

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3700 OF 2007

Baldev Singh Mann .. Appellant

Versus

Surjit Singh Dhiman ..Respondent

JUDGMENT

Dalveer Bhandari, J.

1. This appeal has been preferred under section 116A of the Representation of the People Act, 1951 (hereinafter referred to as the said Act) against the judgment dated 8.12.2006 passed by the High Court of Punjab & Haryana at Chandigarh in Election Petition No. 16 of 2002.

2. The facts which are necessary to dispose of the appeal are recapitulated as under:

The Election Petition No. 16 of 2002 was filed by the defeated candidate appellant Baldev Singh Mann who lost

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the election from 87-Dirba (Punjab) Assembly Constituency which was held on 13.2.2002.

3. The appellant Baldev Singh Mann filed his nomination papers as a candidate of Shiromani Akali Dal (B) (for short "SAD"), whereas respondent Surjit Singh Dhiman filed his nomination papers as an independent candidate. In the election, respondent Surjit Singh Dhiman got 35,099 votes and appellant Baldev Singh Mann got 34,103 votes and consequently, the respondent was

declared elected.

4. The appellant filed this election petition under sections 80 and 81 read with sections 98, 99 and 100 of the said Act before the Punjab & Haryana High Court. By a comprehensive judgment, the election petition was dismissed. Aggrieved by the said judgment, the appellant has preferred this appeal.

5. The appellant pleaded that the respondent's election was liable to be declared void as the respondent had committed corrupt practices by obtaining and procuring assistance, for the furtherance of the prospects of his election, from Gurbachan Singh Bachhi (hereinafter referred to as "Bachhi") and B.S. Shergill (hereinafter referred to as "Shergill") who were in the service of the government and were gazetted officers.

6. According to the appellant, Bachhi was Administrative Member of the Punjab State Electricity Board. He was appointed on 24.12.2001 and belonged to Bhattiwal Khurd, a village falling in Dirba Constituency.

7. Shergill was posted as Deputy Director, Panchayats, Punjab and was a gazetted officer in the service of the government. He had also remained as the Additional Deputy Commissioner, Sangrur for four years and belonged to Rajpura, a village in Dirba Constituency.

8. According to the appellant, the role of Dhiman and Bachhi which amounted to corrupt practices under section 123(7) of the said Act are as under:

(A) On 23.1.2002 respondent met Bachhi at the office of Executive Engineer, Punjab State

Electricity Board (P.S.E.B), Dirba at 7 p.m. in the presence of Kirpal Singh, Sarpanch of Ladbanjara

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Kalan and Gurtej Singh, Sarpanch of Karyal and had asked Bachhi to help him in the elections. After detailed deliberations Bachhi agreed to help and support Dhiman. From 24.1.2002 to 26.1.2002, the respondent and Bachhi were seen by Karnail Singh of Chatha Nanhera, Upender Singh Honey and Teja Singh Tiwana of Chajjli, Kashmira Singh of Karyal and Darshan Singh, Nazam Singh and Labh Singh of Dirba jointly contacting persons and asking them for their support in the elections. They had also contacted Shamsher Singh of Chatha Nanhera and Natha Singh and Harnek Singh of Chajjli and sought their support. The appellant had come to know about these facts on 27.1.2002 at 10 a.m. at Dirba from Karnail Singh, Shamsher Singh, Natha Singh, Harnek Singh, Upender Singh, Teja Singh Tiwana, Kashmira Singh and others when Parkash Singh Badal, President SAD, had come to Dirba on 27.1.2002 to address an election rally in support of the appellant. The appellant and others complained to him about the activities of Bachhi whereupon Bachhi was expelled from the

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primary membership of SAD for anti-party activities.

(B) Bachhi alongwith Dhiman visited Rajpura on 3.2.2002 at 11 a.m. and held a meeting at the house of Jarnail Singh where Ram Karan, Sukhdev Singh and others had also assembled. All these persons were voters of Dirba Constituency. Bachhi had taken N.S. Bhullar, an Assistant Engineer (PSEB) with him.

The said Bhullar was a relative of Jarnail Singh. Bachhi threatened Jarnail Singh's relatives that in case they did not vote and support the respondent he would create problems for their relative Bhullar.

(C) On 4.2.2002, the appellant was informed by Naranjan Singh and Mehar Singh of Kala Jhar that a day earlier at about 2 p.m. Bachhi along with the respondent had met them and asked for support and vote. Later, the appellant was also informed by Jasbir Singh, Dhanvir Singh and Gogi Singh that Bachhi had contacted them in their village on 3.2.2002 at 3.30 p.m. and canvassed for votes in favour of the respondent.

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The appellant in his complaint to the Election Commission had also complained that Bachhi had been canvassing for votes in favour of the respondent at Channo and Kala Jhar.

(D) On 5.2.2002, at 5 p.m. a meeting was convened at Chandani Tourist Complex in Nadampur of the voters belonging to Nadampur, Balad Kalan, Phuymanali and Turi. The respondent was present at this meeting. Some officers of the PSEB were also present. Names of some of the persons who were present there at that time were mentioned in the petition and names of the PSEB employees were also mentioned. At this meeting, Bachhi asked the persons present to vote and support the respondent. The respondent also thanked Bachhi and others for supporting him. The appellant came to know about this meeting on 9.2.2002 from Gurmeet Singh and Hakam Singh of Nadampur and Labh Singh of Phumanwali and

he immediately sent a fax message to the Chief Election Commissioner. At the said meeting, the respondent had introduced some persons of

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Chatha Nanhera to Bachhi and asked him to help them in getting out-of-turn power connection from the Board. The respondent told Bachhi that if he is able to release the connection, that would advance his prospects in the elections not only in his own village but also in the surrounding villages. Bachhi asked Thilu Singh to meet him in the office of SDO (Sub Urban) Suman on 6.2.2002 at 10 a.m.

(E) The above meeting was held at the scheduled time and Bachhi directed the PSEB official to supply material out of turn for giving connections to the villagers of Chatha Nanhera. He also asked Thilu Singh and others of that village to vote and support the respondent. In the evening at 5 p.m. Bachhi visited Dirba and in the presence of Karnail Singh, Ruldu Singh of Chatha Nanhera informed the respondent that Thilu Singh's work had been done. The appellant came to know about this information from Karnail Singh and Ruldu Singh on 8.2.2002 at 5 p.m. at an election rally addressed by Sukhbir Singh Badal at Dirba. Consequently, the

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appellant sent a complaint in this regard to the Chief Election Commissioner.

9. Similarly, Shergill's role which attracted the provisions of the said Act is as under:

As regards Shergill, the appellant pleaded that on 3.2.2002,

the respondent and Bachhi had visited Rajpura where they held a meeting in Jarnail Singh's house. They also went to Shergill's house who at that time was posted as Deputy Director, Panchayats at Chandigarh. They met Shergill at 12 noon in the presence of Joginder Singh, Nachhattar Singh and Chand Singh of Rajpura. The respondent requested Shergill to spare some time for helping him in the election as he had sufficient influence in the area. Initially Shergill showed reluctance to do so but the respondent with the help of Bachhi succeeded in persuading Shergill to render help in the elections. Thereafter, on 4.2.2002 at 9 a.m. both Shergill and Bachhi went to Barroh and met Amarjeet Singh and asked him to collect prominent persons of the village, whereupon several persons came there and Shergill requested them to vote for the respondent. Shergill also reminded them of the favours he had been doing for

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them when he was posted as ADC (Development) at Sangrur. The appellant learnt about these details from Amarjeet Singh of Barroh on 6.2.2002. Similarly, Bachhi and Shergill went to Noorpur on 4.2.2002 and at Mastaan Singh's house, a number of persons of Noorpur arrived. Shergill impressed upon those persons to vote and support for the respondent. The appellant learnt about this from Jagjit Singh and Jasbir Singh when he went to Noorpur on 6.2.2002 about 2 p.m. The appellant immediately filed a complaint through fax before the Chief Election Commissioner.

10. The appellant pleaded in the election petition that when Bachhi came to know about the complaints lodged by the appellant, he destroyed the log book of his car to conceal the fact that he was touring Dirba during the assembly elections to canvass for votes for the respondent. After the result was declared, the respondent toured the

villages falling in Dirba Constituency to congratulate and thank his voters and supporters. On 4.4.2002 and

5.4.2002, Bachhi also accompanied him and visited about 33 villages in Bhawanigarh. While addressing meetings in villages, the respondent specially thanked Bachhi for the sacrifice made by him. Bachhi also thanked the people for voting and supporting the respondent. There was a news item in this regard in the Punjabi Tribune dated 6.4.2002.

11. The respondent's conduct established that he had obtained assistance from Bachhi and Shergill, both gazetted officers in the service of the Government. These acts constituted corrupt practices. According to the appellant, the respondent had obtained assistance from Bachhi and Shergill in furtherance of the prospects of his election. Hence, the election was liable to be declared void. The respondent had committed corrupt practices as detailed under section 123(7) of the said Act. According to the appellant, the respondent is clearly guilty under section 123(7) of the said Act.

12. The respondent filed written statement in which he had taken five preliminary objections that :

(i) The election petition was not maintainable as the affidavit attached to it was not an affidavit in the eyes of law since it has not been properly verified;

(ii) The election petition does not contain material facts on which the appellant relied upon;

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(iii) The election petition was not a complete petition as the alleged complaints and the news items have not been attached therewith;

(iv) The appellant has no cause of action because

Bachhi, though a gazetted officer was not in the service of the Government and Shergill though in the service of the Government was not a gazetted officer;

- (v) The petition deserved to be dismissed because it did not disclose the date, time and place when the appellant's statement was recorded by Avtar Singh and thus did not disclose any cause of action.

13. That the respondent submitted on merit that he was not aware of the details of appointment of Bachhi as Administrative Member of the Punjab State Electricity Board as copy of the gazette notification has not been placed on record. However, Bachhi was not in the employment of the Punjab Government as Punjab State Electricity Board was an autonomous body created under the Electricity (Supply) Act, 1948 and its employees are not in the service of the Punjab Government.

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14. According to the respondent, Shergill is not a gazetted officer as Deputy Director in any of the departments of the Punjab Government.

15. The respondent specifically pleaded that he had neither sought nor got any assistance for any purpose, much less for the furtherance of the prospects of his election either from Bachhi or Shergill.

16. In the written statement, other allegations of taking assistance or help from Bachhi or Shergill were specifically denied. The allegations regarding destruction of car's log book have been made on the basis of the information received from Varinder Singh, Assistant, Punjab State

Electricity Board. According to the respondent, Varinder

Singh was an ardent supporter of the appellant.

The

allegations lacked material particulars as regards date,

place and time of the alleged destruction of the log book.

Allegations that Bachhi addressed meetings after the

election were also denied.

It was submitted that these

activities cannot be taken into consideration.

Under

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election law only activities of the returned candidate from

the date of filing of the nomination since declaration of the

results were not relevant. The High Court after completion

of the pleadings framed the following issues:-

"1. Whether the Election Petition and the affidavit in support of the election petition are not properly verified, if so, its effect?

2. Whether the Election Petition lacks in material facts, if so, its effect?

3. Whether the copy of Election Petition supplied to the answering respondent is not a complete copy of the election petition, if so, its effect?

4. Whether the Election Petition does not disclose any cause of action as mentioned in preliminary objections nos.4 and 5 of the written statement, if so, its effect?

5. Whether the returned candidate obtained the assistance of Mr. Gurbachan Singh Bachhi Administrative Member of P.S.E.B. for the furtherance of the prospects of his election in the way and manner alleged in paragraph 4 and paragraphs 6-A to E and 7 of the election petition and thereby respondent committed corrupt practice as defined under section 123(7) of Representation of People Act, 1951? If so, its effect."

17. On October 17, 2003, an additional issue was

framed which reads as under:-

"Whether the returned candidates obtained assistance of

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Shri B.S. Shergill, Deputy Director, Panchayats, Punjab for the furtherance of his prospects of his election in the way and manner alleged in para nos.5 and 7 of the election petition and thereby committed corrupt practice as defined under section 123(7) of the Representation of People Act?"

18. Issues 1 to 4 were treated as preliminary issues.

19. On January 13, 2004, issues 1 to 4 were decided against the respondent."

20. The appellant in support of his case submitted a list of 54 witnesses, but examined only 15.

21. Sumit Mukherjee, Under Secretary to the Election Commission of India appeared as PW1 and testified in respect of the complaints received by the Chief Election Commissioner of India from the appellant during the process of election to the Dirba Assembly Constituency. The four complaints were dated February 4, 6 and 9, 2002 marked as PW1/A to PW1/D respectively. The said complaints were inquired into by the Chief Electoral Officer, Punjab and the report of the Chief Electoral Officer including reports of the Department of Rural Development and Panchayats and Additional Secretary, Department of

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Power are marked as PW1/E to PW1/G. The four complaints (Exhibits PW1/A to PW1/D) were in respect of the incidents already referred to in the pleadings.

22. The appellant appeared as PW2 and submitted his affidavit dated March 5, 2004 Exhibit PW2/1. The appellant produced 15 witnesses and the respondent produced 9 witnesses.

23. The High Court after hearing learned counsel for the parties and examining the relevant cases came to the conclusion that it is difficult to hold that Bachhi was a gazetted officer though he was in the service of the Government. In this view of the matter it is necessary to examine the specific allegations of corrupt practice and after

enumerating these incidents try and see if proof of allegations either through direct, circumstantial or corroborative evidence was forthcoming. There are allegations that on several occasions Bachhi had agreed to support the respondent. These are extracted from the examination-in-chief of the appellant's sworn affidavit PW2/1.

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"(i) January 23, 7 p.m. : On Dhiman's persuasion Bachhi agreed to support him in the constituency. This incident had taken place in the presence of Kirpal Singh (PW-3). Mann was informed about this at Dirba by Karnail Singh (PW-4) and others.

(ii) Between January 24-26 : Dhiman and Bachhi personally contacted prominent persons of Dirba constituency for soliciting support for Dhiman.

(iii) They joined campaign for Dhiman. They were seen by Karnail Singh (PW4), Upinder Singh, Teja Singh Tiwana, Kashmira Singh, Darshan Singh, Nazam Singh and Labh Singh.

(iv) Bachhi and Dhiman contacted Shamsheer Singh and Harneek Singh. These persons had told Mann about this fact.

(v) January 27-12 noon Parkash Singh Badal, President (SAD) came to Dirba to address an election rally in Man's support and Mann informed Badal about Bachhi's anti-party activities. This led to Bachhi's expulsion from the party.

(vi) February 3 : Bachhi and Dhiman visited Rajpura and met in Jarnail Singh's house in the presence of Ram Karan (PW 5). Jarnail Singh was the brother-in-law of N.S. Bhullar, AEE, P.S.E.B. Bhullar was also present there. Persons present in the meeting were asked to vote for Dhiman. Bachhi even threatened Jarnail Singh that in case his relatives did not vote and support Dhiman, then Bhullar could be in trouble. Mann was informed about this on the following day by Ram Karan (PW 5).

(vii) February 4 at 2 p.m. : Bachhi and Dhiman met Niranjana Singh (PW 6) and Mehar Singh at their

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houses at Kala Jhar and asked them to vote and support Dhiman.

(viii) February 3 at 3.30 p.m. : Bachhi had contacted Jasbir Singh (PW 7), Dhanvir Singh, Gogi Singh in the house of Jasbir Singh and asked them to

vote in favour of Dhiman. Mann was informed about this by Jasbir Singh on the following day.

- (ix) February 5 at 5 p.m. : Bachhi held a meeting of voters of various villagers falling in Dirba constituency. The meeting was also attended by Dhiman. Many employees of the Board were also present at that meeting. Bachhi with the consent of Dhiman had requested the persons present in the meeting to vote for Dhiman. The meeting was also addressed by Surjit Singh.
- (x) February 6 at 10 a.m. : Bachhi asked PSEB employees to supply material out of turn for releasing connection to the villagers of Chatha Nanhera and asked Thilu Singh to vote for Dhiman. On February 6 itself Bachhi visited Dirba and in the present of Karnail Singh and Ruldu informed about the work done by him for Thilu and others. Mann learnt about this from Karnail Singh and Ruldu Singh at a rally addressed by Sukhbir Singh Badal at Dirba."

24. The main question before the High Court was whether the aforementioned instances constituted corrupt practice as defined under section 123(7) of the said Act. In the impugned judgment the High Court came to the conclusion under sub-section (7) of 123 of the said Act, it is obtaining or procuring of assistance for the furtherance of

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the prospects of the candidate which constitutes main ingredients of corrupt practice. The assistance has to be procured from a person who is in the government service and who additionally is a gazetted officer. In the impugned judgment the High Court had also discussed the legal position in detail. The law is now well-settled that charge of a corrupt practice in an election petition should be proved almost like the criminal charge. The standard of proof is high and the burden of proof is on the election petitioner. Mere preponderance of probabilities are not enough, as may be the case in a civil dispute. Allegations of corrupt practices should be clear and precise and the charge should be proved to the hilt as in a criminal trial by clear, cogent and credible evidence.

25. A three-Judge Bench of this court in Jeet Mohinder Singh v. Har minder Singh Jassi (1999) 9 SCC 386 has held that the success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the court shall be vigilant to see that people do not get elected by flagrant

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breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves an enormous load on the public funds and administration. Similar opinion has been expressed in Jagan Nath v. Jaswant Singh & Others 1954 SCR 892, Gajanan Krishnaji Bapat & Another v. Dattaji Raghobaji Meghe & Others (1995) 5 SCC 347. The will of the people who have exercised their franchise in an election in favour of a returned candidate must be respected to protect the interest of the returned candidate.

26. The court in a number of cases held that charge of corrupt practice is a quasi-criminal in character and it has to be proved as a criminal charge and proved in the court.

27. In Jeet Mohinder Singh's case (supra), the court observed as under:-

"Charge of corrupt practice is quasi-criminal in character. If substantiated it leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career. A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Two

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consequences follow. Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full

opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to the hilt, the standard of proof being the same as in a criminal trial."

28. The court has expressed similar opinion in the cases Quamarul Islam v. S.K. Kanta & Others (1994) Supp (3) SCC 5 F.A. Sapa & Others v. Singora & Others (1991) 3 SCC 375, Manohar Joshi v. Damodar Tatyaba & Others (1991) 2 SCC 342, Ram Singh & Ors. v. Col. Ram Singh (1985) Supp SCC 611 and Kripa Shankar Chatterjee v. Gurudas Chatterjee & Others (1995) 5 SCC 1.

29. In Ram Phal Kundu v. Kamal Sharma (2004) 2 SCC 759, the court reiterated the principle of election jurisprudence and observed that the election of the returned candidate should not be lightly interfered with though at the same time the purity of the election process has to be maintained.

30. Now the crucial question arises for consideration is whether the evidence of the appellant on record is adequate to constitute corrupt practice within the meaning of section 123 (7) of the said Act.

31. Section 123 (7) of the Act reads as under:-

"(7) The obtaining or procuring of abetting or attempting to obtain or procure by a candidate or his agent or, by any other person [with the consent of a candidate or his election agent], any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:-

- (a) gazetted officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed forces of the Union;
- (d) members of the police forces;
- (e) excise officers;
- (f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police

functions; and]
(g) such other class of persons in the service of
the Government as may be prescribed:

[Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election]."

32. In the instant case, the respondent won by less than 1000 votes out of nearly 70000 polled votes. In the

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impugned judgment, it is aptly observed that a candidate who loses by such a slight margin finds it hard to accept defeat. Therefore, the candidate who has narrowly lost would ordinarily make all efforts and gather all kind of material against the elected candidate and level all kinds of allegations of corrupt practices whether substantiated or not. In the instant case, this is what seems to have happened. Allegations are that the winner was moving from village to village asking for vote and in this process he had often taken help of Bachhi and Shergill for canvassing for votes in his favour.

33. In the impugned judgment, it is aptly observed :

"Casting a vote or asking for it does not amount to obtaining any assistance. When a candidate meets a voter and ask him to vote, the voter may say "yes" or "no" or "may be". In any event such conversation between a candidate and the voter would not amount to the voter giving assistance to the candidate. A persistent candidate or his agent may request the voters for vote and the voter may say "yes" simply to escape the candidate's persistence. This would not amount to corrupt practice at all. There must be some positive and explicit proof on the part of voters belonging to categories mentioned in section 123(7)(a)(g) to constitute corrupt practice.

34. After carefully examining the entire evidence on record, the High Court came to the conclusion that the appellant failed to prove the ingredients of corrupt practice contained in section 123(7) of the said Act. The High Court

observed that the evidence of corrupt practice was not strong enough to upset the people's verdict in favour of the respondent. The High Court also observed that the appellant has failed to prove issue 5 and the additional issue framed by the High Court.

35. This court in *Gajanan Krishnaji Bapat (supra)* observed that that the appellate court attaches great value to the opinion formed by the Trial Judge more so when the Trial Judge recording findings of fact is the same who had recorded the evidence. The Appellate Court shall remember that the jurisdiction to try an election petition has been vested in a Judge of the High Court. Secondly, the trial judge had the benefit of watching the demeanour of witnesses and forming first-hand opinion of them in the process of evaluation of evidence.

36. We have carefully re-assessed and re-evaluated the entire evidence of record and we concur with the view which has been taken by the High Court. In our opinion, the appellant has failed to prove the basic ingredients of corrupt practices under section 123(7) of the said Act. Consequently, the appeal being devoid of any merit is
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accordingly dismissed.

37. Before parting with the case, we would like to reiterate that in a democratic country the will of the people is paramount and the election of elected candidate should not be lightly interfered with. At the same time, it is also the bounden duty and obligation of the court to ensure that purity of election process is fully safeguarded and maintained.

.....J.
(Dalveer Bhandari)

.....J.
(Harjit Singh Bedi)

New Delhi;
November 21, 2008

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ITEM NO. 1A COURT NO.9 SECTION XVII

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 3700 OF 2007

BALDEV SINGH MANN Appellant (s)

VERSUS

SURJIT SINGH DHIMAN Respondent(s)

Date: 21/11/2008 This Appeal was called on for judgment today.

For Appellant(s) Ms. Naresh Bakshi, Adv.

For Respondent(s) Mr. R.C. Kohli, Adv.

Hon'ble Mr. Justice Dalveer Bhandari pronounced the
judgment of the Bench comprising His Lordship and Hon'ble
Mr. Justice Harjit Singh Bedi.

Appeal is dismissed in terms of signed judgment.

(Pardeep Kumar)
Court Master

(Neeru Bala Vij)
Court Master

[SIGNED REPORTABLE JUDGMENT IS PLACED ON THE
FILE]