

Dharmesh Prasad Verma

Vs

Faiyazal Azam

Civil Appeal No. 3011 of 1979

(Syed M. Fazal Ali, A. Varadarajan, Ranganath Misra JJ)

17.07.1984

JUDGMENT

VARADARAJAN, J. -

1. This election appeal is directed against the judgment of the Patna High Court dismissing Election Petition No. 4 of 1977 with costs of Rs. 1000. The appellant Dharmesh Prasad Verma, who is stated to have contested the election as a Janata candidate, had pleaded four items so corrupt practice in his election petition filed against the respondent Faiyazal Azam who is stated to have contested the election as a Congress-I candidate. The poll in this case was held on June 12, 1977 for the election of a member of the Bihar Legislative Assembly from No. 5 Sikta Constituency in West Champaran district. The appellant secured 1795 votes while the respondent secured 28,324 votes and was declared elected on June 15, 1977. The election petition was filed on July 18, 1977. The Legislative Assembly was dissolved in 1980 and fresh election had been held in that year and the respondent is stated to have contested as a non-Congress-I candidate and to have been elected from the same constituency. The appellant is, however, interested in pursuing this election petition relating to the election of the year 1977 in order to prove corrupt practice on the part of the respondent.

2. Mr. Shanti Bhushan, senior counsel, appearing for the appellant, restricted his arguments to the first charge alone and that too regarding the use of the jeep USJ 5226 which is alleged to have belonged to one Kabir Ahmad. That charge is that respondent committed the corrupt practice falling under Section 123(5) of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act') by procuring and using the jeep for the free conveyance of voters to the polling station on the date of poll. The respondent denied the charge in his written statement and contended that the appellant had not complied with the mandatory provisions of Sections 81, 82 and 83 read with Order VI, Rule 15 of the Code of Civil Procedure and Section 117 of the Act and that the election petition is, therefore, liable to be dismissed.

3. The learned Single Judge who tried the election petition, after observing that it is common knowledge that every politician realises the importance of vehicles during general elections, noticed this Court's observations in *Rahim Khan v. Khurshid Ahmed* ((1975) 1 SCR 643 : (1974) 2 SCC 660 : AIR 1975 SC 290) that proceedings arising out of election petitions are quasi-criminal in nature and that the evidence relating to corrupt practice should be scrutinized with scrupulous care and merciless severity, and then proceeded to consider the evidence adduced by the parties. On the evidence the learned Judge found that the jeep bearing No. USJ 5226 while carrying five ladies was seized by the District Magistrate and the Superintendent of Police of the district from a road near a canal situate about 1 1/2 or 2 miles away from the Sarkiatola booth on the date of the poll and that the five ladies including Maratiwa alias Deokalia (PW 10), Mehrunnissa (PW 11) and Rasulia (PW

42) were voters who were being carried free of cost for casting votes on behalf of the respondent. The learned Judge found that at the time of the seizure of the jeep it was driven by Kabir Ahmad's nephew Tabrez Ahmad and that Kabir Ahmad was a great friend of the respondent and he and his father worked for the respondent in the election and were present in the booth on the date of the poll and that the respondent's polling agent Manager Prasad stood surety for the release of the jeep. However, the learned Judge held that these facts are not sufficient by themselves to hold that the respondent himself procured the jeep from Kabir Ahmad. The learned Judge further found that since the jeep with the voters was caught not at the polling station but at some distance away from it, in any event, it was only a case of an attempt at corrupt practice and not corrupt practice itself as per Section 123(5) of the Act. Thus the learned Judge rejected the appellant's case in regard to this instance of corrupt practice as also the other instances and dismissed the election petition.

4. Section 123(5) of the Act read thus :

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

#(1) \* \* \*(2) \* \* \*(3) \* \* \*(4) \* \* \*##

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under Section 25 or a place fixed under sub-section (1) of Section 29 for the poll :

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power :

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation. - In this clause, the expression 'vehicle' means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

5. In clause (5) of Section 123 the word 'or' is used in several places and the word 'and' is used in two places in the first proviso and the explanation. Prima facie, Parliament must be deemed to have used the words 'or' and 'and' for different purpose or objects. If the matter is res integra it could be said that the main clause (5) consists of two separate parts, namely (1) the hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person, with the consent of a candidate or his election agent for the free conveyance of any elector to or from any polling station or (2) the use of any vehicle or vessel by any candidate or his agent or by any other person with the consent of a candidate or his election agent for the purpose of

free conveyance of any elector to or from any polling station. It is true that in the latter part of clause (5) the word 'such' is used before the words "vehicle or vessel for the free conveyance of any elector to or from any polling station". But the matter is no longer res integra. In *Joshbhai Chunibhai Patel v. Anwar Beg Mirza* ((1969) 2 SCR 97 : AIR 1969 SC 586 : 39 ELR 438), Hidayatullah, C.J. speaking for himself and G. K. Mitter, J. has observed :

This brings us to the examination of Section 123(5) with a view to finding out what are its requirements. We have already indicated that in our opinion the election petitioner must prove in addition to the other ingredients of the section that the vehicle was used for free conveyance of voters which ingredient we have stated was not attempted to be established in the case..... This section defines one of the corrupt practice and it consists of the hiring and procuring whether on payment or otherwise of any vehicle. This hiring and procuring must be by a candidate or his agent or by any other person with the consent of the candidate or his election agent and the hiring according to the section must be for the free conveyance of any elector other than that candidate himself or members of his family or his agent to and from any polling station. It will, therefore, appear that the section requires three things, (1) hiring or procuring of a vehicle; (2) by a candidate or his agent etc. and (3) for the free conveyance of an elector. It will be noticed that the section also speaks of the use but it speaks of the use of such vehicle which connects the two parts, namely, hiring or procuring of vehicle and the use. The requirement of the law therefore is that in addition to proving the hiring or procuring and the carriage of electors to and from any polling station, should also be provided that the electors used the vehicle free of cost to themselves.

6. In *Razik Ram v. Jaswant Singh Chouhan* ((1975) 4 SCC 769, 775), Sarkaria, J. speaking for himself and Alagiriswami, J. has observed : (SCC p. 775, paras 9, 10 and 11)

On analysis, clause (5) of Section 123 falls into two parts. The requirements of the first part are : (i) The hiring or procuring whether on payment or otherwise, of any vehicle or vessel for the free conveyance of voters. (ii) Such hiring or procuring must be by a candidate or his election agent or by any other person with the consent of a candidate or of his election agent. The second part envisages the "use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family, or his election agent) to or from any polling station". The two parts are connected by the conjunction "or" which is capable of two constructions. In one sense, it is a particle co-ordinating the two parts of the clause and creating an alternative between them. In the other sense - which is akin to the sense of "and" - it can be construed as conjoining and combining the first part of the clause with the second. The latter construction appears to comport better with the aim and object of the amendment of 1966. In this connection, it is noteworthy that even before the amendment, this Court in *Balwan Singh v. Lakshmi Narain* ((1960) 3 SCR 91 : AIR 1960 SC 770 : 22 ELR 273), held that in considering whether a corrupt practice described in Section 123(5) is committed, conveying of electors cannot be dissociated from the hiring of a vehicle.

Even if the word "or" is understood as a co-ordinating conjunction introducing alternatives, then also a petitioner in order to succeed on the ground of a corrupt practice under the second part of the clause, must prove, in addition to the use of the vehicle or vessel for the free conveyance of any elector to or from any polling station, the hiring or procuring of that vehicle or vessel. This is so because the word "such" in the phrase introduced by the 1966 amendment, expressly imports these elements of the first into the second part of the clause.

In the view we take we are fortified by the dictum of this Court in *Joshbhai Chunibhai Patel v. Anwar Beg Mirza* ((1969) 2 SCR 97 : AIR 1969 SC 586 : 39 ELR 438), wherein Hidayatullah, C.J., speaking for the Court analysed the requirements of the clause, thus :

It will be noticed that this section also speaks of the use of such vehicle which connects the two parts, namely, hiring or procuring of vehicle and the use. The requirement of the law therefore is that in addition to proving the hiring or procuring and the carriage of electors to and from any polling station, it should also be proved that the electors used the vehicle free of costs to themselves.

7. In *Dadasaheb Dattatraya Pawar v. Pandurang Raoji Jagtap* ((1978) 2 SCR 524, 528 : (1978) 1 SCC 504, 507-08 : AIR 1978 SC 351), Jaswant Singh, J. speaking for the Court has observed : (SCC pp. 507-08, para 4)

In regard to Section 123(5) of the Representation of the People Act, 1951 which before its amendment by Act 47 of 1966 was identical in terms with Section 144-I(3) of the Act, it was held by this Court in *Balwan Singh v. Lakshmi Narain* ((1960) 3 SCR 91 : AIR 1960 SC 770 : 22 ELR 273) that in considering whether a corrupt practice described in Section 123(5) is committed, conveying of electors cannot be dissociated from the hiring of a vehicle.

It has also been held by this Court in *Ch. Razik Ram v. Ch. J. S. Chouhan* (1975) 4 SCC 769, 775) that to establish the corrupt practice under Section 123(5) of the Representation of the People Act, 1951, it is necessary for an election petitioner to prove (i) that any vehicle or vessel was hired or was procured, whether on payment or otherwise by the returned candidate or by his election agent or by any other person with the consent of the candidate or of his election agent; (ii) that it was used for the conveyance of the electors to or from any polling station and (iii) that such conveyance was free of cost to the electors. Failure to substantiate any one of these ingredients leads to the collapse of the whole charge.

8. In view of the above decisions of this Court it has to be held that the requirement of the law in regard to corrupt practice under Section 123(5) of the Act is that in addition to proving the hiring or procuring of any vehicle or vessel for the carriage of voters to and from any polling station it should also be proved that the electors used the vehicle or vessel free of cost to themselves.

9. We shall now proceed to consider the evidence adduced by the parties regarding this item of corrupt practice alleged by the appellant. On the day of poll, June 12, 1977, J. K. Dutta, PW 69, the then District Magistrate, West Champaran was proceeding to Sikta in a jeep accompanied by the Superintendent of Police in the course of his duties in relation to the election. Finding a jeep carrying some ladies, PW 69 instructed the Superintendent of Police to make the necessary enquiry. After the necessary enquiry was made by the police the jeep with the occupants and the driver was taken to the police station by the Station House Officer, Sikta Police Station, who found the jeep having been detained by the District Magistrate and the Superintendent of Police on the road near a canal situate about 1 1/2 or 2 miles away from the Sarakiatola booth when he was proceeding towards Parsa village with some policemen. Subsequently, the ladies who were in the jeep were taken from the police station by a Government jeep to the place from where the private jeep with the occupants and the driver was taken by the officials to the Sikta Police Station. Anil Kumar, PW 73, the then Superintendent of Police, Bettiah who accompanied PW 69, has given a little more detailed evidence regarding what happened when he was accompanying PW 69 to Sikta. He has deposed that since they suspected that the four or five rustic ladies who were being carried by the jeep could not

be its owners, he seized the jeep, evidently under the impression that the ladies were being carried free of charge to the booth, near a canal situate about 1 1/2 or 2 miles from the booth and too it along with the driver and its occupants to the police station. After the statements of the ladies and the driver were recorded by the Station House Officer at the Sikta Police Station, they were taken back by a Government jeep to the place from which the private jeep in which they were travelling earlier was seized so that they could go and cast their votes. PWs 69 and 73 do not remember the number of the jeep and PW 69 does not know to whom the jeep belonged. Amal Ranjan Sarkar, PW 81, is the Station House Officer who took the jeep with its occupants and the driver to the police station after he found the jeep having been detained by PWs 69 and 73. Kabir Ahmad's nephew Tabrez Ahmad was driving the jeep. PW 81 obtained the statement, Ex. 13, written and signed by Tabrez Ahmad as also the statements of the five ladies who were found travelling in the jeep. The jeep USJ 5226 which was taken into custody was later released to Kabir Ahmad on June 17, 1977 under Ex. 14(c) after one Managar Prasad, who is proved to have been the polling agent of the respondent, furnished security under Ex. 14(b). There is evidence of Sheikh Ejazul, PW 8 that the jeep USJ 5226 which was used in the election belonged to Kabir Ahmad and that it was driven by Tabrez Ahmad. There is evidence to show that Kabir Ahmad's brother Nazir Ahmad was another polling agent to the respondent like Managar Prasad. The learned Trial Judge has found that Managar Prasad was the respondent's polling agent. This fact, to which our attention was drawn by Mr Shanti Bhushan, was not disputed by the respondent's learned counsel. The respondent, RW 45 has admitted that Kabir Ahmad's brother Nazir Ahmad was his polling agent and that Tabrez Ahmad is the nephew of Kabir Ahmad and Nazir Ahmad. But he has stated that he does not know if Managar Prasad whom he knows was his polling agent or whether he had furnished security for the release of the jeep by the police of Kabir Ahmad. D. N. Pandey, PW 75 the then Anchal Adhikari of Sikta who had been deputed to work as the Sub-Zonal Officer during the election in 1977 has also deposed about the seizure of Kabir Ahmad's jeep driven by Tabrez Ahmad. He was present at the Sikta Police Station when the jeep with some women sitting in it was brought to the police station. He has has stated that Kabir Ahmad, who was very friendly with respondent, came to the police station to get the women and the jeep released from the custody of the police. The evidence of Muratiwa alias Deokalia, PW 10, Mehrunnissa, PW 11 and Rasulia, PW 42 who travelled in the jeep along with two other ladies including Querasha, PW 67 is that Kabir Ahmad got them released from the police station on the day of the poll after they and the two other ladies who were travelling with them by the jeep had been taken to the police station. The aforesaid evidence of PWs 69, 73, 81, 75, 10, 11 and 42 which has not been seriously challenge in the cross-examination establishes satisfactorily that the jeep USJ 5226 belonging to Kabir Ahmad was seen being driven by Kabir Ahmad's nephew Tabrez Ahmad with five women electors including PWs 10, 11, 42 and 67 on the road near a canal situate about 1 1/2 or 2 miles away from the Sarakiatola booth on the day of the poll, that the jeep with the ladies and the driver was seized on suspicion that it was being used for carrying electors to the booth free of cost, that the statements of the five ladies and the driver Tabrez Ahmad were recorded at the Sikta Polices Station by the Station House Officer, PW 81, in the presence of PWs 69, 73 and 75, that Kabir Ahmad got the ladies released from police custody on the same day and they were thereafter brought by a Government jeep from the police station to the place from where they had been previously taken to the police station in Kabir Ahmad's jeep, that the jeep was released to Kabir Ahmad on June 17, 1977 under Ex. 14(c) and that the respondent's polling agent Managar Prasad furnished security under Ex. 14(b) for the release of the jeep to Kabir Ahmad. The appellant's contention is that the respondent procured the jeep USJ 5226 from Kabir Ahmad and it was used for the conveyance of electors free of cost to themselves for the purpose of casting votes in favour of the respondent and that the respondent is thus guilty of corrupt practice under Section 123(5) of the Act. The evidence referred to above establishes the requirement of

clause (5) of Section 123 that the vehicle USJ 5226 which is proved to belong to the respondent's close friend Kabir Ahmad was used for the conveyance of electors who were proceeding to cast votes in favour of the respondent on the day of the poll. It is not possible to agree with the learned Trial Judge that what this evidence establishes is only an attempt to convey electors to the polling booth and not actual conveyance of the electors merely because the jeep with the electors who were being carried in it was intercepted at a distance of 1 1/2 or 2 miles away from the booth and taken to the police station by the officials who had suspected that an election offence had been committed. The jeep was seized when it was being used for carrying electors who were proceeding to vote for the respondent, no doubt at a distance of 1 1/2 or 2 miles away from the polling booth. Even the learned counsel for the respondent did not contend before us that what has been established is only an attempt at conveying electors by the jeep of Kabir Ahmad to the polling booth and not actual conveyance.

10. There is overwhelming evidence on record including that of the Anchal Adhikari, PW 75 who had worked as the Secretary of a Cement Committee of which the respondent was the President, to show that the respondent is a good friend of Kabir Ahmad, whose brother Nazir Ahmad was admittedly the respondent's polling agent. The respondent had used a permit issued to him for the purchase of a motor cycle for the benefit of Nazir Ahmad who admittedly advanced the money required for its purchase and was using the vehicle which stood nominally registered in the name of the respondent. The respondent has professed ignorance in his evidence whether Kabir Ahmad owned the jeep USJ 5226 at all and he has denied that the jeep was used for carrying electors for casting votes in his favour on the day of poll. A reading of the evidence of RW 45 shows that his evidence is totally unreliable. We may state at this stage that the respondent's learned counsel Mr. S. K. Sinha found it practically impossible to deny any aspect of the appellant's case in regard to this item of corrupt practice except the part relating to the procurement of the jeep USJ 5226 by the respondent from its owner Kabir Ahmad. We find that this part of the appellant's case relating to this item of corrupt practice is clearly established by the evidence referred to above.

11. The next point for consideration is whether the electors were carried free of cost to themselves by the jeep USJ 5226 on the day of poll. On this aspect of the appellant's case there is direct evidence of the electors PWs 10, 11 and 42 besides that of some other witnesses. The appellant's polling agent Jang Bahadur Mian, PW 6, has stated in his evidence that the jeep USJ 5226 was being used for carrying electors to cast votes in favour of the respondent, that the respondent met the expenses of the electors and that the jeep was seized by the District Magistrate and the police on the day of poll. He has denied the suggestion that the jeep USJ 5226 was not used for carrying electors at all. In view of the other evidence referred to above we are of the opinion that there is no substance at all in this suggestion made to PW 6 Mohammadin, PW 9 who was an elector from Parsa village in the election held in 1977 has stated in his evidence that electors were carried by Kabir Ahmad's jeep on behalf of the respondent. The suggestion made to him and denied by him is that he has given false evidence. The electors PWs 10, 11 and 42 belong to the same Parsa village. PW 10 has stated that Kabir Ahmad had asked her to vote for the candidate whose symbol consisted of cow and calf, i.e. the respondent that she and four other women electors were being carried in Kabir Ahmad's jeep driven by Kabir Ahmad's nephew when the jeep was seized and taken to the police station and that they did not pay anything to the owner or the driver of the jeep for their conveyance. To the same effect is the evidence of PWs 11 and 42 who also have stated clearly in their evidence that they did not pay anything for their conveyance to the owner or the driver of the jeep and that they and the other women were carried in the jeep free of cost to themselves. What has been elicited from PW 10 in the cross-examination is that she does not know the names of the other ladies who travelled with her in the jeep. PW 11 has denied the suggestion that she has been tutored

to give false evidence. PW 42 had denied the suggestion that she was not an elector at all and that she has given false evidence. PW 10 is a Hindu while PWs 11, 42 and 67 are Muslims. Yakub Mian, PW 43, the husband of PW 42 also has stated in his evidence that the electors were carried by the jeep free of cost and that after learning that the jeep had been taken to the police station he went to the police station and found that Kabir Ahmad had already obtained the release of the electors from the police. He too has denied the suggestion that he has been tutored to give false evidence and that he had worked for the appellant in that election. We are of the opinion that there is no reason for disbelieving the evidence of PWs 10, 11, 42 and 43 that the electors who travelled by the jeep which was intercepted by the officials and taken to the police station were being carried to the polling booth free of cost to themselves for casting their votes in favour of the respondent. This part of the appellant's case is clearly proved by the evidence of these four witnesses. We may state that the respondent's learned counsel has not disputed that the evidence of these four witnesses proves that the electors were being carried to the booth by the jeep USJ 5226 for casting their votes in favour of the respondent free of cost to themselves. We find that the evidence referred to above proves the second requirement of clause (5) of Section 123 of the Act.

12. The third point which alone is seriously disputed by the learned counsel for the respondent is the question of procuring Kabir Ahmad's jeep USJ 5226 by the respondent for carrying electors to vote for him. Since it has been found that the jeep USJ 5226 belonging to the respondent's close friend Kabir Ahmad was actually used for the conveyance of voters who were proceeding to cast votes in favour of the respondent free of cost to themselves, the jeep could have been put in use for the purpose either by Kabir Ahmad himself or some other person without reference to the respondent or his agent or it could have been procured by the respondent. It could not have become available for carrying electors who were proceeding to vote for the respondent in any other manner. It is not the respondent's case that Kabir Ahmad or any other person put the jeep to use for carrying electors to vote for him free of cost to themselves without any reference whatsoever to him. The details relating to the jeep USJ 5226 had been given in the election petition. The respondent could have made necessary enquiries from Kabir Ahmad, the owner of the jeep and pleaded that the jeep was used for carrying electors for his benefit without any reference to him voluntarily by its owner Kabir Ahmad or by any other person if that were so. The respondent has not come forward with any such plea. Therefore, it is not possible to accept the submission of the respondent's learned counsel Mr. S. K. Sinha that in view of the fact that it is the appellant's case that Kabir Ahmad is a very close friend of the respondent, Kabir Ahmad himself could have put his jeep to use for carrying electors for the benefit of the respondent without any request for the use of the jeep on the part of the respondent. Therefore, the only other possibility is that the respondent or someone else acting as his agent had procured the jeep from Kabir Ahmad for the purpose of using it for the benefit of the respondent in connection with the election, namely, to carry electors for voting in his favour free of cost to themselves. Having regard to this probability we are of the opinion that even slight evidence in this regard would be sufficient for proving this aspect of the appellant's case.

13. Regarding this aspect of the appellant's case, on the side of the respondent there is the interested evidence of the respondent alone and he has stated that he had not asked for any jeep or any other help from Kabir Ahmad in connection with the election held in 1977 and that Kabir Ahmad did not help him in any way in that election. The evidence of the respondent is absolutely unreliable as stated earlier having regard to the fact that it is clearly established by the evidence that the jeep USJ 5226 belonging to Kabir Ahmad was actually used for carrying electors who were proceeding to vote in favour of the respondent free of cost to themselves and that it was seized by the officials when it was being driven by Kabir Ahmad's nephew Tabrez Ahmad, with the electors seated in the jeep. The evidence on record clearly proves and it is not challenged by the respondent's learned

counsel but is on the other hand conceded by him that Kabir Ahmad had helped the respondent by allowing his jeep USJ 5226 driven by his own nephew Tabrez Ahmad for the free conveyance of electors who were proceeding to the booth for voting in favour of the respondent. The appellant's polling agent PW 6 has stated in his evidence that the respondent had borrowed Kabir Ahmad's jeep for the conveyance of electors from their respective places to the booth and for their return to their places from the booth. He has also stated that one of the two jeeps used for carrying electors to vote for the respondent is USJ 5226. He has denied the suggestion that he has given false evidence. PW 43 has stated in his evidence that the respondent and Kabir Ahmad went to his village on the day prior to the day of the poll and asked him to vote for the respondent and told him that a jeep had been borrowed from Kabir Ahmad to carry voters and that accordingly a jeep driven by Tabrez Ahmad came on the next day and carried female electors. No doubt, PW 43 and his wife PW 42 are casual labourers. PW 43 has denied the suggestion that he had worked for the appellant in that election and that he has been tutored to give false evidence. There is no satisfactory reason for disbelieving the evidence of these three witnesses PWs 6, 16 and 43 of whom PW 6 was not doubt the appellant's polling agent. It is not possible to reject the evidence of PW 6 merely because he was admittedly the appellant's polling agent, especially having regard to the fact that his evidence is in a way corroborated by the evidence of PWs 16 and 43. The respondent RW 45 has admitted in his evidence that Kabir Ahmad and others own a mill and that Kabir Ahmad is a partner in that mill business. As stated earlier, he has admitted that Kabir Ahmad's brother Nazir Ahmad was his polling agent and that Tabrez Ahmad is the nephew of Kabir Ahmad and Nazir Ahmad. The evidence of PW 75 shows that Tabrez Ahmad did not even hold a driving licence when he was found to be driving the jeep USJ 5226 carrying electors to the booth on the day of poll and that he was prosecuted separately for that offence under the Motor Vehicles Act. There is evidence of Daroga Mahato, PW 56, to show that the respondent and Kabir Ahmad were good friends and that Kabir Ahmad's father Sharif Ahmad was sitting about 100 yards away from the booth on the day of poll. The learned Trial Judge has found that Kabir Ahmad is a good friend of the respondent and that he and his father had worked for the respondent in the election held in 1977. In spite of all these facts the respondent has not called Kabir Ahmad as his witness to deny that he had procured the jeep USJ 5226 from Kabir Ahmad for the conveyance of his electors. He has not examined even Tabrez Ahmad though he had been admittedly named as one of his witnesses in the list of witnesses submitted on his behalf. He would say that to the best of his knowledge Kabir Ahmad did not possess any jeep and that he submitted the list of witnesses by merely looking into the voters' list without applying his mind because he was pressurized by his lawyer to file a tentative list of witnesses as soon as possible and was informed by his lawyer that if he did not file his list of witnesses he would lose his case on that ground alone. It is not possible to accept this evidence of the respondent as well having regard to the fact that it is stated without any denial that he himself is a lawyer, and it is improbable that he would have been pressurized by his lawyer and that he filed the list of witnesses merely by looking into the voters' list without applying his mind as to who should be cited as his witnesses. In these circumstances, we are of the opinion that it is not possible to place any reliance on the interested evidence of the respondent RW 45 on the question of procuring the jeep USJ 5226 from its owner Kabir Ahmad. The evidence of PW 16 is most natural and reliable. There is absolutely no reason whatsoever for rejecting his evidence which could not be tutored evidence. We accept the evidence of PWs 6, 16 and 43 on this aspect of the appellant's case and find that the respondent had procured the jeep USJ 5226 from his close friend Kabir Ahmad for the free conveyance of his electors and that the jeep was, thereafter, used for that purpose on the day of poll and seized by the officials PWs 69, 73 and 81 when it was being used for the conveyance of the electors PWs 10, 11, 42 and others including PW 67 free of cost to themselves.

14. The appellant has thus proved satisfactorily all the three requirements of clause (5) of Section 123 of the Act. The respondent has therefore, to be held guilty of corrupt practice falling under that clause which is ordinarily difficult to prove. We think that such corrupt practice which is very largely resorted to in the elections could be avoided by either locating polling booths within walking distance of the electors or by having mobile polling stations. We accordingly allow this appeal in regard to this item of corrupt practice alone with costs quantified at Rs. 5000 and hold that the respondent was guilty of corrupt practice under Section 123(5) of the Act in regard to his election in 1977 as a member of the Bihar Legislative Assembly from No. 5 Sikta constituency in West Champaran district.

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