

Nihal Singh

Vs

Rao Birendra Singh and Another

Civil Appeal No. 1148 of 1969

(Bhargava, J.)

12.08.1970

JUDGMENT

BHARGAVA, J. -

1. The appellant, Rao Nihal Singh, respondent No. 1, Rao Birendra Singh and respondent No. 2, Manohar, were candidates for election to the Legislative Assembly for the State of Haryana from Atoli Constituency during the mid-term election held in the month of May, 1968. Polling took place on the 14th May, 1968 and the result was declared on the 15th May, 1968. The appellant received 15,937 votes, respondent No. 1, 23,673 votes, and Manohar 455 votes. Consequently, respondent No. 1 was declared as the successful candidate. An Election Petition under the Representation of the People Act, 1951 (hereinafter referred to as "the Act") was then filed by the appellant challenging the election of respondent No. 1 primarily on grounds of commission of corrupt practices which were all denied by respondent No. 1. The High Court of Punjab and Haryana, in the trial of the petition, framed four issues, but issue No. 4 was not pressed in that Court, and, consequently, it was not dealt with in the judgment of the High Court. That Court recorded findings on three issues; one of them was not pressed before us by the counsel for the appellant and was given up. Consequently, we reproduce below the only two issues on which arguments have been addressed to us in support of this appeal :

"(1) Whether respondent No. 1 is guilty of corrupt practices as alleged in Paragraph 6(A) within the meaning of Section 123(3) and (4) of the Act ?

(2) Whether respondent No. 1 has committed the corrupt practice of hiring or procuring the vehicles for the free conveyance of electors as detailed in Paragraph 6(F) within the meaning of Section 123(5) of the Act ?"

On both these issues, the High Court recorded findings against the appellant and, consequently, dismissed the election petition. The appellant has come up to this Court in this appeal under section 116-A of the Act against that judgment of the High Court.

2. Under the first issue, counsel appearing for the appellant, on the basis of the pleadings, urged that two different sets of corrupt practices had been alleged in Paragraph 6-A, and argued that the High Court was wrong in rejecting one and in not recording any finding on the other. One allegation was that a pamphlet or poster Ext. P.W. 20/1 was got printed and published by one Raghbir Singh with the consent and connivance of respondent No. 1 and it contained allegations against the appellant as to his personal character and conduct which respondent No. 1 and Raghbir Singh knew to be false and baseless so as to adversely affect the prospects of the election of the appellants constituting a

corrupt practice under Section 123(4) of the Act. It was further urged that this poster contained an appeal on the grounds of caste and activities of the appellant and respondent No. 1 in respect of members of their caste so as to persuade voters not to vote for the appellant and to vote for respondent No. 1, thus constituting a corrupt practice under Section 123(3) of the Act. The finding in respect of these charges relating to the poster is that there is no satisfactory proof that it was got printed, published or was distributed before the polling took place and, consequently, the appellant failed to discharge the burden of proving that those corrupt practices had been committed.

3. The second set of allegations related to holding of meetings by respondent No. 1 or his workers at which respondent No. 1 was present and in which speeches were made in order to influence the voters on the same grounds as are contained in the poster Ext. P.W. 20/1. The High Court, in the judgment, did mention at one stage that such a plea of speeches in the meetings had been raised in the election petition and denied by respondent No. 1; but, after recording the finding on the first set of corrupt practices, the High Court ignored altogether this allegation about commission of corrupt practices by oral speeches in the meetings.

4. On the question of publication and distribution of the poster, the evidence, which was tendered by the appellant in the High Court, can be classified into three classes. There is, first, some documentary evidence. Then there is evidence of witnesses who have deposed about the printing of this poster and, lastly, witnesses have been examined to prove its distribution in various meetings at various places. The documentary evidence consists of the printed poster Ext. P.W. 20/1 and, in addition, there has been tendered in evidence the manuscript of the poster Ext. P.W. 20/2. The poster purports to have been printed in Rajasthan Printing Press at Narnaul of which the owner Ghansham Das has been examined as a witness. Raghbir Singh's name appears as the person making the appeal in this poster; and the case put forward is that Raghbir Singh got this poster printed at the Press of Ghansham Das. The subject-matter of this poster was written by one M. L. Saini, Advocate, at the dictation of Raghbir Singh in the presence of another Advocate, Umrao Singh Kaushik, thereafter Raghbir Singh, accompanied by Umrao Singh Kaushik, went to Ghansham Das in his Press and asked him to print it. Ghansham Das did not know Raghbir Singh, but accepted the printing order when Umrao Singh Kaushik, who was known to him, identified Raghbir Singh. The poster was given for printing on the 3rd May, 1968 and was printed by Ghansham Das on the 4th May, 1968, on which day about 2.00 or 3.00 p.m. he delivered 1,000 copies of it to Raghbir Singh. Ghansham Das also stated that one copy of this poster was filed by him in the officer of the District Magistrate of Narnaul within whose jurisdiction his Press was situated; and further evidence has been adduced to show that Kishan Chand Chopra, a clerk in the office of the District Magistrate, received this printed poster on the 9th May, 1968 and put it on the file. All this evidence has been disbelieved by the High Court which has recorded a finding that this poster was not printed before the election, so that an inference follows that it was printed after polling had taken place for the purposes of this election petition. In arriving at this finding, the High Court has discussed the evidence of all the four witnesses who gave relevant evidence on this point, viz., Ghansham Das, Umrao Singh Kaushik, Raghbir Singh and Kishan Chand Chopra. Having heard learned counsel for the appellant, we are unable to agree with him that the assessment of the evidence made by the High Court is incorrect or that there are any sufficient grounds for this Court to disagree with the view taken by the learned Judge of the High Court who had the benefit of examining these witnesses in his presence.

5. Raghbir Singh, whose name appears as that of the person making the appeal in the poster, denied that he dictated the subject-matter of this poster or that he got it printed. The original manuscript of the poster Ext. P.W. 20/2 purports to bear two signatures of Raghbir Singh. Raghbir Singh denied that those signatures were his. On this point that Raghbir Singh got this manuscript prepared by

dictating it to M. L. Saini, Advocate, the only evidence tendered on behalf of the appellant is that of Umroa Singh Kaushik. M. L. Saini, who is a Senior Advocate and responsible person, has not been examined. Umroa Singh Kaushik, Advocate, does not explain how he happened to be present when Raghbir Singh dictated the poster and M. L. Saini wrote it. According to him, he has no relations with M. L. Saini. He does not even indicate where M. L. Saini took down the dictation. If he had no relations with M. L. Saini, he can only be treated as a chance witness who happened to be present when Raghbir Singh got this poster prepared. On the face of it, M. L. Saini was the more reliable witness, but he was not examined at all. The reason for not examining him suggested by Umroa Singh Kaushik is that M. L. Saini was a member of the Samyukt Socialist Party and was the counting agent of Dharam Pal who was a candidate in another constituency on behalf of the Vishal Haryana Party to which respondent No. 1 also belonged. It is difficult to believe that M. L. Saini, a Senior Advocate, would be willing to implicate himself in charges of corrupt practices punishable under the Indian Penal Code by preparing the manuscript of such a poster as Ext. P.W. 20/1 in his own handwriting. In view of the non-examination of M. L. Saini and the denial by Raghbir Singh that he dictated it and got it written out by Saini, and the other circumstances mentioned above, we agree with the finding of the High Court that it is not possible to hold that the manuscript of this poster was dictated by Raghbir Singh and written out by M. L. Saini, Advocate and that Raghbir Singh got it printed. Umroa Singh Kaushik has gone on to state that he went along with Raghbir Singh to get the poster printed. He himself is an Advocate, though, at the time when this poster is alleged to have been printed, he had not yet been enrolled as such. There seems to be no reason why Umroa Singh should have taken so much interest as to go out of his way to accompany Raghbir Singh to the press, identify him there and get this poster printed. The High Court disbelieved Umroa Singh Kaushik on one other ground, viz., that he did not know that the allegations in the poster constituted an offence under Section 500, I.P.C., even though he was an Advocate. That reason may not be a very good one for disbelieving Umroa Singh, but, on the face of it, this poster contained allegations against the character of the appellant and, consequently, Umroa Singh should have been on guard and should not have taken an active part in getting it printed as he states he did. An Advocate is at least expected to know that he should not be a party to such undesirable practice of getting such a poster printed so as to adversely affect the election of a candidate.

6. Next comes the evidence of Ghansham Das who says that he printed this poster. The only documentary evidence which Ghansham Das could produce was the manuscript which contains the printing order supposed to be in the handwriting of Raghbir Singh. According to him, he does not maintain any register of printing order. He does maintain accounts in the form of a cash-book. but that cash-book was not produced before the Court to corroborate his version that he received Rs. 21/- from Raghbir Singh for doing this printing work. He went on to state that he runs his press all alone and has no employees at all to assist him which obviates the risk of his being contradicted by his employees which would have been possible if respondent No. 1 had summoned them to give evidence. Under Section 127-A of the Act, every printer is enjoined not to print any election poster or pamphlet unless a declaration as to the identity of the publisher there of signed by him and attested by two persons, to whom he is personally known, is delivered by him to the printer in duplicate. Ghansham Das does not state that he took any declaration at all from Raghbir Singh, nor did he insist that Raghbir Singh should be identified by two persons known to him personally. All he says is that he accepted the printing order on identification of Raghbir Singh by Umroa Singh Kaushik alone. Ghansham Das, thus, on his own version, acted in contravention of the requirements of Section 127(2)(a) of the Act and rendered himself liable to punishment under Section 127-A(4) of the Act. Ghansham Das goes on to state that he filed a copy of this poster in the office of the District Magistrate. Section 127-A(2)(b) of the Act lays down on the printer the duty to file before

the District Magistrate of the district in which the printing takes place one copy of the declaration obtained under Section 127-A(2)(a) together with one copy of the document printed. Ghansham Das does not state that he tried to comply with this requirement of law by filing any declaration. According to him, all he did was to send to the District Magistrate one copy of the poster only. In his examination-in-chief, he stated that a copy of this poster was sent to the office of the Deputy Commissioner which would imply that he himself did not go and deliver it; but, in his cross-examination, he changed his stand and put forward the version that he himself went to the office of the Deputy Commissioner and handed over one copy the Clerk-in-charge in the office 3 or 4 days after the poster had been printed.

According to Kishan Chand Chopra, the Clerk, the poster was handed over to him on 9th May, 1968 by Ghansham Das in duplicate. Ghansham Das mentioned the delivery of only one copy of the poster. He was also asked whether he had delivered any other poster in the office of the Deputy Commissioner besides this one, and he pleaded forgetfulness by stating that he did not remember if he gave any other poster besides this poster. From the file produced by the Clerk, we found two posters Printed in the Press of Ghansham Das which were both purported to be filed on 9th May, 1968. If, in fact, Ghansham Das had filed two different posters on the same date together, he could not have forgotten this fact when he did remember that he had gone and filed one copy of the poster Ex. P.W. 20/1 in that office by handing it over to the Clerk. The two posters purported to be printed by him both appear one after the other in the serial order in the file maintained by the Clerk. Ghansham Das's statement that he went and filed one poster would lead to the inference that, very likely, it was the other poster which he had gone and filed on the 9th May, while this poster in question was introduced in the file later. It is significant that Kishan Chand Chopra, the Clerk who maintained the file, was considered an unreliable person who had to be placed under suspension on one occasion in connection with a complaint. Kishan Chand Chopra, as we have indicated earlier, stated that this poster was handed over to him in duplicate and that one copy was retained by him on his file, while the other was sent for information of the Deputy Commissioner himself. He was asked where the other copy, which was sent to the Deputy Commissioner, was kept. He said that he did not know definitely, but, very likely, that copy must have gone to the person to whom the Deputy Commissioner may have marked it and the likely person was the Election Naib-Tehsildar or some other official in some other branch. If a copy of the poster bearing the signature of the Deputy Commissioner with the date 9th May, 1968, had been available, there would have been no doubt left at all in our mind that this poster was printed as stated by this doubt, we summoned the filed in which posters seen by the Deputy Commissioner are kept. The Official sent to Court in response to that summons for production stated that there was no such file in the Deputy Commissioner's office and that, in fact, the file, which was produced by Kishan Chand Chopra, was the only file containing posters and pamphlets received in the office of the Deputy Commissioner. This makes it clear that the statement of Kishan Chand Chopra that it was received in duplicate and one copy was sent to the Deputy Commissioner is not correct. It seems that all copies of posters received are kept by Kishan Chand Chopra on his own file. An examination of that file showed that a very large number of posters in it existed either in duplicate or even in triplicate. In a few cases, there was only one copy of the pamphlet or the poster. If two copies of this poster Ext. P.W. 20/1 were received by the Clerk, both those copies should have been on the file. An inference appears to be justified that, in fact, Kishan Chand Chopra received two copies of another pamphlet printed by Ghansham Das and it was put on the file in duplicate, so that they bore consecutive serial numbers. It seems that, later on, one copy of that pamphlet was removed and, instead, a copy of this poster Ext. P.W. 20/1 was introduced which could be easily done by the Clerk, because the documents on the file are merely put therein with a loose tag passing through holes made in them, so that substitution of one

document for another is a simple matter. The attempt made on behalf of the appellant to support his case that this poster Ext. P.W. 20/1 was printed before the date of polling by production of the file from the office of the District magistrate, thus fails. In these circumstances, we can see no reason to differ from the finding recorded by the High Court that there is no proof at all that this poster was printed and published before polling took place on the 14th May, 1968.

7. On this point, reliance was also placed by learned counsel on the evidence of ten witnesses who stated that this poster was distributed in the presence of respondent No. 1 at various meetings in the various villages by his workers. He urged that there was no sufficient ground for disbelieving the evidence of these witnesses. It is significant to note that no two of these ten witnesses speak of distribution at one and the same meeting. Each one of them has come to depose for a different meeting, so that it was not possible for the counsel for respondent No. 1 to cross-examine these witnesses and establish by eliciting contradictions that they were not speaking the truth. It is true that some of these witnesses were Sarpanches or Panches in villages; but, at the same time, quite a number of them were Congressmen or supporters of the Congress Party which gave the ticket to the appellant for this election. Respondent No. 1 and his witness who are alleged to have distributed this poster at these meetings have appeared in the witness-box and denied that there was any such distribution by them. To prove the negative circumstance that this poster was not distributed, no other evidence could have been given by respondent No. 1 except by examining witnesses who were alleged to have been present and to have taken part in the distribution. The burden lay on the appellant to prove that such distribution took place, and the evidence given by examining one witness from each village for each separate meeting, in these circumstances, cannot be considered to be reliable enough to discharge that burden of proof. Consequently, we agree with the finding of the High Court that the printing, publication and distribution of poster Ext. P.W. 20/1 before the date of polling is not proved at all and no question arises of any such act having been done with the consent of respondent No. 1.

8. So far as the second set of corrupt practices alleged to have been committed by making oral speeches to the same effect as contained in poster Ext. P.W. 20/1 is concerned, it has to be noticed that, in the election petition itself, the details of these corrupt practices were not given. There was a vague and general statement that, at meetings in different villages, speeches were given between the 5th and 12th of May, 1968. There was no specification at all as to the date and place at which each meeting took place as required by Section 83 of the Act. The pleading was so vague that it left a wide scope to the appellant to adduce evidence in respect of a meeting at any place on any date that he found convenient or for which he could procure witnesses. The pleading, in fact, was so vague and was wanting in essential particulars that no evidence should have been permitted by the High Court on this point. However, evidence was permitted; but that evidence has to be judged in the light of the nature of the pleading put forward. The pleading being vague, the Court would require much better type of evidence in proof of the meetings than the evidence of the ten witnesses examined on behalf of the appellant. These ten witnesses are the same whose evidence we have dealt with above in connection with the distribution of the poster Ext. P.W. 20/1. We have already held that their evidence cannot be relied upon in regard to the distribution of the poster and have indicated out reasons therefore. In considering their evidence on the question of meetings, there is the additional factor that the pleadings in respect of the meetings were wanting in particulars and respondent No. 1 could not, therefore, properly meet the case put forward in evidence by these witnesses. Consequently, on the basis of the evidence of these witnesses, no finding can be recorded that there were any meeting at any place where speeches may have been delivered to the same effect as contained in poster Ext. P.W. 20/1. As a result, the whole of issue No. 1 has to be decided against the appellant and the finding of the High Court on it must be affirmed.

9. The second issue relates to the commission of the corrupt practices by respondent No. 1 and his workers with his consent under Section 123(5) of the Act inasmuch as they hired or procured five different trucks for carriage of voters free of hire at five different polling stations. When counsel for the appellant opened his case before us, he made a statement that he would rely only on the allegation relating to three trucks Nos. PNM 335, PNE-6904, DLL 1197, but, after concluding his arguments in respect of them, he sought permission and urged arguments in respect of a fourth also which bore the No. PNJ 6354.

10. It appears that the drives of the first two of these trucks were prosecuted for carrying passengers on 14th May, 1968, the polling day, in contravention of the provisions of the Motor Vehicles Act and the licence granted under that Act, and the High Court has held that the appellant had built up his case around that circumstance. Truck No. PNM 335 belonged to one Bal Mukand who was not examined as a witness, though the allegation was that the arrangement was made by respondent No. 1 himself with Bal Mukand that the vehicle would be placed at the disposal of his worker and agent Mool Chand for the purpose of carrying electors from their fields in villages Mirzapur and Bachhod to the polling stations. Sub-Inspector Permanand has proved his report Ext. P.W. 9/1 which he recorded at his police station, and the relevant fact mentioned in the report was that he found this truck parked at the polling station with 50 passengers in it. It is significant that he did to allege in that report that he actually saw the truck carrying passengers. All he stated was that he saw the truck parked and stationary with 50 men in it whom he described as passengers. In his statement in Court, he proved that report and added that the truck came from the side of Atoli and was parked outside the polling station. Again, he did not state that he himself saw the truck coming. He was only definite about its being parked outside the polling station. It does not appear that he personally saw the truck coming from the side of Atoli. Further documentary evidence consisting of Exts. P.W. 9/6 P.W. 9/3 and P.W. 3/1 was produced to prove that the driver Kishori Lal was prosecuted for offences under Section 112 of the Motor Vehicles Act and that he was convicted under that section read with Rule 4.43 of the Rules framed under that Act, and that there were 50 passengers in the truck. Devki Nandan, P.W. 3, a Government official, was also examined to prove this conviction. All this evidence, however, does not show that the truck was actually seen carrying passengers and in fact, the records so far produced, which relate to the proceedings before the Magistrate, do not seem to contain any statement that the truck was actually transporting passengers. The only allegation that appears to have been put before the Magistrate was that the truck was parked at the polling station with 50 persons in it. The conviction was, however, still recorded for carrying passengers which does not help the case of the appellant so far as this charge under the Act is concerned.

11. Kishori Lal, driver, was also examined and he stated that he brought voters from the fields to the polling station. A number of other witnesses were examined in corroboration. These are Tula Ram, Budh Singh, Banarsi Lal and Balbir Singh. None of these witnesses have been believed by the learned Judge of the High Court who had the benefit of watching their demeanour when they were examined before him. Kishori Lal's evidence is contradicted by that of Sub-Inspector Permanand when he says that the Sub-Inspector met him on the way to the polling station, while the evidence of the Sub-Inspector is that he found the truck parked at the polling station. Most of these witnesses have not stated that the persons, who were carried in the truck, were voters and these does not seem to be sufficient material on the record to hold that any voters were actually carried in this truck to the polling station in order to assist them in casting their votes. Banarsi Lal witness was a member of the Block Congress Committee. Balbir Singh was not even a summoned witness. Budh Singh was a member of the Pradesh Congress Committee and was canvassing for Congress. Thus, all these witnesses were interested persons. Only one person Tula Ram, who purported to be a passenger in the truck, was examined. The evidence, thus, was of a very unsatisfactory nature. No cogent reasons

have been advanced before us which would justify our differing for the assessment of this evidence made by the High Court. So that we are unable to hold that the charge put forward in respect of this truck has been established by the appellant.

12. The driver of the second truck No. PNE-6904 was also prosecuted for carrying passengers in contravention of the Motor Vehicles Act and the Rules made thereunder. Two documents Exts. P. W. 3/2 and P.W. 3/1 were produced to prove this conviction, no doubt supports the case of the appellant that this truck was carrying men on 14th May, 1968; but the evidence given to show that the persons, who were carried, were voters is highly unsatisfactory. The Assistant Sub-Inspector Tilak Raj, who prosecuted the driver did not know that the persons carried were voters, and relied on the statement of Balwant Singh driver for his belief that they were voters. Balwant Singh driver did, in his statement, state that the persons, whom he carried, told him that they were going to cast their votes; but this statement is inadmissible in evidence as being previous statements of persons not examined as witnesses, made to this witness Balwant Singh driver. Another witness in support of this case is Harphool Singh who was a polling agent of the appellant and a Congressman. Ram Swarup Singh witness only saw men and women getting down from the truck. He was also a supporter of the appellant. There remains for mention Krishan Singh, the owner of the truck, according to whom this truck was taken on behalf of respondent No. 1 for carrying votes under an arrangement arrived at with him. His unreliability is apparent from the fact that, in his statement, he gives three different versions as to when and with whom that arrangement was arrived at. In one sentence he says that Rao Birendra Singh asked for the truck on 13th May, 1968. A second version is that Mata Din of Narnaul and President of the Truck Union came to him 4 or 5 days before 13th May, 1968 for the truck and then took him to Narnaul where Rao Birendra Singh was sitting. Mata Din asked for the truck and not Rao Birendra Singh. Thus, there is considerable confusion whether Rao Birendra Singh asked for the truck on 13th May, 1968, or whether Mata Din asked for the truck 4 or 5 days before the 13th May when he went to this witness, or whether he asked for it later at Narnaul in the presence of Rao Birendra Singh. The Judge has also noticed other reasons for holding that this witness is unreliable, such as the fact that Mata Din should have asked for the truck and not Rao Birendra Singh who really needed it specially when Mata Din himself possesses a truck which he could have placed at the service of Rao Birendra Singh. Krishan Singh owner, according to his statement, did not know Rao Birendra Singh and yet, for no rhyme or reasons he even bore the expense of the fuel used in the truck and charged no hire at all. We have just pointed out some of the circumstances in addition to those which led the learned Judge of the High Court to hold that this evidence was unreliable. In these circumstances, there is no reason at all for us to upset the finding of fact recorded by the High Court, so that this charge also fails.

13. The third charge relates to truck No. DLL-1197 which belonged to Ganpat and which was driven by Mohar Singh. According to Ganpat, he sent his truck for the use of Rao Birendra Singh on the basis of a letter Ex. P.W. 24/1 written to him by one Om Parkash who was the polling agent of Rao Birendra Singh. Om Parkash was not produced as a witness and, yet, reliance is placed on a letter written by him. His handwriting is sought to be proved by examination of one witness Satyapal who also claims to have been the polling agent of Rao Birendra Singh in this election. According to him, this letter Ex. P.W. 24/1 was described by Om Parkash in his presence and then he sent his cousin Jaswant to call one Chiranji to whom this letter was handed over to be carried to Ganpat. This Chiranji has also been examined as a witness to prove that he carried this letter from Om Parkash and delivered it to Ganpat. There seems to be no reason at all why, even if Om Parkash was acting on behalf of Rao Birendra Singh, he should have called a person like Chiranji to carry the letter and, thus create an opportunity for one more witness being examined to charge him with the corrupt practice of procuring this truck for carriage of voters. It is also not believable that he would write a

letter in the presence of Satyapal for such a purpose. Rao Birendra Singh denies that Om Parkash was his polling agent; but, even if it be believed that he was, in fact, a polling agent, he could not have the authority to hire or procure trucks on behalf of respondent No. 1 which can be inferred only in the case of a general agent entrusted with the duty of doing all the election work for a candidate. The fact that a letter was sent by Om Parkash cannot, therefore, imply any knowledge or consent on the part of Rao Birendra Singh that a truck was being procured for carrying voters to the polling station. Ganpat stated that he had no talk with the appellant about this letter and, yet, the appellant procured this letter from Ganpat. How he got the intuition that he should obtain it from Ganpat is not explained. According to Ganpat, on that day, the truck did not do other work except that of carrying passengers. On behalf of respondent No. 1, however, an octroi receipt was produced showing that the truck had passed a barrier on its way to Delhi carrying calves at about 11 p.m. on that day. To explain this receipt, Mohar Singh driver came forward with the version that the work of carrying voters was over at 11.00 in the morning and it was later in the evening, without knowledge of Ganpat, that he took the calves to Delhi. That this statement of Mohar Singh cannot be true appears from other admissions made by him. Mohar Singh and Ganpat both admit that they are partners in this truck and Mohar Singh is not merely a driver. No accounts are kept, Mohar Singh says, that the receipts of each day are divided between him and Ganpat at the end of each day. If this were true, there must have been a division between Ganpat and Mohar Singh of the charges received for carrying calves to Delhi and Ganpat could not have forgotten that the truck was used for that purpose. Clearly, both these witnesses are thoroughly unreliable. Amongst the persons carried in the truck, the only one examined is Udmi Ram who claimed to be one of the voters. How his name was included in the list of witnesses is not explained, because he says that he did not mention to the appellant that he had been carried in this truck. The truck was registered in Delhi and could not, ordinarily, operate in Haryana. Both Ganpat and Mohar Singh came forward with the plea that they had obtained counter-signature for its use in Haryana. On the other hand, R.W. 25, Daulat Ram, Clerk of the office of the Regional Transport Authority, Ambala, clearly stated that there was no such counter-signature for this truck. In these circumstances, it is clear that the High Court was fully justified in not relying on the evidence given on behalf of the appellant and in arriving at the finding that the appellant had failed to discharge the burden of proof.

14. The fourth charge related to truck No. PNJ 6354. On the face of it, it was argued half-heartedly before us; as we have mentioned earlier counsel for the appellant at the first stage stated that he would not press this charge at all. The evidence in respect of this truck also consists of the statements of Darshan Singh owner, Pritam Singh driver and two other witnesses Nathu Ram and Sultan Singh. Their evidence is also of the same unsatisfactory character as the evidence of the witnesses examined in respect of the other three charges. The High Court did not consider their evidence reliable and we have not found any reasons at all which would induce us to differ from the High Court and set aside the finding recorded by it. The charges brought under issue No. 2 also, therefore, fail completely.

15. As a result, the appeal fails and is dismissed with costs.

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