

Nepal Chandra Roy

Vs

Netai Chandra Das and Others

Civil Appeal No. 1248 of 1970

(Vaidialingam, J)

19.07.1971

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal under Section 116-A of the Representation of the People Act, 1951 (hereinafter to be referred as the Act) is from the order and judgment, dated March 25, 1970, of the Calcutta High Court in election petition No. 1 of 1969, setting aside the election of the appellant from the 130-Jorabagan Assembly Constituency after declaring the same void. After hearing arguments in the appeal, we passed on February 9, 1971, the following order :

"The appellant was a successful candidate in the mid-term election held in 1969 for the Jorabagan Assembly constituency. The first respondent herein filed election petition case No. 1 of 1969, in the High Court of Calcutta for setting aside the election of the appellant on various grounds. But it is seen that at the stage of final arguments, the first respondent's counsel gave up allegations in the petition except those in Paragraphs 7(b)(1) and (2), 7(c) and (j), (k), (l) and (m). The learned Judge in his judgment under attack has held that the first respondent has not succeeded in proving the allegations made in Paragraphs 7(b)(1) and (2) and (c).

The learned Judge, however, held that the appellant is guilty of corrupt practices alleged in sub-paragraphs (j), (k), (l) and (m) of Paragraph 7 of the election petition. On the basis of this finding, the learned Judge declared the election of the appellant void and set aside the same.

We have heard learned counsel on both the sides and we have also been taken through the judgment of the learned Judge as well as the material, oral and documentary, bearing on the points arising for decision in this appeal.

We are not inclined to agree with the view of the learned Judge that the appellant is guilty of the corrupt practices found against him and referred to above. In our opinion, the appellant is not guilty of any corrupt practice. The judgment of the learned Judge is hereby set aside and the appeal allowed. The reasons for this order will be given in due course. Suitable directions regarding costs will be given along with the reasons."

We proceed to give our reasons for our decision.

2. In the mid-term elections held on February 9, 1969, the appellant Nepal Chandra Roy was the Congress candidate for election to the Legislative Assembly from 130-Jorabagan Assembly constituency situated in the State of West Bengal. The third respondent Har Prosad Chatterjee, contested the election as the candidate of the Communist Party of India (Marxist). Respondents Nos. 2 and 4 were also candidates in the said election. Both of them were defeated and we are not concerned with them in these proceedings. The poll respondent got 28,315. As the appellant received 1,066 more than the next contesting candidate, namely, the third respondent, the appellant was duly declared elected. The first respondent Netai Das as an elector of the 130-Jorabagan Assembly constituency, Calcutta, filed on March 24, 1969, election petition No. 1 of 1969, challenging the election of the appellant on various grounds. He alleged that the appellant was guilty of various acts of corrupt practice. Such allegations were made by him in Paragraph 7, sub-paragraphs (a) to (c) as well as Paragraphs 8, 12 and 15 of the election petition. The first respondent prayed for setting aside the election of the appellant after declaring it void. He also prayed for a declaration that the third respondent has been duly elected in the said election to the West Bengal Legislative Assembly. Though the election petitioner alleged in the election petition various acts of corrupt practice, yet during the trial and at the final stage of hearing of the election petition he gave up several of these allegations. Ultimately he pressed for the relief only on the basis of the allegations made in Paragraphs 7(b)(1) and (2), 7(c), 7(j), 7(k), 7(l) and 7(m). The appellant contested the allegations made by the election petitioner. The material allegations of corrupt practice as well as the pleas of the appellant will be referred to later. The learned Judge held that the election petitioner has not succeeded in proving the allegations of corrupt practice made in Paragraphs 7(b)(1) and (2) and 7(c) of the election petition. However, the learned Judge found that the allegations contained in Paragraphs 7(j), 7(k), 7(l) and 7(m) were proved, and on those findings declared the election of the appellant to be void and set aside the same. The learned Judge, however, has not declared the third respondent to have been duly elected. The material elements of corrupt practice that have been found by the court to have been committed by the appellant are, as mentioned earlier, those alleged in Paragraphs 7(j), 7(k), 7(l) and 7(m). They are as follows :

"(j) Besides the leaflets mentioned above which include publication of false statements regarding the respondent No. 3 there were other instances of publication of false statements regarding the personal character of the respondent No. 3 by the respondent No. 1, and his election agent and other persons with the consent of the respondent No. 1, and his election agent. Several printed wall posters of the name of the printer or publisher were used in the election by the respondent No. 1, and his election agent and other persons with the consent of the respondent No. 1 and his election agent containing the picture of a house and pictures of two men meant to be Shri Jyoti Basu leader of the Communist Party (Marxist) and Hara Prosad Chatterjee the respondent No. 3 and the person resembling Shri Hara Prosad Chatterjee was depicted as telling his leader Shri Jyoti Basu that he had said Hara Prosad Chatterjee was able to acquire the plot No. 185, C.I.T. Scheme No. VII(M) at No. 101, Main Road, Calcutta which was bought by Hara Prosad Chatterjee on May 11, 1967 at a price of Rs. 1,14,774/- in nine months time and had built a house on the same.

The person depicted as respondent No. 3, Hara Prosad Chatterjee in the said posters was also depicted by captions to be saying to his leader Shri Jyoti Basu that given little more time he would have been able also to acquire the lands and buildings shown at the back ground of the picture. By all these it was meant to be conveyed that the respondent No. 3, was a dishonest person and had purchased the land with a large sum of money acquired dishonestly in nine months when the United Front Government was in power and had also built a big house on the said plot of land. The said

posters did not contain the name and address of the printer or publisher. The respondent No. 3 and his supporters at various meetings challenged the truth and veracity of the statements contained in the same posters and other pamphlets. This was also intimated to the Returning Officer by a letter, dated February 4, 1969, by respondent No. 3. The fact is that no building has yet been constructed on the said land and the full price of the land has not yet been paid the same being payable in instalments in fourteen years time. Auction for purchasing the said plot of land took place in October, 1966 long before the U. F. Government came in power.

(k) After the said protests were made by the respondent No. 3 and his supporters in public meetings the respondent No. 1 and/or his election agent and/or other persons with the consent of the respondent No. 1 and/or his election agent cause to be published a leaflet in Bengali in which the name of the publisher was given as Dr. Sailendra Mohan Roy and the name of the printer was given as Shri Durga Press, Calcutta-5. In this leaflet counter-challenge was thrown to the respondent No. 3 as has been stated above. The respondent No. 3 and his supporters had said in public meetings that as the aforementioned posters did not contain any name and address of the publisher and printer no legal action could be taken immediately by the respondent No. 3. The leaflet bearing the name of Dr. Sailendra Mohan Roy was in reply to the said challenges of the respondent No. 3 and his supporters. In this leaflet it was stated that the name of the printer of the aforesaid large wall poster was D.S.P.B. This leaflet also stated that certified copy of the deed of sale of the said plot of land being 185 C.I.T., Scheme No. VII(M) was kept at 292/6, Upper Chitpur Road, Calcutta and every one was welcome to inspect the same there. The said leaflet was issued on and from February 5, 1969 and the address 292/6, Upper Chitpur Road, as given in the said leaflet is the address of respondent No. 1. Respondent No. 1's address was formerly 292/6, Upper Chitpur Road and the same premises has been re-numbered as 431/C, Rabindra Sarani.

(l) Many electors went to the said address with the said leaflet on various dates between February 5, 1969 and February 8, 1969 when the respondent No. 1, himself produced some papers alleged to be certified copy of the deed of sale in respect of plot No. 185, C.I.T., Scheme No. VII(N) from the Calcutta Improvement Trust to the respondent No. 3, but the papers shown by the respondent No. 1, did not contain the fact that the purchase money was not fully paid by the respondent No. 3 but was payable in various instalments covering a period of fourteen years. By the said posters and the said leaflets and production of the said incorrect and/or incomplete papers containing false statements relating to the character and conduct of the respondent No. 3, to the effect that he was a dishonest person and unworthy of being elected as representative of the people from the Jorabagan Assembly Constituency and representations made orally to convey the idea that the respondent No. 3 was guilty of corruption the prospects of the respondent No. 3 was damaged. All these were done by respondent No. 1, and his election agents and other persons with the consent of the respondent No. 1, and his election agent in spite of the knowledge that the said representations were false. All these prejudiced, the electors against the respondent No. 3, in the said election. While showing the alleged certified copy to different persons at his residence between February 5, 1969 and February 8, 1969, the respondent No. 1 also made several other false statements concerning the character and conduct of the respondent No. 3, which were damaging to his prospects. The respondent No. 1 did all these and made the said statements knowing

that they were false. Dr. Sailendra Mohan Roy is not a fictitious person and resides at 69/B, Beniatola Street, Calcutta, within the Jorabagan Constituency and has his dispensary at 92/A, Sova Bazar Street, within the aforesaid Constituency. The said Roy is well known supporter and close associate of the respondent No. 1 and it is a fact that the posters and leaflets mentioned in this paragraph as well as the preceding paragraphs of this petition were handed over by the said Dr. Roy and the respondent No. 1 and his election agent B. L. More to other persons and different workers working for the said respondent No. 1 in the said election in various quantities from the address of the respondent No. 1, stated above as well as from the dispensary of the said Dr. S. Roy and 92/A, Sova Bazar, Calcutta.

(m) One morning a few days before the election the respondent No. 1, came to 18, Brojodulala Street, Calcutta to ask for votes and in presence of your petitioner and Sadhan Dutt of the same address and other persons described the respondent No. 3 as a "Debauch and Bribe Taker" and handed over a few copies of the Bengali leaflet being annexure 'E' to the Sadhan Dutt and some other persons present."

The first respondent has averred that the particulars of corrupt practice referred to in Paragraphs 7(j), (k) and (m) are true to his knowledge and the particulars contained in sub-paragraph (l) of Paragraph 7 "are based on information received by me from Guru Pada Bhattacharjee..... and Ramesh Chandra Dutta..... and others and believed to be true by me".

3. The first respondent with reference to the above allegations has replied as follows :

"With reference to sub-paragraph (j) of Paragraph 7 of the said petition this respondent denies each and every allegation contained therein. This respondent denies that there were any such leaflets or this respondent had anything to do with any such leaflets or this respondent made any false statement regarding the personal character of the respondent No. 3 by the respondent No. 1 or by his election agent or by any other person with the consent of the respondent No. 1 or his election agent as alleged or at all. It is denied that this respondent even published any printed wall poster in any language not containing the name of the printer or publisher or any such poster was or were used in the election of this respondent or by this respondent or by his election agent or by any other person or persons with the consent of this respondent or his election agent or any such posters contained the picture of a house or picture of two men meant to be Sri Jyoti Basu leader of the Communist Party (Marxist) or Hara Prosad Chatterjee was depicted as telling his leader Sri Jyoti Basu that the said Hara Prosad Chatterjee was able to acquire any plot alleged to have been bought by Hara Prosad Chatterjee in nine months time and has built a house on the same.

This respondent has taken inspection of the said posters and states that this respondent or his election agent or any other person working for this respondent ever has or has anything to do with the said alleged posters and denies that any such posters was published as alleged or at all. At the time of inspection of the said poster it appeared that there is written "printed by D.S.P.B., Calcutta-5". It is in the premises not clear to which posters allegation has been referred to and the said charges are therefore vague and untenable. This respondent is not aware and he does not admit if the respondent No. 3 or any of his supporters at any meeting challenged the truth or veracity of the contents of the said poster or the alleged pamphlets. Such a poster never came to the knowledge of

this respondent or his election agent or any of his workers or agents. This respondent has no knowledge of the alleged intimation to the Returning Officer by the alleged letter, dated February, 4, 1969, as alleged or at all. This respondent has nothing to do with the allegation in respect of the land alleged to be belonging to the respondent No. 3 or the payment of the price thereof, or the manner of payment or as to when the auction took place as alleged or at all.

With reference to sub-paragraph (k) of Paragraph 7 of the said petition this respondent denies each and every allegation contained therein. It is denied that any protest was made or there was any question of any protest or occasion for the same by the respondent No. 3 or any of his supporters in any meeting or after the alleged protest this respondent or his election agent or any person with the consent of this respondent or his election agent caused to be published any leaflets in Bengali in which the name of the publisher was given as Dr. Saileendra Mohan Roy or the name of the printer was given as Sri Durga Press or this respondent or his election agent or any of his agents or workers ever or had anything to do with the alleged leaflets or with the alleged publication thereof as alleged or at all. This respondent or his election agent or any other agent had nothing to do with the alleged contents of the purported leaflets.

It is denied that any copy or certified copy of the alleged Deed of Sale of the alleged plot of land was kept at 292/6, Upper Chitpore Road or this respondent ever welcomed any one to inspect the same or the alleged leaflet was issued on or from February 5, 1969 or this respondent or his election agent or any of his worker or agents even had or has anything to do with the same as alleged or at all. It is admitted that the address of this respondent was formerly 292/6, Upper Chitpore Road but the same has long before the election been renamed and renumbered as 431/C, Rabindra Sarani.

With reference to sub-paragraph (1) of Paragraph 7 of the said petition this respondent denies each and every allegation contained therein. It is denied that many or any elector went to the said address with or without the said leaflet on any date between February 5, 1969 and February 8, 1969 or otherwise or this respondent himself or otherwise produced any paper alleged to be certified copy of any certified copy of the purported Deed of Sale or any Deed of Sale in respect of the said alleged land or any paper was shown by this respondent or this respondent had anything to do with the said alleged purchase money or the manner of payment as alleged or at all. It is denied that this respondent ever made any false statement or any statement or allegation regarding the character or conduct of the respondent No. 3 personally or to the effect that he was a dishonest person or unworthy or being elected or any representation was made orally or otherwise to convey the alleged idea that the respondent No. 3 was guilty of corruption or the prospect of the respondent No. 3 was damaged for the alleged publication as alleged or at all. It is denied that any of the alleged representations in poster or leaflet was or could be ever known to or made by this respondent or his election agent or there was or is or could be any question or occasion for such knowledge or for any knowledge that the said alleged representation was false as alleged or at all. It is denied that they by such alleged representations prejudiced the electors against the respondent No. 3 in the said election or any certified copy or alleged certified copy was shown at the residence of this respondent between the said period or any period or while showing the alleged document the respondent No. 1 made any other false statement concerned the character or conduct of the respondent No. 3 or anything damaging his prospect in the manner as alleged or at all. It is denied that this respondent ever made any such statements or the question or occasion for knowing the same as false even arose as alleged or at all. It is denied that Dr. Saileendra Mohan Roy is a supporter or associate well-known or close or otherwise of this respondent or any such alleged posters or leaflets was handed over by the said Dr. Roy or this respondent or his election agent to any person or to any worker working for this respondent

in any quantity from the address of this respondent or from any other place or from the alleged dispensary of the alleged Dr. Roy or from 92/4, Sova Bazar Street, Calcutta or from any other place as alleged or at all.

This respondent states that the entire story regarding the said alleged posters and leaflets has been concocted and the alleged posters and leaflets have been fabricated and manufactured with a view to create evidence for the purpose of this case.

Each and every allegation contained in sub-paragraph (m) of Paragraph 7 of the said petition is denied. It is denied that this respondent in the presence of the petitioner or Sadhan Datta or any other persons described the respondent No. 3 as a "debauch" or "bribe taker" or handed over any copy of any Bengali leaflet or any leaflet to Sadhan Datta or to any other person as alleged or at all. This respondent never had not has any concern with the said purported leaflets being Annexure 'E' to the said petition."

4. The appellant further stated that neither he nor any other person committed any corrupt practice or published any false statement regarding the personal character or conduct of the third respondent and that in any even the result of the election so far as it concerned the third respondent has not been materially affected. In the end he pleaded that there were no grounds for setting aside this election.

5. The impugned documents which were alleged to constitute corrupt practice are Exs. A, B and C. Ex-A is a wall poster in Bengali and Ex.C. is the same wall poster, but in Hindi. Therefore Exs. A and C are substantially the same. Ex.B is a leaflet in Bengali.

Exhibit A. - As per translation runs as follows :

"Sketches of houses and streets -

Yes Sir Sketch of a human figure Sketch of another human figure Due to your kindness only this little in nine months (9) could have grabbed these houses and lands behind you had I got some more time

In this your that (piece of) land ? Sketches of houses

Plot No. 184 Plots Nos. 154 and 155 Plot No. 187 Plot No. 185, C.I.T., Scheme No. VII(M)

Measurement of land 6 Cottaha 12 Chhitacks 1 square feet

Purchaser Hara Prosad Chatterjee Price of land Rs. 1,14,774/- (Rupees one lakh fourteen thousand seven hundred and seventy four)

Date of Registration May 11, 1967, A. D. 40-0 Feet Wide Road

Guru (spiritual guide) All this is (through) your will."

"Exhibit B.

Zamindary Conduct (Showing Off)

Honourable Zamindar Saiba Srijeet Babu Hara Prosad Chatterjee you have said with regret in the

meeting at Kumertully Park that you would have taken legal action if you had found the name and address of the press in the wall poster in respect of the purchase of the land. In spite of the name of the press being there in each wall poster you are pretending not to see (that) so we again print the name of the press in this letter for your information. Kindly oblige (us) by instituting the suit before the elections. We also want that the truth should come out before the general public.

Plot No. 185, C.I.T. Scheme No. VII(M) No. 101, Ultadanga, Main Road (Maniktola) Measurement of land 6 Cottahs 12 Chittacks 1 square feet Purchaser Hara Prosad Chatterjee.

Price of land Rs. 1,14,774/- (Rupees one lakh fourteen thousand seven hundred and seventy four) :

Date of Registration the May 11, 1967, A.D. Name of the Press D.S.P.B. Calcutta-5.

We submit to the general public that the certified copy of the deed in respect of the purchase of the said land has been kept at No. 292/6, Upper Chitpur Road. We cordially invite any gentleman to have inspection.

Finis.

Dated 5-2-69

Yours

Sailendra Mohan Roy Published by Dr. Sailendra Mohan Roy printed by Sri Durga Press Calcutta No. 5."

6. According to the allegations contained in the election petition, of the two figures in Ex. A., one is represented to be Sri Jyoti Basu, leader of the Communist Party Marxist and the other Hara Prosad Chatterjee, the third respondent. The allegation is that the said respondent is depicted in the poster as telling his leader Sri Jyoti Basu that the third respondent was able to acquire the plot referred to therein which was bought by him on May 11, 1967, at a price of Rs. 1,14,774/- in nine months time and that he had built a house on the same. It is further alleged that the third respondent is depicted as saying to his leader that if he had been given a little more time he would have been able to acquire lands and buildings shown at the background of the picture. All these, it is alleged were meant to convey that the respondent was a dishonest person and he purchased the site with a large sum of money within nine months during which period the United Front Government was in power.

7. The main issue relating to the question of corrupt practice was whether the allegations in Paragraph 7 of the election petition and the various sub-paragraphs therein constitute corrupt practice and, if so, was any such corrupt practice committed by the appellant or his election agent or by any person with the consent of the appellant or his election agent or by any other agent, in the interest of the appellant. Before we refer to the findings of the learned Judge recorded against the appellant on certain allegation of corrupt practice, it is necessary to advert to the nature of evidence adduced on behalf of the election petitioner. In the words of the learned Judge "..... many of the witnesses called by the petitioner appeared to me to be not only partisan and tutored but also reckless and without any respect for the oath that they had taken on the witness box. The petitioner himself, I have no doubt in my mind, is a staunch supporter of Hara Prosad Chatterjee and his party....." Again the learned Judge states "..... It is true that I have to reject masses of evidence led by the petitioner and his witnesses..." When considering the question whether the appellant had an election office at No. 5, Jadulal Mullick Road in Calcutta and whether the posters and the

pamphlet were displayed and distributed, the learned Judge has chosen to accept the evidence of one Kashinath Mallick alias Gaju, who gave evidence as witness No. 22 on the side of the first respondent herein. The learned Judge has characterised him "Gaju admittedly is an anti-social element..... He was the most ill-famed amongst the workers of Nepal in the area..... He is of despicable character, he has admitted on the witness box frankly and repeatedly.... He is a rowdy element and is a dangerous character, who is capable of inflicting physical assaults". Notwithstanding all these derogatory remarks made against the witness, the learned Judge was prepared to believe his evidence and reject the evidence adduced on the side of the appellant.

8. Similarly, regarding the publication of Ex.B., the learned Judge has referred to the evidence of Dr. Ashutosh Bhattacharjee, who has given evidence as witness No. 4, on the side of the election petitioner. He has characterised the said witness as a staunch supporter of the third respondent herein and that his evidence clearly showed that he was a partisan and interested witness. The learned Judge has noted that the witness could not even bear the name of the Congress party being uttered in his presence. The learned Judge records in the judgment his opinion about this witness "... The impression that he made on me was unfavourable....." Again about this witness the learned Judge has stated that the Court did not take his evidence seriously "on account of his general demeanour in the witness box". Regarding the entire evidence adduced on the side of the election petitioner, the learned Judge concludes by saying. "The evidence of the petitioner and his witnesses which I have not discussed at all is, in my opinion, either irrelevant or entirely partisan or thoroughly unreliable and the length of this judgment ought not to be prolonged by dealing with such worthless matters".

9. We are only referring to the comments made by the learned Judge himself regarding the nature of the evidence adduced by the election petitioner, which, however, the Court has ultimately chosen to accept.

10. Another point to be noted is that the most important question that arose for consideration was whether the statements contained in Exs. A, B and C were statements of facts in relation to the personal character or conduct of the third respondent. The High Court, so far as we could see, has not come into close grips with this aspect, though ultimately it has recorded a finding that those exhibits contained statements of fact in relation to the personal character or conduct of the third respondent. The only discussion that we find in the rather lengthy judgment written by the learned Judge is where he refers of the statements of the third respondent that the Calcutta Improvement Trust in or about September or October, 1966, had issued the notification for the sale by auction of a plot of land at Nanicktola measuring about 6 cottahs and 12 chittacks. The third respondent attended the auction and his bid for Rs. 17,000.00 per cottah was accepted by the Improvement Trust and the total price of the land was about Rs. 1,14,700.00. The third respondent paid 10% of the stipulated value and the balance of 40% was paid within about three months and the remaining portion was payable in 12 annual instalments. The payments so far made to the Improvement Trust were from and out of the accumulated earning by the third respondent as an advocate. The learned Judge says that the above statements of the third respondent have not been challenged and hence "...the result is that if the posters and other documents complained of in the aforesaid sub-paragraphs of Paragraph 7 of the petition, were, in fact, published, they contained prejudicial statements of facts which were false in relation to the personal character of Hara Prosad Chatterjee who was a candidate in this election. The other points, therefore, that remain to be considered are whether the posters and other documents were published by Nepal Roy or his election agent or any other person with the consent of Nepal or his election agent and whether Nepal believed them to be false or did not believe them to be true".

11. From the above extract it will be seen that without any investigation into the question both of facts and law, whether the statements in Exs. A, B and C were statements of fact in relation to the personal character or conduct of the third respondent, which is one of the essential ingredients to constitute corrupt practice under Section 123(4) of the Act, the learned Judge assumed that the facts mentioned in the evidence of R.W. 3 referred to above clearly lead to the conclusion that the statements related to the personal character of the third respondent. There are several assumptions in this conclusion of the learned Judge, which we will later on show are not correct. The observation of the learned Judge that the above statements of the third respondent have not been challenged, is not correct. As to whether the facts mentioned by R.W. 3 and referred to above will bring the statement in the exhibits concerned as being in relation to the personal character or conduct, is a matter which will be considered by us later. At this stage we are only pointing out that the learned Judge has taken the view that no further consideration need be made by him on this aspect and that the only question he had to consider was whether Exs. A, B and C were in fact published and circulated. It is this latter aspect that has been considered rather elaborately by the learned Judge. As to whether the findings recorded by the learned Judge on this aspect are correct or not, is again a matter which will be dealt with by us in due course.

12. Another feature which will strike anybody by a perusal of the voluminous record in the fact that there has been a questioning of the witnesses, particularly some of the witnesses who appeared on behalf of the appellant by the learned Judge very elaborately and some time on matters which are not germane or relevant matters that were under consideration. No doubt under Section 165 of the Evidence Act a Court has got power to put any question in plain in any form at any to any time of the witnesses of the parties about any fact relevant or irrelevant, but that power is to be exercised in order to discover or obtain the counsel for the appellant has elicited one or two answers to the formal questions in the opening of the chief examination, the learned Judge has taken up the matter on hand and has started examining the witnesses. Unfortunately, this was adopted even when the witnesses were being cross-examined by the counsel for the election-petitioner. Mr. A. K. Sen, learned counsel for the appellant, very strenuously urged that the learned Judge has not considered the most important question that arose for consideration, namely, whether the facts stated in Exs. A to C were statements of facts in relation to the personal character or conduct of respondent No. 3 herein, and if so whether those statements were false. The counsel further urged that respondent No. 3, has himself admitted that the statements contained in those exhibits were true, but the court on the other hand has held that the statements were false and they related to the personal character or conduct of respondent No. 3 for the reason that though the total price mentioned in the conveyance is Rs. 1,14,774.00, it has not been mentioned in the exhibits that the third respondent has the right to pay the sale consideration in instalments over a period of 14 years. Mr. Sen pointed out that there has been no plea much less proof, that there is any insinuation in the exhibits about the personal character or conduct of the third respondent. Nor is there any evidence to show that the statements contained in Exs. A to C were false and that the appellant either believed them to be false or did not believe them to be true. The counsel also attacked the further halting finding of the learned Judge without any discussion that Exs. A to C were reasonably calculated to prejudice the prospects of the third respondent in the election on the ground that there is no plea and no proof in that regard. The learned counsel very vehemently attacked the findings of the learned Judge that Exs. A to C were printed and published by the appellant or his agent or by any other person with his consent. The evidence bearing on that point and which has been accepted, is absolutely false and unreliable as the learned Judge has himself characterised. According to the learned counsel the learned Judge brushed aside the evidence on behalf of the appellant on very flimsy and untenable grounds.

13. Mr. A. N. Sinha, learned counsel for the election petitioner has very strongly supported the

findings of the learned Judge. The counsel pointed out that the statements in Exs. A to C are, as correctly held by the learned Judge, statements of facts in relation to the personal character or conduct of the third respondent. The counsel contended that there has been a suppression of very many material facts in the posters and pamphlet. He relied on the circumstance that there is no reference to the third respondent being a lawyer who was able to possess adequate resources. Another circumstance pointed out by him was that there was no reference to the fact that the sale consideration has to be paid in annual instalments covering a period of about 14 years. The statements in Exs. A to C, as they stand, will give the impression that the third respondent has purchased a large item of property for a very large amount utilising his influence during the term of office of the United Front Government. According to the learned counsel, the whole idea underlying Exs. A to C is to make known to the public that the third respondent is a dishonest person who has acquired properties by dishonest means and is also bent upon grabbing the properties of others by unfair means. Though the counsel was prepared to accept the position that there has been no elaborate consideration by the learned Judge whether the statements in Exs. A to C relate to the personal character or conduct of the third respondent, nevertheless, he contended that the entire discussion in the judgment will clearly show that the Court has considered these aspects and given a finding against the appellant. The counsel also very strongly supported the conclusion arrived at by the learned Judge that it was the appellant who was responsible for the printing, publication and circulation of the posters Exs. A to C and the handbill Ex. B. In conclusion Mr. Sinha pointed out that the approach made by the learned Judge is correct and the findings are based on the material on record.

14. The first question to be considered is whether the statements in Exs. A to C are statements of facts relating to the personal character or conduct of the candidate, namely, the third respondent. If they are statements relating to the personal character or conduct of the third respondent, the further question will be whether these statements of facts are false and the appellant believed them to be false or did not believe them to be true. We have already referred to the fact that the learned Judge has not given any importance to this very material aspect. On the other hand, the learned Judge has referred to the evidence of the third respondent to the effect that in September or October, 1966, the Calcutta Improvement Trust had issued a notification for the sale by auction of plot of land measuring about 6 cottahs and 12 chhittacks and that he attended the auction and bid for Rs. 1,700/- per cottah, which was accepted. His further evidence was that the total price for the land was Rs. 1,14,774/- towards which he paid 10% of the stipulated value and another 40% within three months. The balance amount was to be paid in 14 annual instalments and that the payments made by him were from and out of his earnings as lawyer. The statements, referred to above, according to the learned Judge, have not been challenged and, therefore, if it is established that Exs. A to C were proved to have been published, it must be held that they contained prejudicial statements of fact which were false in relation to the personal character and conduct of the third respondent, who was a candidate in the election. In the concluding part of his judgment the learned Judge says that any person looking at the certified copy of the deed of conveyance Ex. N will form the impression that the particulars of purchase set out in Exs. A to C are correct. The learned Judge emphasised that the date of conveyance has been given as May 11, 1967, and not some day in October, 1966, and there is no mention that the purchaser has a right to pay by instalments covering a period of 14 years the balance of sale consideration. From the above circumstances, the learned Judge concludes that the posters and pamphlet Exs. A to C contained statements of facts in relation to the personal character or conduct of the third respondent and that the appellant must have represented these matters to some of the witnesses, who claim to have met him.

15. We will assume that the facts stated above by the third respondent have not been challenged. We

will also assume that the facts mentioned by the learned Judge and referred to by us above are correct. On that basis we will proceed to consider whether there are any statements of facts in Exs. A to C which relate to the personal character or conduct of the third respondent. If so, whether they are false. The law on the subject is clear. Sub-section (4) of Section 123 of the Act requires : (1) that there should be publication of any statement of fact by a candidate; (2) that fact is false; (3) the candidate believes it to be false or does not believe it to be true; (4) the statement is in relation to the personal character or conduct of another candidate; and (5) the said statement is one being reasonably calculated to prejudice the prospects of the other candidate's election. (See Sheopat Singh v. Ram Pratap ((1965) 1 SCR 175.) and Kumara Nand v. Brijmohan Lal Sharma ((1967) 2 SCR 127.)). The onus on an election petitioner under Section 123(4) of the Act is to show that a statement of fact was published by a candidate or his agent or by any other person with the consent of the candidate or his election agent and also to show that the said statement was false and related to the personal character or conduct of the other candidate. The onus can be discharged by the complaining candidate swearing to that effect. Once that is done, the burden shifts to the candidate making false statement of fact to show that his belief was. It is for him who had made the statement to show either that the statement was true or that he did not believe it to be false. The legal position by implication is also clear that if a statement of fact relating to the personal character or conduct of a candidate, if true, can be made. Even if it is false, the candidate making it, will be protected unless he makes it believing it to be false or not believing it to be true. Instances of allegations of statements relating to personal character or conduct will be found in case where imputation of depravity or immorality have been made or any reflection has been case on the moral or mental qualities of the person against whom the statements have been made.

16. We have already mentioned that the posters Exs. A to C are the same except that Exs. A is in Bengali and Ex. C is in Hindi. The contents of Ex. A have already been referred to by us earlier. The allegations regarding these two posters are contained in sub-paragraph (j) of Paragraph 7. The sum and substance of the allegations is that these posters were meant to convey that the third respondent was a dishonest person and had purchased land with a larger sum of money acquired dishonestly in nine months when the United Front Government was in power in West Bengal. The findings of the learned Judge to which we have referred to earlier are slightly different. Mr. Sinha, learned counsel for the respondent No. 1 has accepted that the expression used in Ex. A "due to your kindness only this little" is not in any way offensive as by these words the third respondent is only portrayed as offering his respect or regard to his elder Jyoti Basu. But according to the learned counsel there is an insinuation that the third respondent has assessed so much wealth during the period of nine months when the United Front regime was in power and that the sale proceeds have been furnished not out of his professional income but by the grace of the political leader, namely, Jyoti Basu. There is also a further insinuation to the effect that third respondent has used his political influence to assess so much wealth and to purchase the property and that he has also attempting to grab the lands and houses of others. From the stand taken by the learned counsel it will be seen that he was not prepared to rely upon the reasons given by the learned Judge for holding that Exs. A and C contained statements of fact relating to the personal character or conduct of the third respondent. The learned counsel, no doubt, has also relied upon the circumstance that by non-mention in Ex. A that the balance sale proceeds have to be paid in 14 annual instalments, an impression is created in the minds of the voters that the third respondent has amassed a large fortune by undesirable means.

17. We may straightaway say that there is no allegation in the election petition that any attempt at insinuation has been made in the poster Ex. A. No doubt, the third respondent has given evidence regarding the circumstances under which he purchased the properties and also the mode or manner

in which the sale consideration is to be paid by him. Coming to Ex. A, the third respondent is represented as offering his regard or respect to his party Guru Jyoti Basu. He is also depicted as pointing out the land, namely, plot No. 185 C.I.J. Scheme that has been purchased by him. The poster contains the measurement of the land, its price and also the date of registration. The boundaries of the properties are also given. There is no controversy about the correctness of the plot number, its measurement, boundaries, price and the date of registration. In fact the third respondent has admitted the purchase of the said property and also its total value. The learned Judge himself has put questions repeatedly to almost all the witnesses who gave evidence on behalf of the election petitioner regarding these admissions made by the third respondent. The learned Judge has elicited answers from those witnesses that Ex. A did not contain other particulars to the effect that the third respondent bid in the auction that was held in pursuance of the notification issued by the Calcutta Improvement Trust in September or October, 1966, and that only 50% of the sale consideration has been paid and that the balance is to be paid in 14 annual instalments. According to those witnesses Ex. A also does not contain that the sale consideration has been provided by the third respondent from his professional earnings. These answers elicited by the learned Judge, in our opinion, are totally irrelevant to the point under consideration. The function of the court was to find out whether in Ex. A there were any statements of facts relating to the personal character or conduct of the third respondent and if so whether those statements were false. This the Court has miserably failed to do.

18. It is seen from the evidence of the third respondent as well as of the other witnesses that the statements of facts contained in Ex. A are absolutely correct. The plot number has been correctly given, it has been described properly, its extent has been correctly given, the true sale consideration has been stated and the date of registration has also been correctly given. That the date of registration falls within the tenure of office of the United Front Government is absolutely irrelevant. There is no statement in Ex. A which is not true. The facts mentioned in Ex. A are all the same as even found by the learned Judge himself and borne out by the copy of the registration document Ex. N. Ex. N. does not contain any statement which is in conflict with Ex. A. The sale consideration, the identity of the plot, the names of the purchaser and the vendor and the date of the document as given in Ex. A tally in all respects with the particulars contained in Ex. N. The auction was held in pursuance of the notification issued in September or October, 1966 and the third respondent has bid in the said auction long before the United Front Government came into power and that the balance 50% of the consideration has to be paid in 14 annual instalments. He has further stated that he paid 50% of the consideration from his professional earnings. The absence of the particulars mentioned above in Ex. A does not make the statements that are actually contained therein in any manner false. It may be that there is a slight embellishment made in Ex. A when the third respondent is represented as expressing his gratitude to his party leader in his being able to purchase the property. We have already mentioned there is absolutely no suggestion or allegation in the election petition that Ex. A contained any insinuation or innuendo in any respect.

19. There is no statement in Ex. A which can be construed as a statement of fact relating to the personal character or conduct of the third respondent. Excepting referring to the fact of purchase of property by the third respondent, there is absolutely no allegation whatsoever that he has dishonestly purchased the property or had used any unfair means in acquiring the said property or he has adopted any illegal means in purchasing the property. While so it passes our comprehension why the learned Judge has not given his attention and consideration to such an important question when the appellant is charged with having committed corrupt practice on the basis of which his election was sought to be set aside. The answers of the third respondent referred to by the learned Judge and adverted to by us earlier do not in any manner establish that there are statements in Ex. A relating to personal character or conduct. The election petitioner as witness No. 1 has stated that he was not

interested in the victory or defeat of any of the candidates. This statement has not been accepted by the learned Judge who has held that though this witness pretended to be not interested in either of the candidates, he is an active sympathiser and supporter of the party to which respondent No. 3, belongs. This witness has further stated that he had no particular reaction when he first saw the posters Exs. A and C because he did not believe that the third respondent would have purchased any properties. He has also admitted that in the meetings attended to by Hara Prosad Chatterjee, the latter had admitted that he has purchased the land in question from the Calcutta Improvement Trust in an auction held in the year 1966 and that he had to pay the balance amount in 14 annual instalments. Gurupada Bhattacharjee, witness No. 6, has stated about his reaction that when he was Ex. A he got the impression that Hara Prosad Chatterjee, who was known as a communist was acquiring properties described therein which generally communist, do not do. This reaction, it must be stated, is a pure political one and has nothing to do with the personal character or conduct of respondent No. 3. He has also admitted that the date of registration of the document given as May 11, 1967, falls within the nine months period of the United Front regime. Therefore, from this answer it is clear that the date given in the document is correct and if it falls within the nine months' period referred to by him, it is of no consequence whatsoever when the truth is that the document bears the correct date. He has further stated that he got impression from Ex. A that the house shown in the poster must have also been purchased by respondent No. 3. We may say there is no such representation in Ex. A. He has also referred to the admission made by respondent No. 3 regarding the purchase of the property in the auction held in 1966.

20. The third respondent Hara Prosad Chatterjee as witness No. 2 has also stated to the notification issue by the Calcutta Improvement Trust in September, 1966 and his bidding in auction held in September or October, 1966. He has admitted the extent of the land purchased by him as well as the total consideration payable under the same. He has no doubt stated that at the time of auction he paid 10% of the value and he paid 40% later, and that balance 50% was to be paid in 14 annual instalments. He has further deposed that he was a bachelor and he paid the sale consideration from and out of his professional earnings. He has further deposed that he did not bother about the results of the election. He has further deposed to his having mentioned in public meeting about the nature of the purchase in question made by him from the City Improvement Trust. When the witness was squarely asked in cross-examination whether there is anything in Ex. A to convey the impression that he was a dishonest person and that he had purchased the property dishonestly, he answered quite frankly that he cannot say anything in that regard. From this answer it is clear that the very person, who according to the election petitioner is portrayed as a dishonest person, has categorically stated to the court that at any rate so far as he was concerned there is no such impression created in his mind.

21. The second feature in the evidence of this witness is that he does not dispute the correctness of the statements made in Ex. A regarding the description of the properties and their extent, value and the date of the document. In fact no suggestion has been made even by the counsel for the election petitioner that the statements contained in Ex. A are false. We do not propose to refer to the evidence of other witnesses to the effect that Ex. A does not contain the date of the auction and that the balance consideration has to be paid in 14 annual instalments and that the consideration has been paid by third respondent from his professional earnings.

22. The evidence referred to above clearly indicates that none of the statements contained in Ex. A is false; none of the statements relate to the personal character or conduct of the third respondent. The non-mention in Ex. A regarding the auction having been held in 1966 and the balance sale consideration being payable in 14 annual instalments and to the consideration having been paid by

the third respondent from his professional earnings, do not in any manner affect the truth of the statements made in Ex. A. In our view, none of the statements in Exs. A and C are statements in relation to the personal character or conduct of the third respondent. On the other hand, they are mere statements regarding the purchase of the property by the third respondent and they contain correct and accurate facts. No part of those statements is false.

23. Coming to Ex. B, we have already extracted the same. According to the election petitioner it has been printed and published by Dr. Sailendra Mohan Roy, witness No.7, Ex. B, according to the first respondent was really published as a rejoinder to a challenge thrown out by Hara Prosad Chatterjee demanding the disclosures of the correct name and address of the press where Exs. A and C were printed. Allegations regarding this pamphlet are contained in sub-paragraph (k) of Paragraph 7 of the election petition. Ex. B refers to the name of the press as . B. Calcutta-5. In turn it throws out a challenge to persons interested in the matter to take legal proceedings so that the truth about the purchase of the property in question can be thrashed out and made known to the public. The particulars of the property, its boundaries as well as the total sale consideration and the date of registration as given in the posters and again repeated. There is an invitation to the general public to come and see the certified copy of the sale deed which has been made available for inspection at 292/6, Upper Chitpur Road. In our opinion, Ex. B has been brought into the picture by the election petitioner in order to provide an occasion for making a further allegation that visits were made to premises No. 292/6, Upper Chitpur Road, where a mutilated document was shown to the witnesses suppressing the material particulars and to the appellant characterising the third respondent as a dishonest person. In fact this really paves a way to the election petitioner for making allegations contained in sub-paragraph (l) of paragraph 7. In this connection mass of oral evidence has again been led in by the election petitioner regarding the meeting held at Umarutuly Park where a challenge is stated to have been thrown out by the third respondent for disclosure of the name of the press where the posters were printed so that legal action may be taken. We do not think it necessary to go into the evidence relating to this meeting as we are satisfied that the evidence on the side of the first respondent regarding the publication of Ex.B by Dr. Sailendra Mohan Roy, witness No. 7 cannot be believed.

24. Dr. Sailendra Mohan Roy has given evidence that he had nothing to do with the printing or publication of this document. The learned Judge has not believed his evidence and he has held that Dr. Sailendra Mohan Roy is an ardent supporter of the appellant and that Ex. B was printed and published by him at the instance of the appellant. We are holding in the later part of the judgment that the evidence regarding printing and publication of the handbill Ex.B by Dr. Sailendra Mohan Roy cannot be believed. But we will assume for the present that Ex.B has been printed handbill contained substantially the same particulars regarding the properties as contained in Exs. A and C. For the same reasons given by us with regard to Exs. A and C we hold that the statements regarding the property in Ex. B are also true and they do not relate to the personal character or conduct of the third respondent. From the above discussion it follows that one of the essential ingredients to constitute corrupt practice is lacking in this case as we have held that there is no statement in Exs. A to C in relation to the personal character or conduct of the third respondent. Even assuming that they are such statements, they are true and no part of the statements is false. But in our view they are only statements of fact giving particulars relating to the purchase of the property by the third respondent which facts are true.

25. In the view that we have expressed above, it really becomes unnecessary to discuss the further question whether Exs. A, B and C were printed, published and circulated by the appellant or by any other person with his consent or by his election agent. But any how we will also consider those

aspects and express our opinion.

26. We will first take up the question regarding the printing of the posters Exs. A and C. The allegation is that they have been printed in the Imperial Art Cottage, the partners of which were Dharendra Nath Dhar, Dwarka Nath Dhar and Satya Prasanna Dhar. It is the further case that one Manik Chand Dhar son of Dwarka Nath Dhar, one of the partners, was an active supporter of the appellant and that he got the posters printed at Imperial Art Cottage. It is in the evidence of the witnesses of the first respondent that Manik Chand Dhar himself owns a press and that as these posters could not be printed at that press, they were got printed at Imperial Art Cottage. According to the appellant Manik Chand Dhar was not his supporter and that he has not been entrusted with the printing of any posters like Exs. A and C. He also denied that he had anything to do with the printing at Imperial Art Cottage, if, in fact they have been printed at that press. The learned Judge has relied on the evidence of three witnesses, witnesses Nos. 9, 11, and 13, who are the employees in the Imperial Art Cottage. The learned Judge has also relied on the non-examination by the appellant of Manik Chand Dhar. The evidence of Motilal Sarkar, witness No. 9 is briefly as follows : He is a commercial artist employed in the Imperial Art Cottage. Manik Chand Dhar is the son of one of the partners Dwarka Nath Dhar. Subhash Kumar Dhar, the manager, looks after the business of the press. Exs. A and C were brought to the press for printing, one in Hindi and another in Bengali and they were printed in the same litho machine at the press. To a specific question in the chief examination, as to who brought them for printing, he stated that he did not know but he deposed that he printed them under the orders of the Manager. He does not know under whose orders the Manager was doing the printing of Exs. A and C. He was ordered to write the letters D.S.P.B., Calcutta-5, in the posters. But he does not know what they mean. Orders to print the letters D.S.P.B., were also given by the Manager and the latter told him that the work was of an urgent nature. He did not know whether any outsider belonging to the press came to collect the posters nor did any partners supervise the printing. After having mentioned all these things he has stated that Manik Chand Dhar was telling them that it was an urgent piece of work and that Manik Chand Dhar is the son of Dwarka Nath Dhar. The printing of these posters was done before two weeks of the mid term election. He also speaks to having seen the posters being put up on the streets after they were printed, but he does not know the number of posters printed at the press. He is not aware of the political affiliation of Manik Chand Dhar. He has not helped in printing any other posters during the said mid term election. In cross-examination the witness has stated that he does not know where the election petitioner lives but he was visiting a club situated in the locality. He had no occasion to meet Netai Chandra Das. The election petitioner served the summons on him just the previous day, but he did not have any discussion with him as to the nature of the evidence that he expected to be given by the witness. He has admitted that he had not spoken to anybody about the printing of the posters till he gave evidence in the court and that he had come to give evidence without taking leave from the management. He learnt from witness No. 11 Radhakanta Pal that both of them will have to give evidence in Court and that he had discussed with the latter late in the night. The Manager, Subhash Kumar Dhar, has been in service of the management for over 20 or 22 years and that he was still in service. He has further admitted that Manik Chand Dhar has no proprietary interest in the imperial Art Cottage.

27. Radhakanta Pal, witness No. 11, has also stated that the press at the material time was under a Receiver and that the Manager Subhash Kumar Dhar was working under him. Originally it was in the hands of joint Receivers but at the relevant time there was only one Receiver, Mr. M. N., Banerjee. The Receiver supervises the work of the press and the general administration is being done by the Manager who gives orders to the workmen. Manik Chand Dhar had got a press of his own known as D.S. Print, Exs. A and C were printed at Imperial Art Cottage and the Manager of the

Press handed a copy of the posters to be printed. The witness does not know who placed the orders with the Manager for printing the posters. Manik Chand Dhar now and then came to the press and asked for the posters saying that they were urgently required. The witness does not remember who gave instructions in the matter of printing. The witness has admitted that he, Motilal Sarkar, witness No. 9 and Durgapad Sinha, witness No. 13, were all members of a union of which one Jatin Chakraborty is the President and Sailen Guba Roy is the Secretary. He has also admitted that the election petitioner cannot recognise him, but, nevertheless he came one night and handed over the summons to him to attend the Court.

28. The evidence of Durgapad Sinha, witness No. 13 is also similar to the evidence of other two witnesses. The reasoning of the learned Judge when discussing the evidence of these witnesses shown that their evidence is not very satisfactory. The learned Judge has proceeded on the basis that the election petitioner must have known that these witnesses will support his case and therefore he picked up their acquaintances and served summonses on them. In spite of the contradictions in their evidence, the learned Judge was prepared, by and large, to accept their evidence for two reasons, (1) that there was evidence to show that the appellant was friendly with Manik Chand Dhar as he had applied for a telephone for election purposes at the residence of the latter, and (2) non-examination of Manik Chand Dhar by the appellant to controvert the evidence of the three witnesses.

29. In our opinion, the approach made by the learned Judge is totally erroneous. Mr. A. K. Sen, learned counsel for the appellant, relied on the provisions of Section 127-A of the Act and according to him the nature of the evidence contemplated therein has not been adduced by the election petitioner. There is a considerable force in this contention of Mr. Sen. It is not necessary for us to base our decision on the non-compliance with the provisions of that section alone. In cases where a candidate wants to have pamphlets or posters printed surreptitiously for election purposes, the provisions of Section 127-A may not have been complied with. But in this case so far as we could see it is not the case of the election petitioner that the posters Exs. A and C were got surreptitiously printed at Imperial Art Cottage. In fact no such suggestion has been made to the three witnesses mentioned above. On the other hand, the evidence of some of those witnesses clearly shows that it was the Manager who was giving directions regarding the printing of those posters and also directing the workmen to expedite the printing on the ground that the work was urgent. None of the witnesses have stated that any secret instruction was given by the Manager in this regard. On the other hand the work was done openly in the presence of various other workmen in the press. Under these circumstances Section 127-A of the Act should have been invoked by the learned Judge.

30. In this case there is no controversy that Subhash Kumar Dhar, the Manager of the Imperial Art Cottage, had been summoned by the election petitioner to produce the Job Register, Bill Register, Ledger and Bill Books of the Company. The election petitioner did not have those documents produced as evidence in the case. Mr. Sinha, counsel for the first respondent admitted that the best evidence, that Exs. A and C were printed in the Imperial Art Cottage, would have been to have before the Court the evidence of the Manager supported by necessary documentary evidence admittedly brought by him on summons. But the counsel pressed for accepting the evidence of the three witnesses, namely, witnesses Nos. 9, 11 and 13. We are not inclined to accept this contention of the learned counsel. Having summoned the Manager to produce the books of accounts, it was the duty of the appellant to have satisfied the Court by proper proof of those documents and establish by that material if they could that Exs. A and C were printed at Imperial Art Cottage. Some of the witnesses have admitted that the order for printing was given by the Manager. They have also admitted that the press was in the charge of a Receiver. Under those circumstances, without summoning the Manager and the Receiver and having the books of the press placed before the

Court, it was not open to the respondent No. 1 herein to ask the Court to give a judgment in his favour merely on the ipse dixit of the three workmen who are admittedly members of a particular Union. In our opinion, the evidence of the three witnesses, namely, witnesses Nos. 9, 11 and 13 is absolutely useless and is of a partisan nature and their evidence has been got up for the purpose of this case. It is highly improbable that when the press is in charge of a Receiver and there is a Magistrate who is looking after the day to day work in the press, that these three workmen would have got these things printed surreptitiously. It is not even the case of the election petitioner.

31. The further criticism of the learned Judge that the appellant should have summoned Manik Chand Dhar as his witness to controvert the evidence of witnesses Nos. 9, 11 and 13 is totally unjustified. There is exhibited in the case the summons taken out by the election petitioner to Manik Chand Dhar to give evidence on his behalf before the Court. The learned Judge has found that the election petitioner has not served the summons on Manik Chand Dhar. But, in our opinion, it is of no consequence whether the election petitioner served the summons or not on Manik Chand Dhar. He has misled the appellant into the belief that he will call Manik Chand Dhar as his witness by taking out summons to him. When that is so, one cannot expect the appellant to summon Manik Chand Dhar as his witness. This circumstance has been totally ignored by the learned Judge when he has criticised the appellant for not calling Manik Chand Dhar to give evidence on his side. The election agent of the appellant, Bajranglal Moore, witness No. 6 has in his evidence stated in cross-examination that Exs. A and C were not printed by the appellant. There was no attempt made by the first respondent to face this witness by putting before him the documents of the press, which were admittedly produced by the Manager on summons by the election petitioner. In view of these circumstances we have hesitation in disagreeing with the findings of the learned Judge that Exs. A and C were printed at the Imperial Act Cottage at the instance of the appellant. In fact none of the witnesses referred to above stated to the appellant having anything to do with the printing of these posters. The only attempt was to bring in Manik Chand Dhar as acting on behalf of the appellant. That attempt, we have already shown, has miserably failed.

32. Even in the matter of printing of Ex. B, the handbill, the learned Judge has not chosen to accept the evidence of Dr. Sailendra Mohan Roy, witness No. 7, but on the other hand, has acted on the evidence of Dr. Ashutosh Bhattacharjee, witness No. 4. Dr. Ashutosh Bhattacharjee was an Allopathic physician whereas Dr. Sailendra Mohan Roy, was a Homeopathic practitioner. It is in evidence that the former has been criticising the latter as a quack. The acceptance of the evidence of witness No. 4 by the learned Judge, was even on the reasons given by him quite unjustified. It is not necessary for us to discuss this matter elaborately because even according to the learned Judge this witness could not even bear to hear the name of Congress being uttered in his presence and that the witness made a very unfavourable impression on the Court. The learned Judge has also stated that the general demeanour of witness No. 4 in the witness box was unsatisfactory. The learned Judge has also held that witness No.3 Ramesh Chandra Dutta, who also speaks to Ex. B, was also an ardent supporter of the third respondent and his evidence has to be treated with considerable caution. The Court has further observed that if it has to decide only on the basis of the evidence of witnesses Nos.3 and 4, it would have to face considerable difficulty in deciding in favour of the election petitioner. In spite of all the above observations, the learned Judge has held the witnesses Nos.3 and 4 could be believed when they speak to having gone to the dispensary of witness No.7 on receipt of a copy of the pamphlet Ex. 3 and that witness No. 7 admitted that he is the author of the same as he had got necessary particulars from the appellant. The story given by these witnesses, in our opinion is very fantastic and totally unbelievable. It is difficult to believe that Dr. Sailendra Mohan Roy, witness No. 7 would have spoken to such things as stated by these witnesses. Therefore, it follows that the acceptance of the evidence of witnesses Nos. 3 and 4 and the rejection

of the evidence of Dr. Sailendra Mohan Roy, witness No. 7 by the learned Judge was not justified. We have gone through the evidence of Dr. Sailendra Mohan Roy, and in our opinion his evidence is quite natural and acceptable. From the above discussion, it follows that Ex. B was not printed by witness No. 7 either himself or at the instance of the appellant.

33. The allegations in sub-paragraphs (l) and (m) of paragraphs 7, in our opinion are thoroughly fantastic. A reading of the evidence of the witnesses who speak to having been shown a copy of the said deed by the appellant containing incomplete particulars and the appellant making allegations against the respondent No. 1, and calling him a debauch cannot be believed. The evidence of the witnesses walking into the office of the appellant on getting copies of Ex. B to find out the nature of the transaction relating to the property purchased by the third respondent is very artificial and tutored. It is equally fantastic to allege that the appellant would have called the third respondent a debauch and that in the presence of the election petitioner when the appellant was stated to be in his room soliciting votes for him. It is also equally fantastic that the appellant would have referred to the character of the third respondent to a person like the election petitioner who was known to be an ardent supporter of the third respondent. We have already referred to the observations of the learned Judge that most of the witnesses called by the election petitioner were not only partisan and tutored but also reckless and without any respect for the oath they had taken in the witness box. For instance in discussing the question whether the appellant had an election office at No. 5, Jadulal Malik Road and where the posters Exs. A and C were printed and circulated, the learned Judge was prepared to accept the evidence of one Gajju, who has been characterised by the Court as a despicable character and anti-social element. The court was prepared to believe the evidence of one Deo Narain Chawdhary, an employee of the Official Receiver, in whose charge the press was at the relevant time, notwithstanding the fact that the witness admitted that Gajju was a rowdy element and a dangerous character and that he was terribly afraid of Gajju.

34. Regarding another witness of the election petitioner, namely, witness No. 3, the Court has observed that it had considerable doubt whether the appellant would have taken witness into his confidence to the extent claimed by the latter as he was an incorrigible supporter of the third respondent. Regarding Swaran Pratima Bai, who has given evidence on the side of the appellant and has spoken to the fact that she was working in the election office at No. 6, Jadulal Malik Road, the Court having held that she did work for the appellant in the mid term election, brushed aside her evidence on the sole ground that she was not able to give correctly the total number of booths in her area.

35. After having so criticised the evidence adduced on the side of the election petitioner as mentioned earlier, the learned Judge was not justified in acting on such evidence and setting aside the election of the appellant. In our opinion, the finding of the learned Judge with reference to the allegations contained in sub-paragraphs (j), (k), (l) and (m) of Paragraph 7 of the election petition cannot be sustained, and we accordingly hold that the appellant is not guilty of any corrupt practice.

36. Before we conclude it is necessary to state that there is no allegation that the appellant made any statement reasonably calculated to prejudice the prospects of the third respondent in the election. There is no evidence let in this regard. The learned Judge has also not considered at all this aspect and given a finding one way or the other. We are referring to this aspect because under Section 123(4) of the Act this is one of the essential ingredients to be established. In this respect also the judgment of the learned Judge suffers from a serious defect.

37. In the result the judgment and order, dated March 25, 1970, of the Calcutta High Court in

election petition No. 1 of 1969, are set aside and the appeal allowed.

38. The election petition will stand dismissed. In the circumstances, there will be no order as to costs in the appeal.

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