

Sri Harasingh Charan Mohanty

Vs

Sh. Surendra Mohanty

Criminal Appeal No. 402 of 1972

(P. Jagmohan Reddy, P.K. Goswami, S. N. Dwivedi JJ)

12.10.1973

JUDGMENT

JAGANMOHAN REDDY, J. -

1. The respondent - a nominee of the Utkal Congress of which Biju Patnaik an ex-Chief Minister of the Orissa State is the founder leader - was elected to the Lok Sabha from the Kendrapara Parliamentary constituency in that State, by defeating two candidates, namely Surendranath Dwivedi - a nominee of the Praja Socialist Party - and Pradyamna Kishore Lal - a nominee of the Indian National Congress (R) Party. At this election the respondent Surendra Mohanty polled 1,23,630 votes, Surendranath Dwivedi 1,20,707 votes and Pradyamna Kishore Lal 1,11,235 votes. The appellants - a voter in that constituency - challenged the election of the respondent on the ground that corrupt practices under sub-sections (3) and (4) of Section 123 of the Representation of the People Act, 1951 - hereinafter referred to as 'the Act' - which were detailed in sub-paragraphs i) to (iv) of paragraph - 5 of the petition were committed by him/and or by his agents with his consent. The petition, after it was duly tried, was dismissed by the High Court, against which this appeal has been filed under Section 116-A of the Act.

2. It may be mentioned that the respondent was at all material times, and even at the date of the election petition, an editor of an Oriya Daily 'The Kalinga' published by the Kalinga Publications whose Chairman is Biju Patnaik. As one of the corrupt practices alleged against the respondent has relevance to the election symbol, it is necessary to state that the symbol allotted to the Utkal Congress was the water wheel (Chakra) and the plough (Langala). The corrupt practices which have been set out in paragraph-5 of the petition and which were alleged to have been committed by the respondent and / or his agents with his consent can be divided into two broad categories :

(1) The appeal to the religious symbol, a corrupt practice under sub-section (3) of Section 123 of the Act; and

(2) Imputation against the personal character and conduct of Surendranath Dwivedi a corrupt practice under sub-section (4) of Section 123 of the Act.

3. In respect of the first category the allegations are :

(i) that the respondent who was the editor of an Oriya Daily 'The Kalinga' published in his paper dated February 15, 1971, an editorial appealing "to the religious symbol of Chakra and Langala the mythological weapons associated with Jagannath and Balaram the most worshipped and esteemed deities in Orissa for the furtherance of

the prospects of his election and for prejudicially affecting the election of other candidates". [paragraph-5 (i) of the petition];

(ii) that Biju Patnaik in a public meeting held on February 15, 1971, at 5 p.m. had "appealed to religious symbol by saying that his pray (Utkal Congress) was fully able to eradicate unemployment and poverty from he country by forming a strong Government in the State with the help of the two powers Jagannath the Balaram whose weapons Chakra and Langala have been chosen by Utkal congress as its symbol. The statement was made in the presence of the respondent with his consent and without any protest by him and was for the furtherance of the prospect of the respondent". [paragraph-5(iii) of the petition]; and

(iii) that the respondent in his daily paper 'The Kalinga' dated February, 19, 1971 had published a report regarding the meeting held at Marshaghai on February 15, 1971, containing the aforesaid appeal to religious symbol as detailed in (i) above. [paragraph-5 (iv) of the petition].

4. The allegations in respect of the second category are :

(i) that on February 15, 1971 in a public meeting held at 5 p.m. at Marshaghai the respondent made false statements of facts regarding the personal character and conduct of Surendranath Dwivedi to the following effect, which the respondent believed to be false and/or did not believe to be true :

"Shri Surendranath Dwivedi has not yet rendered account of the gift of one lakh rupees from the Marwari Society, Bombay, and Rs. 25,000/- from the Prime Minister brought by him during the cyclone of 1967 for the relief of the people." [paragraph-5 (ii) of the petition]; and

(ii) that the report regarding the said meeting of February 15, 1971 containing a false statement in relation to the personal character or conduct of Surendranath Dwivedi as detailed above [in paragraph-5 (ii) of the petition] was published in his daily paper 'The Kalinga' dated February 19, 1971, by the respondent or with his consent by his subordinates.

5. It is stated that the statements of fact both in the speech and the report were false and that Surendranath Dwivedi had not received any money from the Marwari Society, Bombay or from the Prime Minister during the cyclone of 1967; that the respondent being an editor of a daily newspaper knew them to be false or at least he did not believe them to be true; and that the said false statement was reasonably calculated to prejudice the prospects of Surendranath Dwivedi's election.

6. The respondent in paragraph-8 of his written statement denied the allegations of corrupt practices said to have been committed by him. In respect of the allegations of the first category -

(i) The respondent while admitting he was the editor of 'The Kalinga' at all material times stated that he had nothing to do with the editorial of February 15, 1971 or with the publication of the news report of February 19, 1971, nor did he authorise or consent to anyone publishing them nor those who published them were his agents. Even so the editorial did not appeal to a religious symbol, but only by analogy to the secular myth of the Oriya people referred to them as symbols of development of

industry and agriculture.

(ii) The respondent was not present at the time when Biju Patnaik spoke on February 15, 1971, at Marshaghai as he had to leave for another meeting for which he was already late and he was, therefore, not in a position to either affirm or deny from his own knowledge as to what was stated by Biju Patnaik or as was reported in 'The Kalinga' of February 19, 1971, and the speech of Biju Patnaik, even assuming that it was made, had only a reference to a strong Government in the State, and had no relevance to the prospects of the election of either the respondent or Dwivedi and that his alleged reference to the wheel and plough as weapons of deities to root out corruption and unemployment being in illustration of the election symbol by way of analogy, did not amount to any religious appeal, and at any event the respondent had never consented to or authorised Patnaik to make such a statement.

(iii) The respondent was not acting as editor of 'The Kalinga' at all material times as due to his election he was absent on leave, nor did the daily have any correspondent at Marshaghai or any other place mentioned in the report. It was alleged that the report was submitted by some person interested describing himself as "from an informer", that what was spoken by him at the meeting of February 15, 1971 was misreported, and that he did not make the statement said to have caused a sensation. At any event, the report of the statements alleged to have been made by the respondent and patnaik as stated earlier did not amount to any appeal to a religious symbol made for furtherance of the prospects of the election of the respondent, nor were they reasonably calculated to prejudice the prospects of election of Dwivedi.

7. The allegations of corrupt practices in the second category were met with denials as under :-

(i) The respondent did not make any such statement at the meeting held at Marshaghai on February 15, 1971 as alleged in the election petition in paragraph-5 (ii) and at any event, assuming for the sake of argument that such a statement calling on Dwivedi to render an account of the amounts collected for public welfare was made, it would, without a further allegation of misappropriation of such funds, relate to the public conduct of Dwivedi as a responsible Member of Parliament and not to his personal character or conduct, and more so when he lets it be known to the public on his behalf that such accounts need be rendered to the donors only and not to the public. The respondent further averred that in the said meeting at Marshaghai held at about 7 p.m. on February 15, 1971 he had merely referred to a public controversy as to the public duty of Dwivedi to render accounts of the money received by or through him for relief work from outside the State including the Bihar Relief Committee. The demand for such rendition of accounts of the money collected was replied to, not by Dwivedi as yet, but by some one of the Orissa Relief and Rehabilitation Committee, to the effect that Dwivedi had no such duty. The respondent giving his opinion on the said controversy at the meeting said that in the circumstances he felt that as an eminent man in public life it was Dwivedi's moral duty to render such accounts in public. The aforesaid speech of the respondent had been misreported in the said issue of 'The Kalinga' in contents, though not in purport or substance. In any event the statements of himself and Biju Patnaik having been made in the furtherance of the prospects of the Assembly elections could not be said to have been calculated to prejudice the prospects of Dwivedi's election.

(ii) after stating what has been set out in para (iii) of the above denial, that is the denial in paragraph-8 (iv) (a) to (d) of the written statement of the allegations in paras (i), (ii) and (iii) of paragraph-5 of the petition, the respondent stated that the impugned publication (i.e. in 'The Kalinga' of February 19, 1971) was neither in relation to the personal character and conduct of Dwivedi nor was it reasonably calculated to prejudice the prospects of election of Dwivedi.

8. From the various allegations in the petition and the denials in the written statement, the main points in controversy that emerge are -

(1) Whether Ext. 1 and Ext. 2 and the speech of Biju Patnaik appealing to the religious symbol constitute corrupt practice.

(2) (a) If so, whether Ext. 1 and Ext. 2 were published by the respondent or with his consent.

(b) If so, whether the speech delivered by Biju Patnaik was with the consent of the respondent.

(3) whether the alleged speech made by the respondent at Marshaghai on February 15, 1971 asked Dwivedi to render an account of the amounts collected for relief funds is with reference to or makes imputation against the personal character or conduct or public conduct of Dwivedi.

(4) Whether the report of the speech of the respondent respondent asking Dwivedi to render an account for the amounts collected for relief funds as appearing in 'The Kalinga' of February 19, 1971 (Ext. 2) was published by the respondent or with his consent.

9. The case of the respondent is that while no doubt he was the editor of 'The Kalinga' during the relevant period and his name was not only shown as such in the issues of February 15 and February 19, 1971, and there was no change in the declaration made by him under the Press and Registration of Books Act, 1867, he remained absent and his work was done by J. Verma. In support of this contention he produced a letter of January 15, 1971 (Ext. 1) addressed to the Chairman of 'The Kalinga' Press, Biju Patnaik, in which he stated that due to his preoccupation in the Lok Sabha election as a candidate from the Kendrapara constituency, he would remain absent from the Headquarters with effect from January 19, 1971 till the end of the elections, and during his absence J. Verma, the News Editor, would remain in charge of editing the paper as well as of editing the news reports. On this letter, which was sent for information, the Chairman endorsed not he same day "As P.P.D." (as proposed) (Ext. 1/S). This letter with the endorsement of the Chairman was also endorsed as "Seen" by J. Verma R.W.3 (Ext. 1/3) on the same day. Thereafter the respondent states that he had nothing to do with the writing of the editorials or with the editing of news reports or with the publication of the daily 'Kalinga' from Joinery 15, 1971 to August 1971.

10. The High Court disbelieved the evidence of the witnesses on behalf of the petitioner who said that they had attended the meeting held on February 15, 1971, at Marshaghai. On the other hand it believed the evidence of the witnesses produced on behalf of the respondent as also the respondent's own evidence that in the meeting held on February 15, 1971 the respondent had not stated as alleged nor having regard to the working arrangements as disclosed by Exts. L, L/2 and L/3 did he have any

concern with the publication or the editorial Ext. 1 or the news report Ext. 2, nor can the consent or complicity of the respondent be presumed either in respect of Exts. 1 and 2, or in respect of the alleged speech made by Biju Patnaik in the public meeting held at Marshaghai on February 15, 1971. The High Court, inter alia, further held that in any event the alleged statement of the respondent asking Dwivedi to render accounts related to the public conduct of Dwivedi and not to his personal character or conduct. In view of these conclusions, the petition was dismissed with costs.

11. Before we deal with the evidence as to whether the High Court was justified in the appreciation of evidence, it would be necessary in the first instance to consider what it is that is required under the provisions of the Act for unseating a successful candidate on charges of corrupt practice. Clauses (b) and (d) (ii) of sub-section (1) of Section 100 of the Act deal with corrupt practices, while Section 123 of the Act sets out what shall be deemed to be corrupt practices. Clauses (b) and (d) (ii) of sub-section (1) of Section 100 and sub-sections (3) and (4) of Section 123 which are relevant for the purposes of this appeal are as follows :

"100 (1). Subject to the provisions of sub-section (2) if the High Court is of opinion -

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

the High Court shall declare the election of the returned candidate to be void."

"123. The following shall be deemed to be corrupt practices for the purposes of this Act -

(3) The appeal by a candidate or his agent or by any other person on with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicial affecting the election of any candidate.

(4) The publication by a candidate or his agent or by any other person, with the consent of a candidate or his election agent, 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, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

12. In order to establish a corrupt practice under the above provisions the petitioner must prove -

(i) For the purpose of corrupt practice under sub-section (3) of Section 123 of the Act

that the statement is an appeal to the religious symbol and has been made (a) for the furtherance of the prospects of the election of that candidate; or (b) for prejudicial affecting the election of any candidate; and

(ii) For the purposes of corrupt practice under sub-section (4) of Section 123 of the Act that the publication of a statement of fact is by (a) the candidate, or (b) his agent, or (c) any other person with the consent of the candidate or his election agent; (d) that the statement is false and the candidate believes it to be false or does not believe it to be true; (e) that it relates to personal character or conduct of a candidate; and (f) that the statement is reasonably calculated to prejudice the prospects of the candidate's election.

The word 'agent' under the Explanation to Section 123 of the Act includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the onset of the candidate. If the corrupt practice is committed by the returned candidate or his election agent, under Section 100(1)(b) of the Act the election is void without any further condition being fulfilled. But if the petitioner relies on a corrupt practice committed by any agent other than an election agent, the petitioner must prove that it was committed by him with his consent or with the consent of his election agent.

13. In *Samant N. Balakrishna etc. v. George Fernandez and Others etc.*, ((1969) 3 SCR 603 : (1969) 3 SCC 238, 248 (Para 25)) Hidayatullah, C.J., dealing with different burdens of proof as to whether an offending statement was made by the candidate himself or by his agent other than an election agent observed at p. 619 :

"There are many kinds of corrupt practices But the corrupt practices are viewed separately according as to who commits them. The first class consist of corrupt practices committed by the candidate or his election agent or any other person with the consent of the candidate or his election agent. These, if established, avoid the election without any further condition being fulfilled. Then there is the corrupt practice committed by an agent other than an election agent. Here an additional fact has to be proved that the result of the election was materially affected. We may attempt to put the same matter in easily understandable language. The petitioner may prove a corrupt practice by the candidate himself or his election agent or someone with the consent of the candidate or his election agent, in which case he need not establish what the result of a the election would have been without the corrupt practice. The expression "Any other person" in this part will include an agent other than an election agent. This is clear from a special provision later in the section about an agent other than an election agent."

14. Bearing these requirements in view, we shall first consider whether Exts. 1 and 2, the editorial and the news report respectively, were published by the respondent or with his consent, and whether the speech delivered by Biju Patnaik was with the consent of the respondent. If it is not established that Exts. 1 and 2 were published by the respondent or with his consent, or that the speech delivered by Biju Patnaik, even if it was an appeal to the religious symbol, was not made with the consent of the respondent, then no corrupt practice under sub-section (3) of Section 123 of the Act can be held to be proved against the respondent.

15. There is no doubt, and it is not denied, that the respondent was at all material times the editor of

'The Kalinga' in which the offending editorial (Ex. 1) and the news report (Ext. 2) were published on February 15 and 19 respectively. The learned Advocate for the petitioner contends that once this fact is established, then there is a statutory presumption under Section 7 of the Press and Registration of Books Act, 1867, which could only be rebutted by the procedure contemplated by the statute itself, namely, Section 8-A of that Act. Section 8-A of the Press and Registration of Books Act, 1867, provides that :

"If any person, whose name has appeared as editor on a copy of a newspaper, claims that he was not the editor of the issue on which his name has so appeared, he may, within two weeks of his becoming aware that his name has been so published, appear before a District, Presidency or Sub-divisional Magistrate and make a declaration that his name was incorrectly published in that issue as that of the editor thereof, and if the Magistrate after making such inquiry of causing such inquiry to be made as he may consider necessary is satisfied that such declaration is true, he shall certify accordingly, and on that certificate being given the provisions of Section 7 shall not apply to that person in respect of that issue of the newspaper.

The Magistrate may extend the period allowed by this section in any case where he is satisfied that such person was prevented by sufficient cause from appearing and making the declaration within that period."

16. It may be noticed that the provisions of Sections 7 and 8-A of the Press and Registration of Books Act, 1867, have to be complied with for the purposes of that Act, wherein penalties have been provided for omission to conform with the requirements of that Act. Though Section 7 raises a presumption that a person whose name is printed in a copy of the newspaper is the editor of every portion of that issue, that presumption may be rebutted by evidence. In order to rebut this presumption the respondent will have to establish that he had nothing to do with the publication of either the editorial or the news report or that any of them were written and or published without his knowledge or without his consent. In *D. P. Mishra v. Kamal Narain Sharma and Others* ((1971 3 SCR 257 : (1970) 3 SCC 558, 560) after this Court had directed the giving of a notice to Shukla who was an editor, publisher and printer of Mahakoshal which published material relevant to the personal character as to why he should not be named under Section 98 of the Act. On notice being given by the High Court Shukla while admitting that he was the registered printer, publisher and editor of the newspaper in the record of the Press Registrar at the relevant time and that the offending material was published by Mahakoshal, it was done without his knowledge as he had left the entire management of the newspaper with one Tarangi and did not himself come to learn about the publication until after the election petition was filed. The High Court accepted this plea. This Court, while confirming the decision of the High Court, further held that granting that there was a close association between the appellant and Shukla, and even granting that Mahakoshal was exclusively carrying on propaganda on behalf of the appellant, unless there was evidence to prove that Shukla had either authorised the publication of the offending matter or had undertaken to be responsible for all the publications made in Mahakoshal, no inference that the offending publications were made with the knowledge and with the consent of Shukla could be drawn. It will have to be seen whether on the evidence, the respondent has been successful in rebutting the presumption under the Press and Registration of Books Act, 1867.

17. The respondent has produced Exts. L, L/s and L/3 to show that he was not discharging the duties as the editor of 'The Kalinga' due to his preoccupation in the Lok Sabha election and in his absence J. Verma, the News Editor was discharging those duties, namely, of writing editorials and also

editing the news reports. After his application dated January 15, 1971 (Ext. L) was seen by the Chairman and was taken note of by J. Verma both on the same day, the respondent did not have anything to do with the publication of the newspaper either with respect to the editorials or the news reports. J. Verma R.W. 3 has admitted this document and has also admitted that from January 19, 1971, the respondent did not have anything to do with writing of editorials or publication of 'The Kalinga.'

18. One of the complaints of the petitioner is that though the respondent in his written statement denied that he had anything to do with the editorial dated February 15, 1971, that he had not authorised its publication nor was its publication by his agent, he did not mention the person who in fact wrote the editorial or that there was any authorisation in favour of someone else for that purpose. In our view, the pleadings clearly indicate the case of the respondent, namely, that he did not publish the impugned editorial, that it was not published by his agent nor did he authorise its publication. It is apparent from the denial that he did not publish the editorial, that someone else must have written and published it and that someone else was not authorised by him, nor did he write it. It is one of the accepted principles that pleadings must contain and contain only a statement in a summary form of material facts on which the party bases his claim or defence and facts which are merely evidence of material facts, though necessary to be proved at the trial, need not be pleaded, but if it is a material fact it should be pleaded. In our view material facts as set out in the pleadings the evidence that has been led in this case to establish that the respondent was not concerned with the impugned corrupt practice cannot be looked at with suspicion.

19. J. Verma R.W. 3 has admitted in his evidence that he had been discharging the duties of the editor after the leave of absence was granted to the respondent. He no doubt stated that Surendra Mohanty (the respondent) did not proceed on leave in pursuance of the letter Ext. L but that he was allowed to remain absent as he had been busy in election work, and that during the respondent's absence he (Verma) was to remain in charge. A four-pronged attack was made not he authenticity of Ext. L - firstly, that in the letter the words 'in February' were struck out; and initialed by the respondent; secondly, that the endorsements on Exts. L/2 and L/3 by Biju Patnaik and J. Verma respectively were made on the carbon copy and not on the original; frothily, the respondent had indicated the duties which J. Verma had to discharge specifically, when that was not necessary if he was taking over the functions of an editor during the respondent's absence. None of these objections, in our view, would detract from the authenticity of the letter. What was sought to be contended in respect of the first objection is that in January 1971 when the letter was written it was assumed that the elections would be held in February, and consequently the respondent's absence from the headquarters was sought with effect from January 19, 1971 till the end of the elections in February. It was only on February 1, 1971, that the Union Ministry announced the dates for each phase of the elections for the parliamentary constituencies in the State of Orissa. The notification makes it clear that the date before which the elections should be completed was fixed as March 15, 1971. From this fact it is sought to be contended that the respondent could only have come to know on February 1 that the elections would not be completed in February 1971 and consequently the words 'in February' were scored off sometime on or after February 1, 1971. R.W. 3 J. Verma, however, stated that when the letter came to him with the endorsement of the Chairman the words 'in February' were scored off. If this statement is to be accepted, and there is no reason why it should not be, it would show that either the respondent or the Chairman Biju Patnaik may have unofficially come to know of the programme of the elections. Even if the words 'in February' were scored off subsequently that does not advance the case of the petitioner any further, because that would cover the impugned editorial and the news report (Exts. 1 and 2), both of which were published in February 1971 itself. If the respondent had to fabricate these documents for the purpose of facilitating his defence after

the election petition was filed, he could have easily got a fresh letter typed and got the necessary endorsements thereon. No such attempt was made, and the fact that a letter with the words 'in February' scored off was produced in evidence supports its authenticity rather than its being spurious. There is also no significance in the endorsements being made on the carbon copy of the letter that was sent to the Chairman, as sometimes it can be so sent inadvertently. This fact also lends assurance to the evidence of J. Verma R.W. 3 and of the respondent.

20. There is also no force in the objection that the letter dated January 15, 1971 does not bear either outward or inward number. When asked why the letter did not bear the number, the respondent replied that the record-keeper would be able to say why it was not numbered. It also appears from the evidence of Udayanath Misra, R.W. 2, the Accountant in The Kalinga Publications that Ex. L is the letter from the Managing Editor, Surendra Mohanty (the respondent) to the Chairman and though he admitted that they maintained the Despatch and Receipt Registers in the Kalinga Publications' office, he was not asked to produce those registers to show that office copies also had to be diarized in the registers. R.W. 2 who was asked to produce the letter Ext. L was even asked whether J. Verma R.W. 3 was acting as editor since January 19, 1971. He said that he was, and that Surendra Mohanty (the respondent) had not joined the office as editor since then.

21. It is, however, contended that the duties assigned to J. Verma were superfluous, because on his own admission the general practice was that in the absence of the editor, the senior-most member writes the editorials. If so the enumeration of the duties of J. Verma was being designedly made to cover up the acts of the respondent and the explanation to the contrary is unbelievable. It was also submitted that notwithstanding this make believe arrangement, the respondent was in fact present on February 14 and February 18, 1971 at Cuttack from which an inference can be drawn that he must have written the editorial dated February 15, 1971 and was responsible for the news report dated February 19, 1971. To a question that Ext. L refers to writing of editorials, editing the paper and the news reports, the respondent replied that the editor is not necessarily required to write the editorial and that is why it was mentioned in Ext. L that J. Verma should write the editorials and should not delegate the power to other junior member of the staff. The reference to editing of the news reports by J. Verma merely emphasised the normal duties, he had to do, which indicated the work load. The respondent was again asked as to what was meant by editing the news reports to which his reply was that news reports received from the accredited correspondents in the Districts were scrutinised by him and that this work should be entrusted to J. Verma and in any case there was no harm in emphasizing the total work load that had to be done by J. Verma during his absence.

22. The respondent was further asked whether his predecessor Manmohan Misra was getting his pay when he was on leave, and though he said he did not know as to whether Manmohan Misra was getting his pay during his absence on leave, he admitted that he was getting his salary as the editor between January 15, 1971 and August 1971 and was getting his pay thereafter also. In our view the mere fact that the respondent was getting his salary during his leave of absence does not indicate that he was not on leave or that he was not permitted to be absent. No doubt he admitted that he had returned to Cuttack on February 14, 1971 very late in the night as he had a programme with Biju Patnaik. This would show that he was not in a position to write the editorial dated February 15, 1971, because the editorials are written and sent each day by the afternoon for being published in the next day's issue of the paper. He was again asked whether he had returned to Cuttack either on 16th, 17th or 18th, to which his answer was that he did not recollect whether he had returned to Cuttack either on 16th, or 17th or 18th, but he must have returned on some of these days. Apart from these suggestions, there is nothing to indicate that the respondent knew what the editorial was going to be or that he had consented to its being written. Similarly there is nothing to indicate that

he knew about the news report published in 'The Kalinga' dated February 19, 1971, or that he had consented to its publication.

23. The criticism that Biju Patnaik was not examined by the respondent cannot be availed of by the petitioner, because it is for the petitioner to establish by positive evidence the corrupt practice or practices charged against the returned candidate. After the burden of proof is shifted to the respondent, it is for him at that stage to discharge the onus that rests upon him, and if he does not call any witnesses who could assist him in discharging that burden he takes the risk.

24. In order to establish that Ext. 1, the editorial, was written by the respondent, he was asked if it was possible to know from the language of the editorial as to who its writer was, the respondent replied that it was possible by and large and it was certainly not infallible. He was asked if "Satapdi Surya" was one of his writings he said that it was. It was suggested to him that the language and style of the editorial Ext. 1 and of the news report Ext. 2 were his, but this suggestion was emphatically denied by him. We do not think there is any basis for inferring from the style of writing of the editorial that Ext. 1 was written by the respondent.

25. It was also contended that the High Court ignored the implications of the admission by the respondent that he searched for the manuscript of the editorial after coming to know of the election petition. We fail to understand how this admission by the respondent has any significance except perhaps for the respondent to establish positively by documentary evidence that R.W. 3 had written that editorial. If the manuscript had been found it would have been more to corroborate the oral testimony of R.W. 3 who had admitted that he had written that editorial. A suggestion to the contrary that it was not produced as it would show that it was in respondent's writing presumes that the manuscript was in existence at the time. There is no evidence of this. Nothing was elicited in cross-examination from R.W. 3 to belie the assertion that the editorial was written by him and we cannot say that the High Court was not justified in its conclusion that R.W. 3 was the author of the editorial dated February 15, 1971.

26. The next question is whether the respondent was present when Biju Patnaik made a speech at Marshaghai on February 15, 1971, in which he is alleged to have appealed to the religious symbol. Whether Biju Patnaik Made the speech appealing to the religious symbol at Marshaghai need not for the present concern us. But what we have to consider is whether there are any circumstances from which we can infer that the respondent consented to the speech made by Biju Patnaik or that Biju Patnaik was the agent of the respondent. It has been strenuously suggested that the relations between Biju Patnaik and the respondent were intimate even prior to the present election, that the respondent was a member of the Lok Sabha earlier on the Ganatantra ticket and was working for Biju Patnaik, that he was an employee of the Kalinga Publications since 1963 of which Biju Patnaik was the chairman, that both the respondent and Biju Patnaik were working for the success of the Utkal Congress during the current elections, and there was also evidence that they were addressing meetings together on February 15, 1971 and that the respondent was spending long hours with Biju Patnaik and he admitted that he was associated with him for encashing his popularity and taking advantage of his presence. It is, therefore, contended that the personal intimacy existing between the respondent and Biju Patnaik long prior to the date of election, and its continuance thereafter, with a clear general political identification between the two, the persistent association between them in political action in connection with the present election, the present relationship of master and servant, absence of disavowal of the election of Biju Patnaik, all lead to the inference that the speech of Biju Patnaik must have been with the consent of the respondent. We do not think that these circumstances justify such an inference. Consent or agency cannot be inferred from remote causes.

Consent cannot be inferred from mere close friendship or other relationship or political affiliation. As pointed out in D. P. Mishra's case (supra), however close the relationship, unless there is evidence to prove that the person publishing or writing the editorial was authorised by the returned candidate or he had undertaken to be responsible for all the publications, no consent can be inferred. That Tarangi was in full charge of the publication of the Mahakoshal does not distinguish that case from the facts of this case where R.W. 3 also was in full charge of 'The Kalinga' during the respondent's absence.

27. The case of the respondent is that he had left the meeting before Biju Patnaik addressed the same and he was, therefore, not present when Biju Patnaik addressed that meeting. He said that two or three minutes after he had spoken at the meeting he left the meeting place for Kiarbanka, because there was another meeting scheduled to be held in that same evening where due to delay the people were getting restive. The respondent was, however, asked whether he had ever consented to what Biju Patnaik said at the meeting, and he replied that the question of his consent being given to the contents of Biju Patnaik's speech did not arise. The cross-examination was mostly, in respect of the editorial Exhibit 1, letter Ext. L and to the respondent being present at Cuttack during the relevant time just before the impugned editorial Ext. 1 and the news report Ext. 2 were published. When once it is established that neither the editorial (Ext. 1) nor the news report (Ext. 2) were published by the respondent or by someone else with his consent or that the speech alleged to be made by Biju Patnaik, even if it amounts to corrupt practice, was made without the consent of the respondent, and that Biju Patnaik was not his agent, it is unnecessary to consider the question whether the editorial and the news report as well as the speech of Biju Patnaik did in fact constitute corrupt practice under sub-section (3) of Section 123 of the Act.

28. The next question is whether the respondent in his speech of February 15, 1971 at Marshaghai made false imputations against the personal character of Dwivedi for collecting donations and not rendering accounts. If the alleged statement in his speech was an imputation against the personal character of Dwivedi then it will have to be further established that the statement was false, the respondent believed it to be false or did not believe it to be true and that it was a statement reasonably calculated to prejudice the prospects of that candidate's election. In any case, since we have found that the publication of the speech of the respondent in Ext. 2 has not been made with his consent, that publication, even assuming its contents have been proved, does not constitute a corrupt practice. It now remains to be considered what it is that the respondent in his speech at Marshaghai is alleged to have imputed to Dwivedi on February 15, 1971.

29. The petitioner examined Daitari Swain P.W. 2, Suresh Chandra Parida P.W. 3, Ramchandra Behara P.W. 5, Sauri Charan alias Bibhakar Swain P.W. 6 and Bidyadhar Paital P.W. 7, all of whom claimed to have attended the meeting at Marshaghai on February 15, 1971. The respondent rebutted this evidence by examining Rasananda Rath R.W. 4, Jhari Basantia R.W. 5, Krishna Chandra Biswal R.W. 6 and himself. As the High Court points out on an examination of the oral evidence, it would not be possible either to fix the exact words of the respondent or of Biju Patnaik much less the entirety of the speeches delivered by either of them, nor even the exact context in which the impugned remarks had been made by the two persons. In these circumstances it came to the conclusion that what is alleged by the petitioner to have been stated by the respondent, the burden of proving which was on the petitioner, has not been satisfactorily established. The petitioner himself as P.W. 14 has no knowledge of these speeches. He admitted in examination-in-chief that he had thought that whatever had been published in the newspaper 'Kalinga' was an admission of the respondent since he was its editor. The petitioner said that he made some inquiries about the context in which the respondent spoke, but admitted that what he found on inquiry in that regard had not

been mentioned in the report Ext. 2. He did not also name the persons at Marshaghai from whom he had ascertained about the truth of the reported portion of the respondent's speech. He said that the persons who had given him the information about the truth of the relevant portion in Ext. 2 ascribed it to the respondent but had asked him not to disclose their names in the petition, and therefore he was not prepared to divulge all that he had ascertained about the context in which the respondent had uttered these words in the course of his speech at Marshaghai. In the cross-examination he admitted that the additional matters that he discovered during the inquiries have not been embodied in his petition and that he had confined himself only to what he found in the paper. It followed, therefore, that the people who were cognizant of the real facts and who had given him a list of names of 20 to 25 persons for being summoned were not prepared to come forward to support the petitioner in court. In fact he admitted that he had not even asked the persons named in the list given to him as to whether they would themselves like to appear as witnesses on his behalf. He confessed that he did not trouble himself about them, because if they wanted to give evidence they he did not trouble himself about them, because if they wanted to give evidence they could do so on being summoned. There are many other incogruities in the evidence of the petitioner. The claims made by him are highly imaginative. In our view the High Court was justified in not relying on the petitioner's evidence. It also did not reply on the evidence of P.Ws. 2, 3, 5, 6 and 7. All these persons, without a single exception, uniformly deposed the respondent as having stated that Dwivedi had got one lakh of rupees from the Bombay Marwari Society and Rs. 26,000/- from Mrs. Indira Gandhi in connection with the 1967 Cyclone relief works, and that when the respondent asked the audience as to whether they had received those monies; some out of the audience said that they had not received any such money from Dwivedi. Thereupon the respondent is alleged to have stated that Dwivedi had appropriated (Mari Nele) that money and had not rendered any accounts therefore. A perusal of the statements of these witnesses shows that in the first instance the allegation that the respondent said that Dwivedi had appropriated or misappropriated the amounts is an improvement from the allegations in the pleadings, where no such imputation of misappropriation has been made by the respondent. This allegation of misappropriation being a material fact ought to have been stated in the pleadings as required in Section 83(b) and no evidence contrary to the pleadings can be led or considered because it changes the complexion of corrupt practice. We have also been taken through the evidence of these witnesses and have come to the conclusion that they have all with parrot-like voice repeated identically the same set piece, but were blank, vague and ignorant about the remainder of the speech, its purport, its contents or its effect. Some of them said that they had never told any one of what they heard. Some of them were from other villages from which they said they had come to hear because Biju Patnaik was speaking when they were aware that he was going to speak at a place near their villages. Prira Bar Lenka P.W. 4 who deposed on behalf of the petitioner, however, says that he was personally present at the meeting as a correspondent for the 'Samaj' another Oriya daily published from Cuttack. He claims to have published the news report Ext. J which was based on his personal knowledge of what happened at the meeting held at Marshaghai. According to him the respondent never stated anything about the sources from which the monies might have been received by Dwivedi. He no doubt says that the respondent's reference to the relief monies received by Dwivedi from different quarters was occasioned by the fact that Marshaghai area was often affected by floods and cyclone which was pointed out by the respondent in his speech. He said that the respondent made reference to certain alleged non-remittance of accounts by Dwivedi in respect of monies collected by him. According to the witness, no allegation of misappropriation by Dwivedi was made by the respondent in his speech, nor did he notice any stir or commotion amongst the audience as deposed to uniformly by different witnesses for the petitioner referred to earlier. P.W. 4 conceded that he was unable to give the exact language which the respondent used about the monies having been received by Dwivedi, but he made it clear in his

cross-examination that what the respondent had said was that Dwivedi had brought monies for the 1967 cyclone from various sources in India and also from individuals and that there was a controversy in the Prajatantra and so he enquired of the people whether they had received any such monies from Dwivedi, if Dwivedi at all received all those monies. Though there are certain aspects of this evidence which the respondent does not admit, in so far as the particular allegation which is being discussed is concerned, his evidence completely gives the lie to the other witnesses of the petitioner.

30. In the circumstances we agree with the observation of the High Court, which had also the opportunity of noticing the demeanor of the witnesses in respect of some of whom the learned Judge had__ made a note while recording their depositions, that it is difficult to understand how each and every one of these witnesses could have occasion to remember the exact sources of moneys which are said to have been received by Dwivedi. We have no doubt that all these witnesses who claim to have attended the meeting at Marshaghai on February 15, 1971, and of having heard the speech of the respondent have been got up for the occasion and cannot be upon. The petitioner has failed to establish the allegation of corrupt practice which incidentally, as observed earlier, was developed in the when the witnesses tried to supplement the pleadings when they that the respondent had charged Dwivedi with misappropriation of the amounts collected for the relief funds. If what is stated in the pleadings alone was the charge against the respondent, in our view that would not amount to a corrupt practice because if amounts had been collected for any public purpose, asking the rson collecting those amounts or those who were responsible for their collection, to give an account could not amount to an imputation against their personal character. Men in public life particularly those who collect monies for public or charitable purposes ought not to be sensitive when there is a demand to charitable purposes ought not to be sensitive when there is a demand to account for those amounts. A situation in which a demand such as that we have referred to may be made may be unfortunate, and it may hurt the vanity or the ego of the person from whom accounts are asked, but it is far from being an imputation against the personal character or conduct of the person concerned. Such a demand would refer to the public conduct of the person who is liable to render accounts and does not amount to corrupt practice.

31. It is, however, contended by the learned Advocate for the petitioner that the respondent had stated that Dwivedi had collected (a) Rs. 1,00,00. - from the Marwaris of Bombay, (b) Rs. 25,000/- from the Prime Minister and (c) that these monies were for the cyclone of 1967, all of which allegations are false. In fact, Dwivedi was responsible for getting Rs. 20,000/- from the Prime Minister for rebuilding a school which had been destroyed in the cyclone. Even this money was not paid to him but was routed through the Chief Minister and given to the school directly. The respondent denied that he had ever charged Dwivedi with getting money for cyclone and his case was that he never referred to any such source in his speech, and could not have done so as his information with respect to this matter on the date of the meeting was confined to a controversy that had been raised in another local daily, Prajatantra, wherein the letters Exts. 3 and 4, dated September 20 and September 27, 1970 respectively were published. Apart from these two items of publication, there was another earlier publication (Ext. A) in the Prajatantra dated June 4, 1970, which referred to the collection of monies. Dwivedi himself had published a reply in the Prajatantra of June 13, 1970. But in none of these exhibits is there any money to Dwivedi for relief work. The respondent says that he had only this controversy in his mind and he could not have alleged that Dwivedi had received a lakh of rupees from Bombay Marwari Society. The learned trial Judge after considering the evidence of the petitioner's said :

"In my view, this is again one of the most vital aspects of the petitioner's evidence

which renders the witnesses on his behalf very much undependable and is clear pointer to the fact that for some obscure reason or other they have come forward with such a story, which stands nowhere explained on behalf of the petitioner."

We agree with the above finding. In our view a finding of fact arrived at by the trial Court after due consideration, of the materials and the conduct and demeanor of the witnesses, should not be lightly interfered with by the appellate Court, particular when the view taken by it is justified on the evidence.

32. As we have noticed already, the respondent could not have made any reference to the Bombay Marwari Society. The respondent says that he also never referred to the Prime Minister's Relief Fund which is probalised by the concession made by Dwivedi who said that it is never the practice for the Prime Minister's Relief Fund to be distributed directly through private individuals. The statement of the respondent that he never referred to any amount received by Dwivedi from the Bombay Marwari Society or from the Prime Minister's Relief Fund, is the more probable version and it was also so held by the High Court. No doubt Dwivedi had issued appeals particularly to the Bihar Relief Committee in respect of the Orissa floods of 1969. The Bihar Relief Committee of which Shri Jayaprakash Narain was the Chairman donated Rs. 25,000/-. This amount was sent to the Utkal Relief Committee which under the instructions of Dwivedi and the Bihar Relief Committee passed on the amounts to the Orissa Relief and Rehabilitation Committee sponsored mostly by the members of the Praja Socialist Party.

33. The learned Advocate for the respondent points out that all the monies that were received by the Utkal Relief Committee were received by it mostly as a result of the appeals made by Dwivedi. The letters of Dwivedi bear this out. His letter dated August 15, 1969 (Ex. X/5) to Shri Jayaprakash Narain says :

"I am trying my best to collect some money for rebuilding schools in a worst-affected area in my constituency which was very badly damaged by cyclone in 1967 also
.....

Can you do something ? Is Bihar Relief Committee in a position to send me a decent donation ? I would like you to do something personally also."

Again in the letter dated October 16, 1969 to Radhanath Rath of the Utkal Relief Committee, Cuttack (Ext. 9) Dwivedi wrote :

"A complete list of schools which deserve assistance for the loss during floods in Patkura P.S. in the district of Cuttack has been made and I want to distribute the money as quickly as possible.

I would request you to issue a cheque for Rs. 25,000/- received from Bihar Relief Committee in the name of 'Orissa Relief and Rehabilitation Committee or in my name so that the work can be started immediately."

Even so the monies never came into the hands of Dwivedi and his evidence as P.W. 13 corroborate this statement. The respondent also has not contested this position. But as Dwivedi had taken part in collecting the monies and as an important member of his party, on whose appeals monies for relief amounts were being paid, the members of the public had a right to call on him to have an account rendered if there was a controversy in respect of its expenditure.

34. Such a controversy was raised in the Prajatantra dated June 4, 1970 in which the Chief Editor referred to this matter under the heading "Mismanagement in Utkal Relief Committee". In that article it was stated that in the audit report for the year 1968-69 it was shown that no account had been kept-though a total sum of Rs. 36,657,05 was given as an advance to different persons. It was also stated that Rs. 24,960 was given to Dwivedi, M. P., out of Rs. 25,000 granted by the Bihar Relief Committee. Though it was shown as an advance, however there was no mention as to how this amount was utilised nor was any account kept by the Relief Committee as was pointed out in the audit report. To these allegations Dwivedi replied by his letter dated June 13, 1970 (Ext. 5) that he did not know why it was written as an advance by the Relief Committee. It was not an advance and there was no question of submitting detailed accounts of it to the Utkal Relief Committee. He further stated:

Last year, when I was visiting the flood affected area of Luna Karandia at Cuttack District, the school buildings were damaged by the floods just after the cyclone and the villagers were not in a position to rebuild them. There was little hope for sanction of much government aid for this purpose. By seeing this I made a special appeal to different relief Committees and some respectable persons to help for repairing of these schools. On the consequence of my appeal some donors sent money and the Bihar Relief Committee sent Rs. 25,000 for me through the Utkal Relief Committee. They have given me the balance amount after deducting Rs. 40 towards the Bank Commission. That amount along with other amounts which were received were given as relief for repairing the school, houses of this area of Patkura and its surrounding areas. The work has been done through a Committee and till now the relief work is going on the detailed description of the accounts shall be sent to the donors after the completion of work."

In this letter also Dwivedi claims that it was as a consequence of his appeal that some donors sent money to him and that he would send the detailed accounts to the donors. Notwithstanding this letter one Saroj Mohanti and some others wrote Ext. 3 as published in the Prajatantra daily dated September 20, 1970 in which it was said as follows :

"After the publication of the audit report of Orissa Relief Committee, no clarification has yet been published by the Relief Committee. Only Sri Surendra Dwivedi has admitted that he has taken Rs. 25,000 which he has arranged from Bihar Relief Committee. Besides this amount he has also declared that he has arranged some more money from other sources also. We have heard that he has collected more than one lakh of rupees for relief purposes. According to Dwivedi he has collected these amounts for the repairing of school buildings. Sri Dwivedi had also requested the Prime Minister for help. Instead of giving money to Sri Dwivedi, the Prime Minister sent Rs. 25,000 to the Chief Minister's Relief Fund. Sri Dwivedi tried to spend this amount himself. But the Chief Minister did not agree with it and spent the amount through the Department. Therefore, this amount is different. Sri Dwivedi should furnish the accounts of rupees more than one lakh which was in his hand. Sri Dwivedi has told that he shall submit the accounts if the donors want it. A great leader like him should know that the donor as well as the donee should know the accounts. Besides, the public also should know it. As far as we know almost no relief has been reached in the Patkura area from Sri Dwivedi. Sri Dwivedi has told that he has collected this money for this area. Our doubts would be cleared if Sri Dwivedi would furnish the full accounts."

35. It is not necessary to go into the controversy further because it is clear that some among the

public were demanding accounts for the amounts collected by or through the efforts of Dwivedi and that Dwivedi was trying to explain some item which pertained to him but he said that he would render the accounts to the donors. Those who were concerned in the controversy, however, did not accept this position and demanded that Dwivedi should render the accounts to the donees who are the public.

According to the respondent it is this controversy to which he was referring in his speech and had merely asked Dwivedi to render accounts of the monies collected by him. He did not make any imputation against his personal character, nor did he in any manner suggest that there was anything sinister in the conduct of Dwivedi in respect of the monies collected for the relief work. We are in agreement with the High Court that asking Dwivedi to render accounts in respect of the amounts collected for the cyclone and flood relief purposes was an expression of opinion and related to the public conduct and did not amount to any imputation against the personal character or conduct of Dwivedi. In the circumstances we do not think it necessary to go into the other questions.

36. As the appellant has not made out any of the allegations of corrupt practices against the respondent, this appeal will be dismissed with costs.

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