

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 83 of 2012

From the judgment and order dated 25.01.2012 of the A.S.J., Balasore
in S.T. No.27/12 of 2004.

Pramod Kumar Pal

....

Petitioner

Versus

State of Orissa

....

Opp. Party

Advocates appeared in this case through Hybrid Mode :

For Petitioner : Mr. D.P. Dhal, Senior Advocate

For Opp. Party : Mr. Sibani Shankar Pradhan,
Addl. Govt. Advocate

CORAM:

JUSTICE SAVITRI RATHO

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Date of hearing : 23.12.2021 Date of Judgment : 05.01.2022
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Savitri Ratho, J. 1. The petitioner who is facing trial for commission of offences punishable under Sections 498-A/307/34 of the Indian Penal Code has filed this revision application challenging the order dated 25.01.2012 passed by the learned A.S.J., Balasore in S.T.

No.27/12 of 2004 rejecting the application to exhibit certified copies of two voter lists as public documents. .

2. The allegations in brief are that the daughter of the informant was prosecuting her study in +3 , 1st year Arts staying in a mess. The informant came to learn that his daughter is staying in a DTP Centre with the petitioner as his wife. His daughter informed him that the petitioner and his elder brother were demanding Rs.1,00,000/- towards dowry or else they will drive her out . It is further alleged that eldest son in law of the informant had asked accused Pramod Kumar Pal for seven days time discuss his demand with other relatives and communicate the decision to him . But on 06.03.2003 at around 8.00 p.m. , he got news that on 05.03.2003 , the petitioner had removed his daughters jewellery, beat her and tried to drive her out , When she did not leave , he set her on fire after pouring kerosene oil on his daughter who sustained severe burn injuries all over her body. The informant got her treated at Balesore Hospital and her condition was serious .She informed her family that her husband wanted her to go and get Rs 1,00,000/- towards dowry, when she did not listen , he poured kerosene on her and set her on fire . On his information, Soro P.S. Case No.38(4) of 2003 was registered against the petitioner and his brother Laxmidhar Pal for

commission of offense punishable under Section – 498-A , 307 , 34 IPC and Section – 4 of the Dowry Prohibition Act .

After completion of investigation , charge sheet was submitted against the petitioner only .

3. In the trial , the prosecution examined 14 witnesses and one witness was examined as D.W.1 only on 01.12.2011. After examination of D.W.1, an application was filed on behalf of the petitioner on 12.01.2012 to exhibit the voter list of the year 2003 and 2006 pertaining to Basta Block. The certified copies of the voter lists was also produced before the Court and it was stated in the application that the certified copy of the voter list being a public document can be admitted into evidence without formal proof.

4. By order dated 25.01.2012 the learned trial Court rejected the application on the ground that none of the documents contains the name and seal of Election Officer without which the same cannot be treated as public document.

5. Mr. D.P. Dhal, learned Senior Advocate for the petitioner submits that the reasoning of the learned Chief Judicial Magistrate, Balasore is perverse and the impugned order is liable for interference as under the provisions of Section 76 and 77 of the Indian Evidence Act, the voter list being a public document, certified copies of such

documents can be admitted in evidence without formal proof. He further submits that on a perusal of the voter lists, it can be seen that they are certified copies of the voter list and the same has been issued from the office of Sub-Divisional Magistrate and Office, Balasore, and bears the signature and seal in the issuing officer. He further submits that this Court as well as the Apex Court in a good number of decisions construing Sections 35, 74, 76 and 77 of the Evidence Act have been pleased to observe that the certified copies of electoral roll prepared under the Representation of People Act is admissible in evidence without the author thereof and the person supplying the information being examined in the case. He relies on the decisions in case of *Kirtan Sahu & Others vs. Thakur Sahu & Others* reported in *1972 Vol.38 (CLT) 82 (F.B.)*, *Naladhar Mahapatra & Anr. vs. Seva Dibya & Others* reported in *AIR (1991) Orissa 166*, *Harpal Singh & another vs. State of Himachal Pradesh* reported in *AIR 1981 (SC) 361*, *C. Thimmappa vs. Mariyappa (D/L.RS)* reported in *AIR 2008 Karnataka 107*, *Jaswant Singh vs. Gurdev Singh & others* reported in *(2012) 1 SCC 425* : and *A.A. Kilachand vs. State of Karnataka* reported in *ILR 1992 KAR 2170* in support of his submission.

6. Mr. Sibani Shankar Pradhan, learned Addl. Govt. Advocate submits that there can be no dispute that the certified copies of public documents can be admitted in evidence without formal proof but the evidentiary value of such documents has to be considered in accordance with law along with other evidence. He has also submitted that since voter lists are prepared on basis of information provided by a member of the family, no sanctity can be attached to the entries therein and it has to be considered alongwith other evidence.

7. The decisions relied on by the learned counsel for the petitioner are mainly on the point that entries in public records are made in the discharge of official duties for which they are admissible under Section 35 of the Indian Evidence Act without its author being examined and that certified copies of such public documents prepared under Section 76 of the Act are admissible in evidence without being proved by calling its author.

A Full Bench of this court in the case of ***Kirtan Sahu*** (supra) has held that

“ the electoral roll prepared under the Representation of the People Act is admissible in evidence without the author thereof and the person supplying the information being examined in the case.”

It has further held:

“Therefore, when the electoral roll is produced before the court by virtue of Section 81 read with Section 4 of the Evidence Act, the court shall regard the fact entered in the electoral roll as proved unless and until it is disproved”...

This Court in the case of **Naladhar Mohapatra** (supra) has held as follows:

24. From all these decisions it is clear that once a document is admitted into evidence, without objection the document cannot be challenged at a subsequent stage, but in a case where a document which cannot be admitted into evidence due to some prohibition in law, even if it is admitted into evidence without objection, the Court can come to a finding that the document though admitted is legally inadmissible.

In the case of **Harpal Singh** (supra) the Apex Court held that entry in the birth register was made by the concerned official in the discharge of his official duties for which it was clearly admissible under Section 35 of the Evidence Act and that it was not necessary for the prosecution to examine its author.

In the case of **C. Thimmappa** (supra) , the Karnataka High Court approved the reasoning of the lower appellate court which refused to accept the sketch map for its entire contents without

examination of the officer who had issued the endorsement regarding encroachment as such entry had been made later .

The Supreme Court in the case of **Jaswant Singh** (supra) held that the compromise had become a part of the decree which was passed by the court of Sub-Judge Ist Class, Hoshiarpur. Hence, it is a public document in terms of Section 74 of the Indian Evidence Act, 1872 (in short 'the Act') and certified copy of the public document prepared under Section 76 of the Act is admissible in evidence under Section 77 of the said Act. As the decree was passed and drafted in the light of the compromise entered into between the parties, viz., the plaintiff and the defendants, the certified copy of such document which was produced before the Court, there is presumption as to the genuineness of such certified copy under Section 78 of the Act. The Court also noted that the appellant had not challenged the genuineness of certified copy in any manner for which there was no reason to doubt its authenticity.

The decision reported in *A.A. Kilachand* (supra) is not relevant to this case as in that case , the learned Court had refused to issue / grant certified copy of public documents which was held to be illegal.

In the case of ***Shiv Ram vs. Shiv Charan*** reported in ***AIR 1964 Raj 126*** , dispute was raised as to whether a candidate had the requisite age qualification of 25. Their Lordships were not inclined to attach finality to the entry in the electoral roll which was relied upon to substantiate the evidence of age. In paragraph 44 of the judgment they observed as follows :

"As we have already pointed out above, no finality can attach to these entries as regards the qualifying age of a candidate at an election and they are at best a piece of prima facie evidence which are liable to be rebutted. Having regard to the evidence led on the opposite side, we are definitely in agreement with the Election Tribunal that these entries have been successfully rebutted in the present case."

In the case of ***Surendranath Das vs. Sachi Dei*** reported in ***II (1992) DMC 375***, this Court has held as follows :

"15. Next material for consideration is the Voter list (Ext. 12/A) in respect of the plaintiff. In Ext. 12/A serial Nos. 1 and 2 indicate plaintiff to be son of Rama Chandra. No explanation is coming forward why name of Rama Chandra does not find place in the voter list. Similarly, name of defendant No. 1 also does not find place in the voter list. It is true that there is presumption of correctness of a voter list. This presumption, however, can be rebutted by other evidence which may be direct or circumstantial."

16. *In I.L.R. 1972 Cut. 161, (Kirtan Sahu, after him Uma Sahnani and Others v. Thakur Sahu and Others). Full Bench of this Court held that voter's list having been prepared in due course of official business has evidentiary value. In that case, it was not considered if incomplete voter's list would have evidentiary value. Omission of name of two of the occupants in the same house as claimed by the plaintiff without any explanation coming forward is a ground not to accept the voter list on its face value though for the purpose of election the same is final and binding*

17. *Entry in voters' list does not create any relationship nor does it destroy existing relationship. It is only a piece of corroborative evidence. Since Ext. 12/A is not complete in all respects I am not inclined to accept the same as a piece of evidence to come to conclusion that the plaintiff is son of defendant No. 1 in this case specially when there is no material that on instructions of defendant No. 1 this voter list was prepared.”*

In the case of ***Sushil Kumar vs Rakesh Kumar reported in (2003) 8 SCC 673***, the Apex Court had observed as follows:

“Electoral Roll and Election Commission of Identity Card:

51. *In both the aforementioned documents the age of the respondent was stated to 24 years as on 1.1.1995. According to the respondent he was born in 1968 and, thus, on the said date he would have been more than 24 years of age. Why*

such an inconsistency crept in has not been explained. The High Court, however, did not give much importance to the said fact and proceeded on the basis that these documents go to show that the respondent was major on that day. It is conceded by Mr. Mullick, learned counsel appearing on behalf of the respondent that the date of birth of a voter contained in the voter list and the election identity card issued by the Election Commission of India is not conclusive. They are recorded as per the statements made by the person concerned. Be that it may, it was for the High Court and consequently for this Court in appeal to consider the said materials on records in their proper perspective. We may, however, observe that the said documents do not conclusively show that the respondent was major on that day.”....

In the case of ***Kamini Das vs Upendra Biswal*** reported in ***101 (2006) CLT 349: 2006 (1) OLR 16*** , a Division bench of this Court has held as follows:

... “We reiterate that entry of age or other description in the voter list of a person is not conclusive proof of such age or status, but that is probative evidence with rebuttable presumption. Therefore, description of age of the opposite party as 19 years in the Voter List of 2002 (Ext.2) is rebutted by the Voter List-Ext.C having been prepared for 1996..”

In the case of *Babloo Pasi vs State of Jharkhand* reported in (2008) 13 SCC 133, the Supreme Court has held as follows :

“23. Therefore, on facts at hand, in the absence of evidence to show on what material the entry in the Voters List in the name of the accused was made, a mere production of a copy of the Voters List, though a public document, in terms of Section 35, was not sufficient to prove the age of the accused.

8. After carefully considering the submissions of the learned counsels, the statutory provisions and the decisions referred to above, I am of the opinion that the certified copies of the voter lists should have been admitted into evidence without formal proof.

9. The revision is accordingly allowed and the impugned dated 25.01.2012 passed by the learned A.S.J., Balasore in S.T. No.27/12 of 2004 is set aside. The voter lists shall be admitted in evidence without formal proof. But it is necessary to clarify that there is presumption of correctness of a voter list. But the contents of the voters lists have not been proved and the presumption of correctness can be rebutted by other evidence which may be direct or circumstantial.

10. Since the case is pending since 19 years and trial has been stalled for almost 10 years due to pendency of this case, the learned

trial Court is directed to take steps for disposal of trial by the end of March 2022.

11. The CRLREV is accordingly disposed of .

12. Urgent certified copy of this order be granted on proper application.

13. A copy of this order be sent to the learned trial Court (Assistant Sessions Judge , Balasore) for compliance.

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(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated 05.01.2022 / Sukanta