

Bansilal Kohistani

Vs

Rishi Kumar Kaushal

Civil Appeal No. 204 of 1970

(J. M. Shelat, C. A. Vaidialingam JJ)

23.03.1971

JUDGMENT

VAIDIALINGAM, J. -

This appeal, under Section 123 of the Jammu and Kashmir, Representation of the People Act, 1957 (hereinafter to be referred as the Act) as amended by Act 11 of 1967, is directed against the judgment and order, dated December 15, 1967, of the High Court of Jammu and Kashmir in Election Petition No. 37 of 1967. Section 123 of the Act corresponds to Section 116-A of the Representation of the People Act, 1951.

2. In the General Election held in 1967, the appellant and the respondent had duly filed their nominations for election to the Jammu and Kashmir Legislative Assembly from the Reasi Assembly Constituency. Scrutiny of the nomination papers was conducted on January 23, 1967 and the polling took place on February 21, 1967. The counting of the ballot papers took place on February 27, 1967 and the appellant was declared duly elected by a majority of 418 votes. The respondent filed an election petition on April 8, 1967, being No. 37 of 1967, challenging the election of the appellant on the ground that various corrupt practices, set out in the petition, had been committed by the appellant, his agents and other persons with his consent in the said election. In consequence the respondent prayed for declaring the election of the appellant from the said Constituency as null and void.

3. In Paragraph 6 of the election petition, the respondent enumerated the various corrupt practices stated to have been committed during the election, in consequence of which the election of the respondent was void. It is not necessary for us to set out the various corrupt practices referred to in Paragraph 6 of the election petition. The election of the appellant had been declared to be void by the High Court only on the ground that the matters mentioned in Paragraphs 16, 17 and 20 of the booklet Ex. P.W. 1/II constitute corrupt practices under Section 132(4) of the Act corresponding to Section 123(4) of the Representation of the People Act, 1951. We may have to deal with certain other matters referred to in Paragraph 6 of the election petition in the latter part of the judgment, as the learned counsel for the respondent has tried to support the judgment of the High Court by attacking the finding recorded against him in respect of some of those allegations.

4. Item No. 2 of Paragraph 6 refers to the appellant, his agents, polling agents and other persons with his consent having published certain posters and booklets containing statements of facts, which were false and which they either believed to be false and did not believe to be true in relation to the personal character and conduct of the respondent. Sub-item (a) of item No. 2 refers to the publication of a booklet under the caption "open letter from Dehati (Rural) Conference to Mr. Rishi

Kumar Kaushal and other Jan Sangh leaders". This is Ex. P.W. 1/II. It was published by one Lal Singh R.W. 53, an active worker of the Indian National Congress and the agent of the appellant. Lal Singh was later on appointed by the appellant as his polling agent. Ex. P. W. 1/II was alleged to contain wrong facts in several paragraphs enumerated in the petition. There were other allegations of corrupt practices mentioned in Paragraph 6 of the election petition.

5. The appellant in his written statement pleaded that none of the allegations that had been made against him by the respondent in the election petition contained material facts constituting the alleged corrupt practices. He further pleaded that the respondent has not mentioned the parties who are alleged to have committed the corrupt practices nor the dates and places when the corrupt practices are alleged to have been committed. Regarding the various allegations of corrupt practices, the appellant denied that he had committed any such corrupt practice and that in any event the allegations do not amount to corrupt practice in law. With reference to Ex. P.W. 1/II, the booklet, the appellant averred that the publication was really a rejoinder issued to a poster Ex. P.W. 1/B issued by the Jan Sangh party, to which the respondent belonged. He further pleaded that P.W. 1/II was published long before the respondent became a candidate in the election and its object was to educate the voters of the constituency. With reference to the various paragraphs in Ex. P.W. 1/II, relied on by the election petitioner as constituting corrupt practice, the appellant pleaded that the matters referred to in the booklet do not affect the personal character or conduct of the respondent and that they never affected him beneath the politicians. Those matters contained in Ex. P.W. 1/II dealt only with the respondent as a politician and they were only criticism of the respondent in his public character as a politician and of the political party, the Jan Sangh, to which he belonged. It was only a criticism of the Jan Sangh Party and its economic and political ideology. He also controverted the various other allegations made in the election petition.

6. R.W. 53 Lal Singh has given evidence that he published the open letter Ex. P.W. 1/II as a reply to the poster Ex. P. W. 1/B issued by the Jan Sangh. He has also stated that the contents of Ex. P.W. 1/II are correct and that the publication was made in the first week of December, 1966.

"Issue No. 2 runs as follows : Whether the respondent, his election agent and agents published the booklet 'Dehati Conference ke taraf se Shri Rishi Kumar Kaushal aur deegar Jansanghi leaderon ke nam Khuli Chitthi' in the name of one Lal Singh an active worker of the Congress and distributed it amongst the voters of the Constituency from 1-2-67 to 20-2-1967 and whether the said booklet contained facts in relation to Rishi Kumar petitioner which were false and which were either believed to be false or were not believed to be true ?"

7. Ex. P.W. 1/II is a pamphlet. It purports to be from the Dehati Rural Conference to Mr. Rishi Kumar Kaushal and other Jan Sangh leaders. Rishi Kumar is the respondent herein and he was at the material time a sitting member of the Legislative Assembly. There is a photo of Lal Singh in the said pamphlet. It calls itself an open letter. It consists of 21 paragraphs and the relevant paragraphs for the purpose of this appeal are Nos. 16, 17 and 20. There are mistakes in the official English translation of the pamphlet and there are also mistakes in the translation of said paragraphs by the High Court. Both the learned counsel have agreed before us that the following translation of the said three paragraphs is substantially correct.

"Paragraph 16. - Who raised the question of the village and the town ? When in the month of September, 1966, two persons of the rural area Sailanjan - Dhani Ram and Baldev Singh came to Reasi and they caught a shop-keeper sawing wood in an

unauthorised manner and you with the aid of your urban colleagues made an attack on them and raised the question; that these people from the village come to town and drink and roam aimlessly like vagabonds etc. And they were kept in jail for a night, the doctors and the lawyers who were in Reasi were instructed not to take up their cause and they received no aid. It was the next day that they were bailed out from jail. No one from Reasi town came to their rescue. Thereafter they went to the Court of the D.C. Udhampur and there they instituted a case against 10-11 persons, including you. Then you gave them some small coins paise and asked for a pardon. But it has been seen that some of your Sathis are found drinking from morning till evening. You rely on their support. Have you ever taken action against them ? Or is it that we alone from the village are bad characters ? The urban question has been raised by you and now you are preaching separation between the urban and the rural people, and that two foundations are being laid now. Who has laid these foundations ? And who raised the rural question ?"

"Paragraph 17. - It is an incident of four years ago that you had in this very manner incited our village brethren. On that account a few Hindus and Muslims of Talwada jointly seized the cattle and livestock of the peasants living in the hills, when they were taking them to their home. Their cattle and livestock were impounded. For this, these peasants filed cases in Courts against their own brethren and a few persons of Talwada were arrested. The case against them has been going on till recently. But have you ever rendered any help to them in Courts ? They had to suffer and thus incur expense up to the Courts in Srinagar but you merely did propaganda about cow-slaughter, you never took into consideration that the peasants invariably carry on the sale and purchase of cattle and livestock. The livestock keeps moving up and down. What marks these cattle carried to indicate that they were on their way to the slaughter house. What work you have done for the benefit of the village. Every effort has been made that in every way the villagers are rendered weak. For this reason alone, you have been knocking at every door and staggering around saying : 'Vote for me'. Have you the face to ask for votes ? 'yeh munh aur masoor ki dal". Now you secure the votes from your town. Don't hope for the village. You commit deception and people from the village get a bad name. We from the village have done everything for you and after 20 years this is reward you have given us. Now you reap as you sowed (jaisa Kiya waisa bhogo). Take a razor and shave the heads of the villagers. Kaushal Sahib, that is all that is left to be done. Now you consider, who should be voted. Strike off the name of 'taking" and insert the name of 'giving'."

"Paragraph 20. - Now we have set up the Dehati Conference on November 20, 1966. Now you do what you please. Now no villager will come to you for being hurt, nor shall anyone else. Now you fix an iron curtain outside your town, so that nobody casts eyes on your golden city and you enjoy the wealth robbed from the poor."

8. The High Court with reference to Paragraphs 16, 17 and 20 of the pamphlet Ex. P.W. 1/II, held that the allegations contained therein constitute statements of fact in relation to the personal conduct and character of the respondent. With reference to Paragraph 16, the High Court held that the respondent is shown to have apologized after paying some money and that he extricated himself from a criminal case and that the respondent is shown to be an associate of drunkards on whose support he comes and that these statements of fact were false and have not been proved by the appellant to have been made in a bona fide manner. Again with reference to Paragraph 17, the High

Court is of the view that the respondent is charged with negligence and is stated to be responsible for the misfortune of certain arrested persons. In particular the High Court has held that in this paragraph "the petitioner is shown to have preached cow-slaughter (which is indeed heinous from Hindu point of view)". The High Court has further held that there are also allegations that the respondent has committed acts of fraud. These averments have been held by the High Court to be wrong and false statements of facts and not proved to be correct and such a type of propaganda has materially affected the prospects of the respondent's election as they touched his personal conduct.

9. With reference to the averments in Paragraph 20 of the Ex. P.W. 1/II, the High Court is of the view that there is an allegation that the respondent has looted the property of the poor and that he is further charged with appropriating the looted property. Such an allegation, which is false, relates to the personal character of the respondent. The High Court winds up its discussion on Paragraphs 16, 17 and 20 of Ex. P.W. 1/II as follows :

"The above referred to allegations made in Paras 16, 17 and 20 are in my opinion statements of fact which are in relation to the personal character and conduct of the petitioner. He is described as one who apologised for extricating himself from a criminal case by paying money to the other side. He is shown to be an associate of drunkards on whose support he counts and in whose company he moves. He is also shown to be a preacher of cow-slaughter (a mala fide statement which is likely to rouse the wrath of Hindu Janta against him and to malign him). He is said to be begging for votes from door to door (on humiliating terms). He is said to have committed acts of fraud and in the end what is worst is that he is asked to appropriate the looted property of the poor. The statements of facts have been made in the booklet Ex. P.W. 1/II, with the clear intention of maligning and defaming the petitioner and degrading him in the eyes of the voters. These statements are false and have not been proved to be correct. These statements of fact have been made by an active workers of the Congress who was not only a worker in election of the respondent but also his polling agent. It is true that the booklet was published before the notification calling upon the candidates to file nomination papers in the Constituency was made. May be also that the booklet was published only in reply to the poster Ex. P.W. 1/B entitled 'Dihati Bhai Hoshiar Bash' issued by Jan Sangh as is argued. But it was issued on the eve of the election and in this there is a clear mention of election propaganda."

10. Finally the High Court held that the allegations referred to in Paragraphs 16, 17 and 20 of the booklet Ex. P.W. 1/II, are statements of fact, which are false and have been made in relation to the personal character and conduct of the petitioner and therefore fall within the ambit of Section 132(4) of the Act. The High Court further finds that there is overwhelming evidence on record to show that the said booklet was distributed and circulated by the author of the booklet R. W. 53 and other workers of the Congress Partly including the election agent of the appellant and the appellant himself amongst the people in different villages of the Constituency during the election and also just before the poll.

11. All other allegations of corrupt practice made in the election petition were either held to be true or not proved. But on the basis of the finding on Paragraphs 16, 17 and 18 of Ex. P. W. 1/II, the High Court held the appellant guilty of corrupt practice and as such set aside his election after declaring it void.

12. Mr. R. K. Garg, learned counsel for the appellant, urged two contentions : (i) that the statements contained in the above three paragraphs do not relate to the personal conduct or character of the respondent, and that, on the other hand, they are only by way of a criticism of the respondent as a politician and the political activities of the Jan Sangh Party to which he belongs. The High Court has misinterpreted and misunderstood the various statements made in the above paragraphs when it came to the conclusion that they amount to corrupt practice; (ii) regarding publication and distribution of the pamphlet by the appellant, his agent, or by any person with his consent, the learned Judge has merely extracted the evidence on the side of the appellant and the respondent and has entered a finding that there is overwhelming evidence on record to show that Ex. P.W. 1/II, has been distributed and circulated in different villages during the election and before the poll. The learned Judge has not expressed any opinion as to which evidence he accepts or rejects, and as such the finding in this regard is grossly vitiated.

13. Section 132 of the Act corresponding to Section 123 of the Representation of the People Act, 1951, deals with corrupt practices and sub-section (4) is as follows :

"The publication by a candidate or his agent or by any other person, of any statement of fact which is false, and which he either believes to be false, or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement from contest, of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election."

14. Sub-section (4), quoted above is the same as Section 123(4) of the Representation of the People Act, 1951 and the contents of the said sub-section have been laid down in several decisions of this Court. We will first refer to the broad principles laid down in those decisions and then advert to the relevant paragraphs of the booklet Ex. P.W. 1/II and will then deal with the contentions of Mr. Bhalgotra, supporting the findings of the High Court in relation to those paragraphs.

15. In *T. K. Gangi Reddy v. M. C. Anjaneya Reddy and Others* ((1960) 22 ELR 261.) this Court stated that the words "personal character and conduct" are so clear that they do not require further elucidation or definition. The character of a person may ordinarily be equated with his mental or moral nature. Conduct connotes "a person's actions or behaviour". It has been further held that if otherwise a statement comes under sub-section (4) of Section 123 as corrupt practice, it will be no answer to plead that the statement was made as a counter blast to a rival statement of an opponent.

16. In dealing with sub-section (4) of Section 123 in *Inder Lal v. Lal Singh*, ((1962) Suppl 3 SCR 114 : AIR 1962 SC 1156.) this Court observed as follows :

"It would be noticed that in prescribing the requirement that the false statement should have relation to the personal character of the candidate, a distinction is intended to be drawn between the personal character of the candidate and his public or political character. Dissemination of false statements about the personal character of the candidate thus constitute a corrupt practice."

In the same decision it has also been pointed out that though it is clear that the statute wants to make a broad distinction between public and political character on the one hand and private character on the other, it is obvious that a sharp and clear cut dividing line cannot be drawn to distinguish the one from the other. But nevertheless the Courts will have to draw a working line to distinguish private

character from public character.

17. It has further been pointed out in *Kultar Singh v. Mukhtiar Singh*, ((1964) 7 SCR 790 : AIR (1965) SC 141 : (1965) 1 SCJ 565.) that the document must be read as a whole and its purport and effect determined in a fair, objective and reasonable manner and that at the election time the atmosphere is usually surcharged with partisan feelings and emotions and some allowance must be made in that regard.

18. Dealing with sub-section (4) of Section 123, in *Sheopat Singh v. Ram Pratap*, ((1965) 1 SCR 175 : AIR 1965 SC 677.) this Court observed as follows :

"The sub-section is designed to achieve this dual purpose, namely, freedom of speech and prevention of malicious attack on personal character or conduct, etc., of rivals. The purity of an election is sought to be maintained without affecting the freedom of expression. The sub-section prohibits any statement of fact in relation to personal character or conduct of any candidate, which is not only false but also the candidate making it either believes it to be false or does not believe it to be true. It implies that a statement of fact relating to the personal character or conduct, etc., of a candidate can be made, if it is true. Even if it is false, the candidate making it is protected, unless he makes it believing it to be false or not believing it to be true, that is to say statements which are not true made bona fide are also outside the ambit of the provision. To be within the mischief of sub-section (4) of Section 123 of the Act, such a statement shall satisfy another test, namely, it shall be a statement reasonably calculated to prejudice the prospects of the election of the candidate against whom it is made. The word "calculated" means designed : it denotes more than mere likelihood and imports a design to affect voters. It connotes a subjective element though the actual effect of the statement on the electoral mind reflected in the result may afford a basis to ascertain whether the said statement was reasonably calculate to achieve that effect. The emphasis is on the calculated effect, not on the actual result, though the latter proves the former."

It has been further stated in the said decision :

"The boundary between personal character and conduct and public character and conduct is well drawn, though, sometimes, it is thin. Sometimes a statement may appear to touch both the candidate's personal as well as public character."

19. In *Dev Kanta Barooah v. Golak Chandra Baruah and Others*, ((1970) 1 SCC 392.) this Court had to consider whether an allegation calling as "Deshdrohita" a person who was having military contracts during the 1942 movements was a statement in relations to his personal character or conduct. It was held that the said allegation was only a reflection on the political conduct of the person concerned in siding with the British Government rather than joining the Congress, which was carrying on a movement against the British for achieving independence of the country. In that context it was held that the statement was not in relation to the personal character or conduct of the party concerned "as there is no imputation of any depravity or immorality".

20. In *Guruji Shrihar Baliram Jivatode v. Vithalrao and Others*, ((1969) 1 SCR 766 : 1969 (1) SCC 82 : (1970) 2 SCJ 10.) it was held by this Court that the statements which were under consideration to not make any reflection on the moral or mental qualities "of the person against whom those

statements had been made". The following observation of Darling, J., in Cumberland (Cockermouth Division) case ((1901) 5 O' M & H 155.) has been quoted with approval in some of the decisions of this Court referred to above :

"What the Act forbids is this. You shall not make or publish any false statement of fact in relation to the personal character or conduct of such candidate; if you do, it is an illegal practice. It is not an offence to say something which may be severe about another person nor which may be unjustifiable nor which may be derogatory unless it amounts to a false statement of fact in relation to the personal character or conduct of such candidate; and I think the Act says that there is a great distinction to be drawn between a false statement of fact which affects the personal character or conduct of a candidate and a false statement of fact which deals with the political position or reputation or action of the candidate. If that were not kept in mind, this statute would simply have prohibited at election times all sorts of criticism which was not strictly true relating to the political behaviour and opinions of the candidate. That is why it carefully provides that the false statement, in order to be an illegal practice, must relate to the personal character and personal conduct."

Darling, J., was dealing with a provision similar to Section 123(4).

21. From a review of the decisions referred to above, it follows that in order to constitute corrupt practice under Section 123(4), the false statement should have been in relation to the personal character of the candidate. If a false statement is made with regard to the public or political character of the candidate, it would not constitute a corrupt practice even it is likely to prejudice the prospects of that candidate's election. Circulation of false statement about the private or personal character of the candidate during the period preceding the election is likely to work against the freedom of election itself inasmuch as the effect created by false statement cannot be met by denial in proper time and so the Constituency has to be protected against the circulation of such false statements which are likely to affect the voting of the electors. If a statement of fact affects the man beneath the politicians, it touches the private character; and if it affects the politicians it does not touch his private character. Some allowance will have to be made in respect of statements made in election meetings as the atmosphere is usually surcharged by partisan feelings and emotions. Allegations of depravity or immorality or affecting the moral or mental qualities of a person are statements relating to the personal character or conduct of a person. Attributing acts of violence to a candidate even if such acts are done during his political career, is a statement relating to the personal character and conduct. If the conditions of Section 123(4) are satisfied it is irrelevant to enquire whether the statement has been made as a counter-blast to another statement issued by the opponent. The Statement must be one reasonably calculated to prejudice the prospects of the candidate's election. The initial onus of establishing the circumstances mentioned in Section 123(4) is on the election petitioner and when once he discharges that onus, the burden shifts to the candidate making a false statement of fact to show what his belief was.

22. Bearing in mind the above propositions, we will now proceed to consider whether the statements in Paragraphs 16, 17 and 20 in Ex. P.W. 1/II are statements in relation to the personal character or conduct of the respondent.

23. In considering this question it is necessary to note that the respondent was then a sitting member of the Legislative Assembly and the pamphlet itself is addressed not only to the respondent but also to other Jan Sangh leaders. There is no controversy that the respondent belonged to Jan Sangh Party.

24. Before we consider the contents of the said three paragraphs of Ex. P.W. 1/II, we can deal with and dispose of the contentions raised on behalf of the appellant that the booklet was issued as a counterblast to the pamphlet issued by the Jan Sangh Party Ex. P.W. 1/B. As stated by this Court in T. K. Gangi Reddy and Others case (supra), Section 123(4) defining corrupt practice, is not conditioned by any proviso to the effect that it would cease to be a corrupt practice if the statement was made to counteract the rival statement of an opponent. Therefore, it follows that if the conditions mentioned in sub-section (4) of Section 123 are held to be satisfied, it is irrelevant to enquire whether the booklet Ex. P.W. 1/II, has been published as a counterblast to Ex. P.W. 1/B.

25. Now coming to the material portion of the pamphlet itself, we are of the opinion that the High Court has misunderstood and misinterpreted the averments contained in Paragraphs 16, 17 and 20. Before we deal with Paragraph 16, we will consider the nature of the statements made in Paragraphs 17 and 20.

26. Paragraph 17 in substance refers to seizure of cattle and livestock of the persons when they were being taken to their home. There is a reference to the cattle being impounded and the persons filing a case in the Court. The charge is that the respondent never rendered any help to those persons who had been arrested and tried by the Courts. There is a reference to the respondent doing propaganda about the cow-slaughter and his not having done anything for the benefit of the villagers. In spite of not doing anything to the villagers, the respondent is alleged to be asking for votes from the villagers. It is further stated that the people of the village have been helping the respondent for over 20 years and the latter had done nothing to help the villagers. This paragraph, unfortunately, has been understood by the learned Judge as containing the statements to the effect :

- (a) that the respondent is a preacher of cow-slaughter and that it is a mala fide statement made to rouse the wrath of Hindu Janta against him and to malign him,
- (b) that the respondent is begging for votes from door to door on humiliating terms,
- (c) that the respondent has committed acts of fraud.

27. None of the above conclusion drawn by the High Court from Paragraph 17 are supported by the statements contained therein. On the other hand, it is a wholesale attack against the respondent as a politician for having ignored the requirements of the villages and the villagers but at the same time trying to woo their votes which he does not deserve. There is no statement to the effect that the respondent has preached cow-slaughter in which case it will be a very serious allegation. On the other hand, the statement is that the respondent did propaganda about cow-slaughter nor is there any allegation that he is begging for votes on humiliating terms. Even if such a statement is there, it will not be a statement in relation to the personal character or conduct. On the other hand, every candidate during elections makes requests for votes and for this purpose he may be visiting the voters from door to door. To say that a candidate is asking for votes, has no reference to the personal character or conduct of that candidate. But the actual statement in Paragraph 17 is that he is knocking at every door and staggering around saying "vote for me". In our opinion, this statement has no relation to the personal character or conduct of the respondent and it only criticises him for asking for votes from the voters when he has not done any goods to them; nor is there any statement to the effect that the respondent has committed acts of fraud. An argument was made by Mr. Bhalgotra, learned counsel for the respondent that there is an averments that the respondent has committed deception and the people from the village get bad name. Deception, according to the learned counsel, consists in the respondent having misled the people into believing that the cattle

were being taken for slaughter and when the villagers got into trouble, when they attempted to prevent the cattle from being taken, the respondent did not render any help to them. We are not inclined to accept this interpretation sought to be placed on these averments in Paragraph 17. The deception that is referred to is attributed to the people of the town generally and the people from the village suffering on account of that. This only reveals the antagonism of the villagers to the town people on the ground that the latter exploit the village people for their own purpose. Therefore, none of the reasons given by the learned Judge for coming to the conclusion that Paragraph 17 contained statements in relation to the personal character or conduct of the respondent appeal to us.

28. Coming to Paragraph 20, the learned Judge had taken the view that there is an allegation that the respondent has been asked to appropriate the looted property of the poor. Here again there is a fallacy underlying the reasoning of the High Court. Paragraph 20 in substance is only to the effect that there is a wide disparity between the people in the town and in the villages and that the former are gaining at the expense of the latter. It is in this context that it is sarcastically mentioned that the people of the town can put up an iron curtain and enjoy the advantages gained from the poor. The sentiments underlying Paragraph 20 reveal only the grievance of the people in the villages that their claims are being neglected and that the people in the town are having all the benefits at the expense of the village people. The words "wealth robbed" has been understood by the learned Judge as the property looted from the poor. There is no warrant for such an interpretation. Those expressions have been used only to bring out very forcibly that the people in the town are having all the benefits at the expenses of the people of the villages who are comparatively stated to be poor. Therefore, Paragraph 20 again, in our opinion, does not contain any statement relating to the personal character or conduct of the respondent.

29. Taking up Paragraph 16, the High Court has held that it contains two statements which relate to the personal character or conduct of the respondent, namely : (a) that the respondent apologised for extricating himself from a criminal case by paying money to the other side and (b) the respondent is shown to be an associate of drunkards on whose support he counts and in whose company he moves. Broadly, the statements in Paragraph 16, relate to the attack of two persons by the urban people including the respondent, their arrest and the case instituted by them being dropped or compromised on the respondent asking for a pardon by paying some small amounts. There is a further statement that the respondent relies on the support of his companions who are found drinking from morning till evening and the respondent not having taken any action against them, cannot blame the villagers.

29-A. Here again the theme seems to be the same, namely, of the town people receiving a more favourable treatment than the people in the villages. There is no such averment as understood by the High Court that the respondent is an associate of drunkards on whose support he counts and in whose company he moves. On the other hand, there is a statement that some of the Sathis of the respondent are found drinking from morning till evening and that the respondent relies on their support. This support, referred to, must relate to the political support that the respondent derives from such persons. But this averment will have to be taken along with the statement contained in the earlier part of Paragraph 16, that the respondent along with his urban friends after attacking the two persons mentioned therein has raised the question that the people from the village come to town and drink and roam aimlessly like vagabonds. Read in this manner the idea is quite clear, namely, that the respondent and his other urban friends charges the villagers of drinking when they come to town and the villagers in turn charge the respondent that his own companions in the town are also persons who drink. There is no reference in these allegations to the personal character or conduct of the respondent. But, on the other hand, it is really a criticism by the village people of the habits and

manners of the people in the town in retaliation to the allegations made against the village people. Therefore, it follows that there is no such statement in Paragraph 16 to the effect that the respondent is an associate of drunkards on whose support he counts and in whose company he moves.

30. This leads us with the question whether the High Court is correct in its finding that the Paragraph 16, the respondent is described as one who apologised for extricating himself from a criminal case by paying money to the other side. So far as this aspect is concerned, Mr. Garg, referred us to the evidence to show that a criminal complaint was actually filed against the respondent and others and that the matter was compromised on an apology tendered by the respondent. If that is so, the counsel urged, the statements contained herein even assuming that they relate to the personal character of the respondent, are true and therefore they do not amount to corrupt practice under Section 123(4). On the other hand, Mr. Bhargotra, learned counsel for the respondent, pointed out that the evidence regarding the filing of a complaint and the respondent having tendered an apology is unsatisfactory and such evidence should not be acted upon. The evidence bearing on this matter may be referred to. In Paragraph 16, the two persons who are stated to have come to Reasi and assaulted are Dhani Ram and Baldev Singh. Baldev Singh has given evidence as R.W. 37. He has deposed that about two years prior to his giving evidence, he and Dhani Ram had gone to the town of Reasi and visited the shop of Shyam Lal Jargar. When a piece of timber was sought to be used as firewood by Shyam Lal, Dhani Ram tried to seize the piece of timber on the ground that it belonged to the firm of Jodha Mal and Company, in which he was employed. On this a hue and cry was raised by the people of the town which included the respondent. All of them beat the witness and Dhani Ram. After referring to the fact that their complaint to the police was not taken on file, the witness has stated that he went with Dhani Ram and Amar Nath, R.W. 43 to Udhampur to file a complaint before the Court. He speaks further to the fact of filing of the complaint and that on the next day a compromise was brought about between the parties. He has produced Ex. R.W. 37/1, the complaint, and the Vakalat executed by him in favour of Durga Dutt, Vakil, R.W. 18, has been produced as R.W. 18/2-A. R.W. 12, Fateh Singh also refers to the incident of attack on Baldeo Singh, R.W. 37 and Dhani Ram, in which the respondent and certain other town people also took part. He speaks to having stood as a surety for Baldeo Singh and Dhani Ram for obtaining their release. He refers to having delivered a letter to Durga Dutt, Vakil at Udhampur and to Baldeo Singh and Dhani Ram coming to Udhampur to file the complaint. R. W. 18 is a lawyer at Udhampur. He speaks of Baldeo Singh and Dhani Ram having come to him on September 19, 1966 with a letter from Mr. Raghunath Das, Advocate, Reasi. He has also spoken to Baldev Singh and Dhani Ram giving him instructions to file the criminal complaint. He has produced the Vakalats Ex. R.W. 18/2 and Ex. R.W. 18/2-A, executed by Dhani Ram and Baldev Singh respectively in respect of the criminal complaint. He has referred to the fact that he signed the complaint petitions and filed them in the Court of the A.D.M., Udhampur on September 20, 1966. The Magistrate forwarded the two complaints to the Station House Officer, Reasi, for investigation. He has stated the reasons as to why the Vakalats were retained by him, by saying that when a complaint petition is sent by the Court to the police for inquiry through the complainant himself, the Vakalats are retained by the lawyer. He has no doubt admitted that he is the maternal uncle of the appellant.

31. R.W. 43 Amar Nath has spoken to his knowing Baldev Singh and Dhani Ram and also to the incident which took place in Reasi and their being beaten by the people including the respondent. He has further referred to R.W. 12 requesting him to accompany Baldev Singh and Dhani Ram to Udhampur for filing a criminal complaint and to his having actually accompanied them. He further deposed to R.W. 18 being engaged as a counsel and to the filling of the complaints by Baldev Singh and Dhani Ram. In cross-examination this witness has stated that the respondent got the case

compromised and the various accused in the criminal complaints were told that if any fine was imposed on them, it will be paid by the respondent and his party, the Jan Sangh.

32. R.W. 53 Lal Singh, who is the author of Ex R.W. I/II, in which these allegations have been made, had deposed to the effect that the statements contained therein are all true and correct.

33. Mr. Garg very strenuously pleaded for the acceptance of the evidence, referred to above, which, according to him, establishes the truth of the averments regarding the filing of the criminal complaints and the proceedings being dropped in view of the compromise entered into between the parties. Mr. Bhargotra, learned counsel for the respondent, on the other hand, pointed out that even if the above evidence is accepted, in toto, the allegations that the criminal proceedings were dropped because of the respondent paying money and asking for a pardon will not stand established. The allegation that a person paid money to a complainant to drop the criminal proceedings is a statement relating to the personal character or conduct of that person. If so, the Counsel urged that the findings of the High Court that the appellant is guilty of corrupt practice is justified.

34. We are of the opinion that the evidence referred to above is acceptable and it substantially proves the truth of the allegations regarding the incident referred to in Paragraph 16 leading to the filing of the criminal complaints and their not being proceeded with due to compromise arrived at between the parties. So far as we could see, the learned Judges has not properly considered the above evidence when he recorded a finding that the allegations regarding the filing of criminal complaints and the respondent entering into a compromise are false and have not been proved to be correct. The allegations regarding the attack said to have been made against Baldev Singh and Dhani Ram by some of the people in Reasi including the respondent is established by the evidence of R.W.s 37, 12, and 43. Their evidence is corroborated by Ex. R.W. 37/1, the complaint, stated to have been made before the A.D.M., Udhampur. The ninth defendants in the said complaint in Rishi Kumar Kaushal, the respondent. The substance of the complaint is that R.W. 37 and Dhani Ram had come to Reasi on September 14, 1966 where they were given a beating by the accused, named, in the complaint which included the respondent. It also refers to the fact that the police did not take the complaint on the file and that is why it was being presented before the Court. That complaint is dated September 19, 1966. That the police declined to entertain the original complaint made by R.W. 37 and Dhani Ram is borne out by the evidence of R.W.s 12 and 43. That R.W. 37 and Dhani Ram went to Udhampur to file the complaint is also established by the evidence of R.W.s 12 and 43. In fact R.W. 43 speaks to having accompanied Baldev Singh and Dhani Ram to Udhampur to contact the lawyer had have the complaint filed before the Court.

35. Ample corroboration is found for the above evidence in the testimony of an independent witness R.W. 18. Durga Dutt R. W. 18 is a practicing lawyer at Udhampur and he has spoken to Baldev Singh and Dhani Ram coming to him on September 19, 1966 with a letter of recommendation from one Raghunath Dass and he has also produced the said letter as R.W. 18/1. He has also produced the two Vakalats executed in his favour by Baldev Singh and Dhani Ram and they have been marked as Ex. R.W. 18/2 and Ex. R.W. 18/2-A. He has further referred to the filing of the complaint before the A.D.M., Udhampur and to the Court handing over the complaint with an endorsement to the police at Reasi to investigate and report. No doubt, this witness has admitted that he is the maternal uncle of the appellant herein, but that circumstance alone will not warrant the rejection of the evidence of this witness. Therefore, it is clear that there was an incident as spoken to by R.W. 37 in which the respondent also was involved and in connection with that incident a complaint was actually filed before the A. D.M., Udhampur and as we have already said the respondent was the ninth defendant in the complaint.

36. R.W. 43 has stated that the respondent Rishi Kumar Kaushal got the criminal case compromised and the respondent further represented that if any fine was imposed the same will be paid by the respondent and his party. This is an answer elicited from R.W. 43 in cross-examination. This answer clearly establishes that the criminal complaint evidenced by Ex. R.W. 37/1 did not proceed further and the matter ended by the parties entering into a compromise. No doubt the respondent has gone to the extent of denying even about the incident of attack spoken to by R.W. 37 and the filing of the complaint. He has further denied that he ever entered into any compromise in respect of any criminal complaint.

37. We are not inclined to accept the evidence of the respondent on this point in view of the overwhelming oral and documentary evidence, which conclusively establishes the events leading up to the filing of the complaint Ex. R.W. 37/1 and to the proceedings being dropped because of a compromise. No doubt R.W. 37, who was one of the complainants does not speak to any apology being given by the respondent, but we have already pointed out that R.W. 43 has clearly stated that the criminal case was compromised. In view of all these circumstances the inference is irresistible that the criminal case must have come to a close because of a compromise arrived at by the parties and probably due to some sort of apology given by the respondent. But even if it is held that there is no evidence that the respondent actually tendered any apology, nevertheless, as the other allegations are held to have been substantially true, any reference to respondent asking for a pardon in Paragraph 16, must only be considered to be a highly exaggerated version given by the author of the booklet. But on that ground it cannot be held that the allegation regarding the filing of the criminal complaint are not true. Therefore, the view of the High Court that the statement in Paragraph 16 that the respondent apologised and extricated himself from criminal case by paying money, is false, cannot be accepted, as we are of the opinion, that the said allegation has been proved to be correct. To conclude there are no statements of fact in Paragraph 17 and 20 of Ex. R.W. 1/II in relation to the personal character or conduct of the respondent. There is no allegation in Paragraph 16 that the respondent is an associate of drunkards. The averment in the said paragraph that some of the companions of the respondent on whose political support the respondent relies are found drinking from morning till evening, does not relate to the personal character or conduct of the respondent. The allegation in the said paragraph regarding the respondent extricating himself from a criminal case filed by Baldev Singh and Dhani Ram has been proved to be true and as such falls outside Section 132(4) of the Act. Therefore, it follows that the finding of the High Court that the statements contained in Paragraphs 16, 17 and 20 amount to corrupt practice under Section 132(4) of the Act cannot be sustained.

38. On the above conclusion arrived at by us it becomes unnecessary to consider the second contention of Mr. Garg that the High Court's finding regarding the publication and distribution of the booklet Ex. P.W. 1/II is erroneous and is not based upon the evidence in the case.

39. Mr. Bhalgotra, learned counsel for the respondent however, has attempted to support the judgment of the High Court by attacking the findings recorded against his client in respect of Paragraphs 7, 8, 10, 18 and 19 in Ex. P.W. 1/II. He has not attacked the findings recorded by the learned Judge on other allegations of corrupt practice made by the respondent in his election petition. In *Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji and Others* ((1965) 1 SCR 721 : AIR (1965) SC 669.) it has been held by this Court that on a consideration of justice, this Court should permit the respondent to support the judgment in his favour even upon the grounds which were negated in that judgment. The same view has been reiterated recently by this Court in *Shri Thepfulo Nakhro Angami v. Shrimati Raveluei alias Rani M. Shaiza*. (CA No. 1125 of 1970, decided on January 21, 1971 : 1970 (1) SCC 421.) Though the above decisions were given under

the Representation of the People Act, 1951, Mr. Garg, learned counsel for the appellant, accepted the position that the same principles are applicable to the present appeal which has been filed under the Act. We have permitted the respondent to support the judgment in his favour by establishing, if he can, that the findings recorded by the High Court against him, with regard to Paragraphs 7, 8, 10, 18 and 19 are erroneous.

40. There is a slight mistake in the official translation of those paragraphs and the learned counsel for both the parties agreed that the following translation may be adopted. The said paragraphs are as follows :

"Paragraph 7. - In the last 20 years whichever Government was formed one after the other and whenever their Ministers and Government Officers visited Reasi, you threw stones at them and made personal attack on them. Instead of welcoming the guests, alongwith city folks and others strayed Jansanghies insulted them. Did Jan Sangh give you such instructions as to assault with the help of Reasi's Jan Sanghi Goondas the Minister and other Government officers when they visit Reasi. Is this called democracy ?

Paragraph 8. - Whenever you started any agitation against the Government, you put forward the misguided groups of the village folks and such of the urban people who were with you, all themselves went underground. Thus the poor villagers faced Lathi charge, tear gas and even bullets. Who did this deception and who got it done ?

Paragraph 10. - In the past when famine conditions arose due to shortage of wheat, you instead of rendering help got wheat supply stopped to village people through a City Panchayat and rotten Atta (what powder) which was full of worms, distributed in villages, which our children and women and elder people had to eat. Were the villagers not human beings ?

Paragraph 18. - Which of the Minister or Government Officers have you allowed to go out of the Reasi City without being stoned in the last twenty years. Often the villagers had problems to be resolved but you did not let them be solved. Did you alone have the right to think of good and evil and thus safe the roots of the villages and bring bad name to the village people ?

Paragraph 19. - Last year when Khan Saheb had come to Reasi to resolve the difficulties of uprooted persons, some of the uprooted villagers were suddenly instigated and some Jan Sanghi Goondas made an attack on him. At whose instance all this happened. The villages were already ruined, you again made them your target by giving them wrong advice and you started leading them. All demands were to be put up to the Hon'ble Minister but you did the reverse. We were again the victims. Think for yourself. Who is responsible for downfall of the uprooted ones ? Who has taught the people not to let officials go back alive from Reasi and to throw stone at them. Where did you get all this power ? There are many other areas, cities which are thickly populated but there human being are treated like humans."

41. The High Court considered Paragraphs 7, 18 and 19 together and has held that the evidence establishes that the respondent was responsible for organising demonstrations and instigating assaults on Ministers and other Government Officers. In this view the High Court held that the

statements contained in the said paragraphs do not come under Section 132(4) of the Act as those statements were not false. Dealing with Paragraphs 8 and 10 the High Court has held that the allegations made therein do not relate to the personal character and conduct of the respondent and therefore, is outside Section 132(4) of the Act. It has further held that in any event the respondent has not satisfactorily discharge the burden of proving the falsity of those allegations. It is in consequence of these findings that the High Court held that Section 132(4) of the Act does not apply to the allegations made in these paragraphs.

42. Mr. Bhalgotra, learned counsel for the respondent, very strenuously attacked the finding recorded by the High Court on this aspect.

43. We will first take up Paragraph 10. It has to be borne in mind that the respondent was a sitting member of the Legislative Assembly. The allegation in Paragraph 10 is that when there was a shortage of wheat, the respondent was responsible for stopping the supply of wheat to village people and in turn got rotten wheat powder distributed to the villagers, which had to be consumed by the people of the village. The insinuation is that the village people have not been properly treated by the respondent when he was representing their Constituency in the Assembly. As we have already pointed out from the decisions cited earlier that the public and political character of a candidate are open to the public view and public criticism and even if any false statements are made about the political or public conduct or character, the elector would be able to judge the allegation on merit and may not be misled by any false allegation in that behalf. Even if a false statement is made in regard to the public or political character of a candidate, it would not constitute a corrupt practice even if it is likely to prejudice the prospects of that candidate's election.

44. In our opinion, the statement contained in Paragraph 10, quoted above, has no reference to the personal character or conduct of the respondent. Mr. Bhalgotra has, no doubt, drawn our attention to the evidence of R.W.s 5, 6, 12 and 28 to establish that no rotten Atta was supplied to the villagers and that the respondent in any event was not responsible for the same. On the other hand, according to the counsel, the evidence shows that far from being responsible for the supply of rotten Atta to the villagers, whenever any complaints were received, the respondent did his best to help the villagers. We do not think it necessary to go into this evidence because of the view that we take that the statement in Paragraph 10 has no relation to the personal character or conduct of the respondent.

45. On the other hand, they are statements relating to the respondent as a politician and even if those statements are false, they will not come under Section 132(4) of the Act.

46. Coming to Paragraph 8, it deals with the role played by the respondent and his urban associates in agitations against the Government. Here again the implication is that the urban people including the respondent start agitation against the Government and always put the villagers in the forefront. The villagers had to bear the brunt of any action that was taken by the Government to put down the agitation and in that connection it is stated that the villagers had to face Lathi charge, tear gas and even bullets.

47. Mr. Bhalgotra, urged that the allegations contained in this paragraph really relate to the personal character or conduct of the respondent. The learned counsel pointed out that the insinuation in this that the villagers were fired upon by the authorities is absolutely mischievous and false. In this connection, the learned counsel drew our attention to the evidence of R.W. s 22 and 53 to the effect that there has been no firing in Reasi. He also referred us to the evidence of respondent as R.W. 41, that there was no firing in Reasi. In our opinion the statements contained in Paragraph 8 have no

relation to the personal character or conduct of the respondent. On the other hand the whole tenor of the allegation made therein is to the effect that in all agitations against the Government, villagers are made to suffer and urban people like the respondent conveniently keep themselves in the background. The reference to the villagers having to face Lathi charge and tear gas and even bullets is only to emphasise the hardship that the villagers have to suffer in carrying out the agitations against the Government and specially when the urban people like the respondent let them down by making themselves scarce. The attack is against the urban people as a whole and it has nothing to do with the respondent's personal character or conduct. Hence we are of the opinion that the statements contained in Paragraph 8 do not attract Section 132(4) of the Act.

48. It leaves us for consideration Paragraphs 7, 18 and 19. All these paragraphs will have to be read together. According to Mr. Bhalgotra, these paragraphs make very serious allegations that the respondent takes active part in violent activities such as stone throwing, etc., and that the appellant has failed to establish that those allegations are true. In this connection the counsel relied on the decision of this Court in T. K. Gangi Reddy v. M. C. Anjanaya Reddy and Others (supra), wherein it has been held that a statement which attributes acts of violence, for example, instigation of murder, throwing of stones at public meetings, etc., even though such acts are done during his political career is a statement relating to the personal character and conduct of the candidate. On this basis the learned counsel argued that the appellant while publishing the statements contained in the said paragraphs is guilty of corrupt practice under Section 132(4) of the Act. The averment that respondent was guilty of throwing stones against the Ministers or Government Officers, who had come on tour to the Constituency is certainly a very serious statement in relation to the personal character or conduct of the respondent as it attributes acts of violence on his part. The High Court has found that these allegations are true. That finding is now attacked. The Khan Saheb, referred to in Paragraph 19 is Mohammad Ayub Khan, who was then the Minister of Health in the State. He has given evidence as R.W. 50. According to Mr. Garg, the allegations in these paragraphs are really directed against the Jan Sangh Party, to which party the respondent belonged to espouse their attitude towards the Ministers and Government Officers when they come on tour to the Constituency. The Jan Sangh Party instead of being helpful by placing before the authorities the difficulties experienced by the villagers, created obstacles in the way of any redress being granted to the villagers and were also causing annoyance to the said officers. There is nothing personal against the respondent.

49. Paragraph 7 charges the respondent of having thrown stones against the Ministers and Government Officers when they visited Reasi. Again in Paragraph 18 the insinuation is that the Ministers and the Government Officers were not allowed to go out of Reasi without being stoned. Again in Paragraph 19 the insinuation is that the respondent along with others instigated the uprooted villagers and Jan Sangh Goondas to attack the Minister, R. W. 50, when he visited Reasi to look into the grievances of the people. These allegations, in our opinion, are of a very serious nature and they attribute acts of violence to the respondent. The question is whether these allegations are true. It must be noted that in Paragraph 18, Mr. Bhalgotra, has drawn our attention to the question that is asked : whether the respondent has allowed within the last 20 years any Minister or Government Officer to go out of Reasi without being stoned ? Mr. Bhalgotra referred us to the evidence of the Tehsildar, R.W. 28 and R.W. 50, the Minister to the effect that there was a demonstration when R.W. 50 visited Reasi, the respondent was not present. Therefore, he urged that the allegation that the respondent threw stones is false.

50. We have been taken through the material evidence bearing on this aspect both by Mr. Garg and Mr. Bhalgotra and we are of the opinion that the finding of the High Court that these allegations

were not false is correct. The main evidence is that of R.W. 50, Mohammad Ayub Khan, who was Minister of Health. He has referred to the fact that when he visited Reasi, he attended a public meeting held by the then Chief Minister Bakshi Gulam Mohammad. At that meeting there was a pelting of stones by some people in order to create confusion and that the people who pelted stones were people from the Jan Sangh Party. He then referred to the fact that in September, 1965, when he visited Reasi there was a very violent demonstration against him by the Jan Sangh Party near the Dak Bungalow where he was staying. The Assistant Commissioner, Mr. Behari Lal Sharma, after the demonstration, complained to the witness that he had been assaulted and manhandled by the respondent and other Jan Sangh workers and that the witness states that he believed that the demonstration was organised by the respondent as he was leading the crowd. He has also stated that the demonstration was very violent and full of fury. He then refers to his vehicle being stoned on the way to Jammu. No doubt he has stated that at that time the respondent was not present but his father and his election agent Babu Lal were present and made violent speeches and in his presence one of his companions was manhandled.

51. In cross-examination, no doubt, he has stated that he is not able to remember whether the incident of pelting stones was reported to the police. R.W. 28, the Tehsildar while stating about the violent demonstration against the Minister, R.W. 50, no doubt, says that the respondent was not present. R.W. 31 who was accompanying the Minister's party has referred to the obstruction caused to the Minister and to the violent demonstration conducted against the Minister in 1965. He clearly refers to the fact that the Minister and others were abused and one member of the Minister's group was manhandled. Amongst the persons who abused the ministerial party was a Vakil of Reasi belonging to the Jan Sangh Party. The obvious reference is to the respondent.

52. The respondent as R.W. 41, no doubt, denies that he was ever a party to the violent demonstration against the Minister or any other Government Officer, but he has admitted that he was a prominent leader of the Praja Parishad Party in 1952 and the said party had launched an agitation against the Government. During that agitation there were incidents of Lathi charges and firing and some people were killed. He has also admitted that he was arrested in connection with the agitation.

53. Great emphasis has been laid by Mr. Bhalgotra, learned counsel, that as the evidence of R.W.s 28 and 50 is to the effect that the respondent was not present at the time of the demonstration, he would not have taken any part in any violent activities as alleged in Paragraphs 7, 18 and 19. We are not inclined to accept this contention of the learned counsel. From the evidence the following facts emerge : there was a pelting of stones by the Jan Sangh Party in the meeting attended by Mohd. Ayub Khan. R.W. 50; the respondent was a member of the Jan Sangh Party; there was a violent demonstration against R.W. 50 and though this witness does not speak to the presence of the respondent, it is clear that the respondent's father and his election agent were actively participating in the violent demonstration and the inference is that the demonstration must have been at the instance of the respondent. The evidence of R.W. 31, shows that a Vakil of Reasi was present when there was a very violent demonstration against the Minister. The reference to the Vakil must be to the respondent. R.W. 41, himself has admitted that he was arrested in connection with a demonstration against the ruling party in which several people died due to police firing. All these circumstances, in our opinion, do establish that the respondent must have either instigated or had been a party to the violent demonstration referred to in Paragraphs 7, 18 and 19 and it cannot be said that the allegation contained therein are false. It cannot also be stated that in view of the circumstances the appellant either believed those allegations to be false or did not believe them to be true. Therefore, the High Court was justified in coming to the conclusion that these statements in the

said paragraphs do not come within the purview of sub-section (4) of Section 132 of the Act. We also agree with the High Court in this respect.

54. It follows that the finding of the High Court that Paragraphs 7, 8, 10, 18 and 19 of Ex. P.W. I/II, are outside the ambit of Section 132(4) of the Act is correct. As we are accepting the findings of the High Court in this regard, we consider it unnecessary to deal with the question of publication and circulation of the booklet Ex. P.W. I/II. We have already held that the statements in Paragraphs 16, 17 and 20 do not amount to corrupt practice under Section 132(4) of the Act. The appeal is consequently allowed. The decision of the High Court is set aside and the election petition is dismissed with costs throughout.

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