

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

Sr.No.235-CR-4158-2014

Decided on: 05.05.2015

RAJA RAM

.....Petitioner

VS

UDA RAM & ANR

.....Respondents

CORAM HON'BLE MR. JUSTICE K.KANNAN

Present Mr.P.K.Ganga, Advocate for the petitioner.

Mr.D.S.Malya, Advocate
for Mr. S.S.Dinarpur, Advocate
for the respondents.

K.KANNAN, J

I cannot sustain an order passed by the Court allowing for summoning of ballot papers on a mere contention raised by a defeated candidate that votes had been cast against names of deceased person in the voter list. If there is any evidence that ballot papers had been issued against names who had already died and the total tally of votes polled showed that votes must have been cast also in the names of dead persons, the ballot papers could be summoned. It is the particular type of evidence which is brought at the trial which can give a justification for summoning the records. Otherwise it will be a very serious infraction into the secrecy of the manner how the votes were cast. There has been simply no justification offered by the respondents for summoning the original.

I asked the counsel appearing on behalf of the respondents to spell out the basis of his apprehension that votes had been cast against the names of deceased persons and what was the evidence so available at the trial. The counsel is unable to give any responsible reply to such a straight forward query. It has been held in the decision of Hon'ble Supreme Court in **Sathi Roop Lal versus Malti Thapar 1998(8) SCC 695** that there needs to be some *prima facie* material before a recount is ordered or ballot paper brought to Court. The Supreme Court while dealing with the case of allegation of bogus electors impersonated dead persons. There was evidence placed in that case that as per official record there has been tickmark against dead person for having used ballot paper. The Supreme Court

observed that even in such a situation, it would only mean demand of ballot paper at instance of someone did not show that vote was also cast by that person. The contention of recounting is repelled due to absence of *prima facie* evidence. The same contention taken in this case.

The order cannot be sustained and it is set aside.

Civil revision is allowed.

05.05.2015**(K.KANNAN)**

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JUDGE