

## **Hem Raj vs Ramji Lal And Anr. on 11 December, 1974**

**Equivalent citations: AIR1975SC382, (1975)4SCC671, 1975(7)UJ85(SC), AIR 1975 SUPREME COURT 382, 1975 4 SCC 671 1975 2 SCJ 250, 1975 2 SCJ 250**

**Author: A. Alagiriswami**

**Bench: A. Alagiriswami, R.S. Sarkaria, V.R. Krishna Iyer**

### **JUDGMENT**

A. Alagiriswami, J.

1. The appellant, an unsuccessful candidate in the election to the Legislative Assembly of Haryana from Hathin constituency held on 11th March, 1972, has filed this appeal against the dismissal of his election petition, challenging the election of the 1st respondent, by the Punjab a Haryana High Court.

2. There were four allegations of corrupt practice against the returned candidate, that he was guilty of (1) the corrupt practice of bribery, (2) the corrupt practice of publication of a false statement relating to the personal character of the appellant falling under Section 123(4), (3) the corrupt practice of hiring and procuring vehicles falling under Section 123(5), and (4) the corrupt practice of incurring and authorizing expenditure in contravention of Section 77 of the Representation of the People Act. Charges (3) and (4) were given up even before the High Court and charge (1) was given up before this Court. The only charge that survives for consideration by this Court is the charge of publication of a pamphlet containing false allegations against the appellant which fall under Section 128(4) of the Act. We may, however, have to refer to the evidence in respect of charge (1) While considering the allegations under charge (2).

3. As we agree with the High Court in its conclusions we are referring only to the broad features of evidence. The allegations regarding the charge under Section 123(4) are found in paragraph 6 (b) and 8 of the election petition. In paragraph 8 it was stated that the returned candidate finding that he was bound to lose, became desperate and he in league with his election agent and Shri Hukam Chand of Palwal and Dharam Chand of V. Hathim decided to indulge in character assassination of the petitioner. This was said to have been in the form of a pamphlet which reads as follows:

IMMORAL CANDIDATE FROM HATHIM CONSTITUENCY Shameful black deeds of Shri Hem Raj Brothers and Sisters We feel ashamed in telling you that this time again that person has been given Congress ticket because of whose atrocities the public is already upset. By the black deeds of Shri Hem Raj even today the sisters and daughters of the area are exiled from their houses in the same manner as the young

women of Bangladesh. So many teachers and nurses have become Victim of his sexual lust. The chastity of so many victims belonging to small castes has been taken away. The Sunari and Kumhari scandal of his own village is hidden from whom ?

If Shri Hem Ramj is successful again then the honour of sisters and daughters will not be safe. It is strongly appealed to you that you should secure honour of your sisters and daughters by defeating this lustful wolf.

Brothers we pray to you that you should make Ch. Ramji Lal Dagar, independent candidate, who is a young man of character, successful. His election symbol is elephant.

Symbol of Elephant APPELLANTS RESIDENTS OF HATHIM CONSTITUENCY It should be stated even at this stage that in the election petition as originally filed the names of Hukam Chand and Dharam Chand were not found and also that though their names were mentioned in the amended election petition they were not examined On the other hand the appellant's case as developed during the trial was that Kishan Singh, the 5th respondent, election agent of the successful candidate and one Debi Singh, the man who wrote the manuscript, went to the Samta Press at Palwal on 8th March, 1972 and gave the manuscript to the proprietor of the press, Mukhi Bhim Sen and placed an order for 5,000 copies. Debi Singh himself was not examined. But Kishan Singh gave a story as to how he came to write on the back of the manuscript asking Bhim Sen to print 5000 copies, a story which the learned Judge characterised as one from the Arabian nights.

4. Bhim Sen was summoned to produce his account book. He did not produce the account books. He produced a note book purporting to be an order book. A mere look at it would show that it is a got up one. It contains entries only on about 6 or 7 pages and the account relating to the 1st respondent though of an earlier date is found after entries relating to other persons which are of later dates. Names of two persons for whom he did printing work are not found in it.

5. The 1st respondent was particular about the production of the account books and he applied for the appointment of a commissioner to go to Palwal and get them But the Commissioner was unsuccessful and Bhim Sen Mukhi could not be got at. If the appellant wanted to establish the fact of printing it was he that should have taken steps to get the account books. But he did not interest himself in that. The only other documentary evidence was the carbon copy of the cash memo. This contains a ???ale entry referring to the pamphlet in question. It contains the words 'Kali Kartoot' meaning black misdeeds. No such descriptive entry is found with regard to any other pamphlet printed in this press. It is obvious that this phrase is put in for evidentiary purpose The printing is said to have been done at the instance of the 5th respondent, Kishan Singh, who was the 1st respondent's election agent After withdrawing from the contest on 14-2-1972 he was appointed the 1st respondent's election agent on 7-3-1972 This Kishan Singh seems to be a shady character. It was on the basis of a letter written by him to another candidate that the charge of bribery was sought to be substantiated That charge, as already mentioned, was not even pressed before this Court The

High Court has characterised his evidence with regard to that charge as a fairy tale and that though he claims to be a supporter of Ramji Lal he is not and Ramji Lal has been taken in by his pretensions. That characterisation applies in regard to his evidence on this charge also. Ramjilal really does seem to be a simpleton to have appointed him as his election agent. It was his endorsement on the back of the manuscript which was printed in the form of a pamphlet that the appellant sought to build up his case that the pamphlet was printed by the successful candidate's election agent. We cannot help observing that whether his version as to how he came to write on the back or the manuscript is acceptable or not, no weight could be attached to the entry in the cash memo in Kishan Singh's name. It is quite easy to put in those two words to give a twist to the whole case. The Bhim Sen Mukhi was out to help the appellant is obvious from the fact that he did not bring the account book which he was summoned to produce but produced the cash memo which he was not summoned to produce and made himself scarce when attempts were made to get at the accounts books. We have already mentioned that he also produced a notebook purporting to be the order book which was a got up one. Furthermore, Bhimsen did not send this poster to the District Magistrate nor to any other officer as required under Section 127A of the Representation of the People Act nor did he take a declaration as required under that section. He did not inform the appellant about the printing of this poster though he was doing printing work for him. He did so only much later. It is curious, furthermore, that the appellant sent a notice to Bhim Sen about the printing of this pamphlet but neither sent a notice to the 1st respondent nor took any other steps. The pamphlet contained matter which was so defamatory of him that it is doubtful whether if it had been published, the appellant would have kept quiet.

6. According to the appellant Dharam Chand, Hukum Chand, Ramji Lal and Kishan Singh and some others decided to print the poster. He does not remember the names of the persons who told him. He says Hukum Chand and Dharam Chand did not tell him about it. But all the same he has mentioned their names in the petition. He did not mention to his lawyer about the printing of the poster and who gave the information. It is, therefore, obvious that he was really looking out for some obliging witness but could not get any.

7. On behalf of the 1st respondent two documents (1) a bill given to the Co-operative Society, and (2) another bill given to the Dayanand Gurukul, Gadpuri were produced to show that the carbon copy of the cash memo alleged to be of the bill given to Kishan Singh in respect of the printing of the poster in question could not be relied upon. Though much of the criticism of the learned Judge based on these two documents may not be quite apt, one is able to infer from them that Bhim Sen Mukhi apparently was got a number of bill books which he can use as occasion demands. We are, therefore, in agreement with the learned Judge that the pamphlet in question was not printed on the 8th of March but should have been brought into existence later for the purpose of the election petition.

8. The printing of the poster in question was sought to be also proved by a complaint which the appellant preferred before the Deputy Commissioner. P W 1 gave evidence that the pamphlet was with the application. But the endorsement merely reads "Send a copy to S.S.P." It is not clear from this as to a copy of what was sent. Apparently it was a copy of the appellant's petition that was sent. The application itself does not show that the pamphlet was enclosed along with the application. Therefore, it is not possible to infer from this endorsement that the pamphlet was sent along with

the application to the Senior Superintendent of Police to whom the application was endorsed. The 1st respondent summoned the Senior Superintendent of Police to produce the relevant papers but he claimed privilege and did not produce it. One would have thought that it was the appellant who should have taken steps to get the documents produced by the Senior Superintendent of Police if he wanted to establish that he had given the poster to the Deputy Commissioner along with his application. On the other hand 1st respondent's effort to get at it was frustrated by the attitude of the Senior Superintendent of Police. We find it difficult to believe that P W 1, the Assistant from the Deputy Commissioner's office could remember that the pamphlet was with the application. It is also interesting to note that according to the appellant he received only one copy of the poster on 9th March from Loka Ram, P.W. 33. But in his evidence the appellant mentioned that he got 2 3 pamphlets. Then there is the book from the election office which shows the receipt of the application from P W 1. That again contains the words "with poster". While we do not agree with the learned Judge about the very detailed and minute criticism regarding the reliability of this book and the conclusion that it is a manufactured one we are of opinion that it is not difficult for an obliging clerk to add the words "with poster" which would just serve the purpose. Therefore, much reliance could not be placed on this document either. There is the further fact that the 1st respondent asked the Deputy Commissioner for a copy of the poster and a reply was sent to him that no such pamphlet had been received in his office. We are, therefore, of opinion that it has not been satisfactorily established that the 1st respondent and his election agent were responsible for printing the pamphlet.

9. In considering matters like this we must keep in mind the fact that the choice of the voters freely expressed should not be lightly interfered with. An allegation of corrupt practice is of a quasi-criminal nature exposing the returned candidate not merely to the risk of his election being set aside but also of his being disqualified to stand for election for a considerable number of years. He also runs the risk of being prosecuted. The charge of a corrupt practice should, therefore, be proved beyond reasonable doubt and that has not been done in this case.

10. We must also point out that this petition has been in the nature of roving and fishing enquiry. Four charges were made against the 1st respondent and only one of them ultimately came to the press before this Court. At the earliest stage the persons who informed the appellant about the printing were not mentioned. It was only later, as we have already mentioned, that the names of Hukum Chand and Dharm Chand were mentioned. But they were not examined. Devi Singh the alleged author of the manuscript, was not examined either. In the list of reliance filed along with the election petition the account books of the Santa Press including cash memos and bills were mentioned but the account book itself was not produced.

11. During the course of the trial of this petition the appellant seems to have cast his net far and wide in order to be sure of obliging and convenient witnesses. In his list of witnesses he gave the names of two Radhevs but examined a different Radhev as P W. 14. He gave the names of two Sohan Lals, one to prove the distribution of the poster, and another to prove the corrupt practice of hiring of vehicles. But only the latter was examined. Instead of speaking of the corrupt practice of hiring vehicles he spoke of the distribution of posters. The names of two Harchandis were given in the list but a 3rd Harchandi was examined as P.W. 18. It was really difficult to get at the truth through the

various twists and turns which the petitioner's case as well as the evidence adduced on his behalf took in the course of the attempt to somehow make some charge stick and have the election set aside.

12. We have also carefully gone through the evidence regarding the distribution of the posters and find them worthless and unreliable.

13. The petitioner's case as well as the evidence of his witnesses is thoroughly unreliable. The appeal is dismissed with costs.