 111.

occurs in that judgment runs thus : "The crucial point is the nexus between the gratification and the voters, one being the consideration for the other, direct or indirect.' The two passages extracted above squarely supported the contention of the appellant. While a few others which are being quoted below were pressed into service by learned counsel for respondent No. 1. The said passages at page 1995 are "If the candidate pays money to a V.I.P. of the locality to use, his good offices and canvass votes for him, it is a borderline case, but if the money is paid as consideration for votes promised to be secured by him using his sway, it is bribery even though indirectly exercised. If the Mulla had been paid the money striking a bargain for getting the votes-in his ambit of influence, it is electoral corruption. On the other hand, if it is money received for the purpose of organising effectively the election campaign by hiring workers, going round the places in car, meeting people and persuading them to vote for the candidate, it is proper election expense. In between these two extremes lies the case of a man who just receives a large sum of money, pockets it himself and promises to use his good offices to secure votes. This is a gray area. We are not called upon to pronounce on it in this case The touchstone in all these cases of payment of gratification is to find out whether the money is paid in reasonable measure for work to be done or services to be rendered. Secondly, whether the services as offered amount to a bargain for getting votes or merely

to do propaganda or to persuade voters to vote for the candidate, it being left to the voters not to respond to the suasion. It is a plain case if a voter is paid for his vote. It is; direct. It is equally plain if the payment is made to a close relation as inducement for the vote. The same is the case if it is paid to local chief on the understanding that he will get the votes in his pocket borough, in consideration for the payment." The third learned Judge in his separate note did not join in the views expressed in the passages just extracted above from the majority decision and said "I consider it, therefore, unnecessary to discuss whether if money is paid or offered as consideration for votes promised to be secured by a person using his influence it is bribery or not. It is a good policy not to discuss in a judgment questions which do not arise out of the facts of the case." The observations of Krishna Iyer J., which were relied on behalf of respondent No. 1 may occasion a debate or dispute if in a given case the facts so warrant. But it will be a futile exercise to do so in this case as the findings recorded against the appellant by the High Court are clearly outside the observations relied on by respondent No. 1. It was not a case where money was paid to respondent No. 3 as consideration for votes promised or as a bargain for getting votes. It was a money paid to him to retire from the contest and to do propaganda and persuade the voters to vote for the appellant. In spite of the propaganda and the appeal of respondent No. 3 the voters were left free not to respond to his persuasion. In no view of the matter, therefore, it is possible to sustain the judgment of the High Court holding the appellant guilty of corrupt practice within the meaning of section 123 (1) (A) (b) of the Act. That being so, it is plain that respondent No. 3 also must be exonerated of the charge levelled and found against him of bribery within the meaning of section 123 (1) (B) (b).

In the result the appeal is allowed with costs payable by respondent No. 1 and the judgment. and order of the High Court are set aside.

P.B.R.

Appeal allowed.