

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 5403 of 2019**

=====

VIBHAVRIBEN VIJAYBHAI DAVE

Versus

STATE OF GUJARAT &amp; ANR.

=====

Appearance:

MR JS UNWALA, Senior Advocate with MS TEJAL A VASHI(2704) for the Applicant(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 2

MS MAITHILI MEHTA, APP for the Respondent(s) No. 1

=====

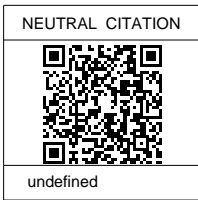
**CORAM:HONOURABLE MR. JUSTICE CHEEKATI  
MANAVENDRANATH ROY****Date : 20/02/2024****ORAL ORDER**

1. This Special Criminal Application under Section 482 of Criminal Procedure Code is filed by the petitioner seeking quash of the FIR being Crime Register No.II-54 of 2019 registered with Nilambaug Police Station, Bhavnagar, for the offences punishable under Section 13 (1) (a) of the Representation of the People Act, 1951.

2. Heard learned Senior Counsel Mr.Unwala for the petitioner and learned Assistant Public Prosecutor, Ms.Maithili Mehta for the respondent-State.

3. Brief facts of the prosecution case, relevant to dispose of this application, may be stated as follows:-

3.1 The petitioner has contested for the election of the Member of the Legislative Assembly of Bhavnagar Assembly



Constituency held in the year 2019. She has visited the polling station on the date of polling. After exercising her right of franchise, when she came out of polling station, she has shown sign of "V" with the fingers of her hand which denotes Victory and said that "If Modi is there everything is possible". The State GST Inspector, Bhavnagar North, was appointed as Flying Squad Member by the State Election Commissioner. He is the *defacto* complainant in this case. As a Flying Squad Member appointed by the State Election Officer, he has lodged a report with police against the petitioner for showing 'V', the victory symbol, and for the words uttered by her at the polling station. Said report was registered as a crime under Section 130 (1) (a) of the Representation of the People Act, 1951 and the same is being investigated.

3.2 Although the crime was registered long back in the year 2019 about five years back, still investigation was not completed and the investigation is still pending.

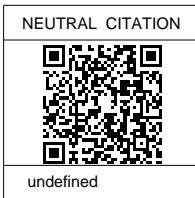
4. The petitioner sought quash of the said FIR, on the ground that even if the said facts and the allegation is true, it does not constitute any offence punishable under Section 130 (1) (a) and as such registration of FIR is legally unsustainable. Learned Senior Counsel for the petitioner, Mr.Unwala, vehemently contended that reading of Section 130 (1) (a) of the Act makes it manifest that it is only when a person commits an act of canvassing for votes at the polling station on the date of polling or at any public or private place within the distance of 100 mtrs. from the polling station then only it



constitutes an offence under Section 130 (1) (a) of the Act. He would vehemently contend that mere showing a sign of victory with two fingers of her hand and saying that “If Modi is there then everything is possible” by itself will not amount to doing any act of canvassing for votes and as such absolutely no offence is made out under Section 130 (1) (a) of the Act. Therefore, he would pray to quash the FIR stating that continuation of criminal proceedings against the petitioner in the said facts and circumstances of the case would amount to abuse of process of the Court.

5. Learned APP for the respondent-State would contend that the only allegation that is made in the FIR is that the petitioner came out of the polling station and has shown the sign of victory with two fingers of her hand and uttered the above words and except that nothing is revealed so far during the course of investigation, and the said acts amount to doing an act of canvassing for votes. So she would pray for dismissal of the petition.

6. Therefore, from the aforesaid rival contentions made by both the learned Senior Counsel for the petitioner and learned APP, the crucial point that emerges for determination is whether the act of showing sign of victory with two fingers of the hand and saying that “if Modi is there that everything is possible” amounts to doing an act of canvassing for votes, constituting an offence punishable under Section 130 (1) (a) of the Act or not.



7. In order to appreciate the said contention and to resolve the same, it is expedient to extract Section 130 of the Act, which reads as follows:-

***“130. Prohibition of canvassing in or near polling stations.—***

*(1) No person shall, on the date or dates on which a poll is taken at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of one hundred metres of the polling station, namely:—*

*(a) canvassing for votes; or*

*(b) soliciting the vote of any elector; or*

*(c) persuading any elector not to vote for any particular candidate; or*

*(d) persuading any elector not to vote at the election; or*

*(e) exhibiting any notice or sign (other than an official notice) relating to the election.*

*(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to two hundred and fifty rupees.*

*(3) An offence punishable under this section shall be cognizable.”*

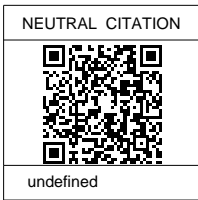
7.1 Five acts are enumerated in clause (a) to (e) in the above Section, which constitutes an offence under Section 130 of the Act. The acts shown in Clause 1 (b) to (e) of Section 130 are not applicable to the present facts of the case. Only Clause (a) of Sub-section (1) of Section 130 is relevant in the context to consider. It relates to an act of canvassing for votes either at the polling station or at any public or private place within a distance of 100 meters from the polling station. If any person



commits any act of canvassing for votes at the polling station on the date of poll or in public or private place within the distance of 100 meters of the polling station, it constitutes an offence punishable under Section 130 (1) (a) of the Act. The allegation against the petitioner is that she has shown victory symbol with two fingers of her hand and uttered the above words. Now, the crucial question that arises for determination is whether showing the said symbol of victory and uttering the above words amounts to committing an act of canvassing for votes attracting the offence punishable under Section 130 (1) (a) or not.

8. As rightly contended by learned Senior Counsel for the petitioner, mere showing a symbol of victory with two fingers of the hand by the petitioner after coming out of the polling station and uttering the above words by itself would not amount to committing an act of canvassing for votes.

9. No elector, who is present at the polling station, complained that the petitioner has by way of showing that victory symbol or uttering the said words canvassed for votes at the polling station. Further mere expressing herself by way of said gesture and uttering said words, in the considered view of the Court, will not amount to committing an act of canvassing for votes. The word “canvassing” is not defined in the Representation of People Act, 1952. Therefore, we have to go by the general and literal meaning of the said word.



10. In Oxford English Dictionary, the meaning of the word “canvass” is given as follows:-

*“The action or process of personally soliciting votes before an election, or of ascertaining the amount of support a candidate may count on.”*

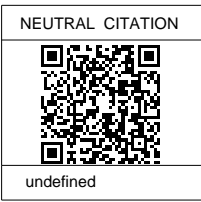
10.1 Another meaning is also given stating as follows:-

*“Scrutiny of votes in an election.”*

11. From the reading of the above dictionary meaning, it is clear that when a person is involved in the process of personally soliciting votes before an election or during election or if he makes any attempt to ascertain the amount of support a candidate may count on, then it amounts to doing an act of canvassing for votes.

12. As noticed supra, mere showing the sign of Victory with two fingers of the hand by the petitioner or by mere uttering the words that “If Modi is there then everything is possible,” it will not amount to doing an act of canvassing for votes.

13. Therefore, it does not constitute any offence punishable under Section 130 (1) (a) of the Act. In the said facts and circumstances of the case, allowing said proceedings to go on pursuant to the registration of said FIR would certainly amount to abuse of process of Court. Therefore, the petitioner has made out a strong case warranting interference of this Court to quash the said FIR in exercise of its inherent powers under Section 482 of the Criminal Procedure Code.



14. Resultantly, this petition is allowed. The FIR being Crime Register No.II-54 of 2019 registered against the petitioner with Nilambaug Police Station, Bhavnagar, is hereby quashed so far as present petitioner is concerned.

**(CHEEKATI MANAVENDRANATH ROY, J)**

R.S. MALEK