

APPEAL NO. 02(f)-64-11/2023 (M)

Abdul Hakim bin Abdul Wahid v Mas Ermieyati binti Samsudin

Quoram:

Justice Nallini Pathmanathan, FCJ

Justice Mary Lim Thiam Suan, FCJ

Justice Abu Bakar bin Jais, FCJ

BROAD GROUNDS

This is an appeal in relation to an election petition premised primarily on section 32 (c) of the Election Offences Act 1954. The relevant complaints by the Appellant are of “corrupt or illegal practices” under section 10 relating to bribery and “treating” under section 8. The Election Judge dismissed the petition on the grounds inter alia that these offences were not made out.

The Appellant submitted that the Election Judge had fallen into error in failing to infer from the available evidence that an offence under section 10(a) of bribery had in fact been made out. The Respondent contends otherwise.

The pivotal point turns on the term ‘induce any elector or voter to vote or refrain from voting’. The Appellant concedes that there is no direct evidence of inducement and this element of the offence has to be inferred from the factual matrix. We were urged to infer that inducement within the meaning of section 10(a) can be deduced from the mere act of money being given to a voter post voting, without more. We make it clear that we find any act of monies being handed out for votes or the like, as being abhorrent and something no Court would condone in any event.

However section 10(a) expressly requires evidence of inducement. Inducement means that the voter has to be persuaded or led to vote or not vote by some act or promise of money or other consideration. In the instant appeal there is no evidence of the voters being persuaded or influenced or induced to vote or not to vote or to vote in any particular manner. There is no extrinsic evidence from which such inducement can be inferred.

This means in turn that the essential element in section 10(a) has not been met. Here the voters were randomly told while at a restaurant after having voted, to go to a house

behind the restaurant where monies were being handed out. They did so. The issue is whether this is sufficient to amount to bribery within the meaning of section 10(a).

Since the voters had already voted and at the material time of voting were free from any promise of payment of monies by the Respondent or her agent, and had no knowledge of monies being distributed at the house behind the restaurant, can it be said that the subsequent act of the Respondent or her agent in making payment of monies to those voters, affected their decision to vote? Put another way, in the absence of any evidence of a promise of money or other consideration at any time, present or future, preceding the act of voting, can it be said that the voter was induced to vote by the Respondent or its agent?

We do not think so. This is because the Act itself requires the element of inducement to be made out. There can be no bribery under section 10(a) without the element of inducement being established. Similarly for corrupt practice – the second limb.

We were urged by the Appellant that the fact of monies being given and received after voting was caught by the first line of section 10(a) which refers to “before, during or after an election”. However these words do not do away with the requirement of inducement which appears later on in the section.

We now turn to the complaint of ‘treating’ under section 8. This section also expressly requires the element of influencing the voter as borne out by the words “for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election”. It was submitted for the Appellant that ‘treating’ was made out by the fact of a dinner being held post election, and attended by his witnesses. The Respondent countered this by offering a plausible explanation for the purpose of the dinner which the election judge accepted. He was not plainly wrong in doing so on an independent review of the evidence on record. Therefore there is no reason to disturb his finding here either.

In relation to the issue of ‘agent’ applying Ali Amberan per Raja Azlan Shah J (as His Lordship then was) we are satisfied that both Akmal and Noorashimah were agents of the Respondent. However, in the absence of the elements of inducement in section 10(a) and corruptly influencing in section 8 the offences of bribery and treating are not made out.

We are of the view that the Election Judge was also incorrect in drawing an adverse inference against the Appellant in relation to the absence of Akmal and Noorashimah. It was clear that the Appellant tried very hard to procure these witnesses. Any such

inference should, if at all, been drawn against these witnesses. However, even if the Election Judge had done so, this would not have filled in the fundamental gap of a lack of evidence of 'inducement' in the terms we explained earlier.

In conclusion the Election Judge was not plainly wrong in his ultimate finding. Accordingly the result that the election was not avoided is correct. We dismiss the appeal with no order as to costs.

Date: 28 February 2024