

# MADHYA PRADESH HIGH COURT

Mohansingh Laxmansingh

Vs.

Bhanwarlal Rajmal Nahata

First Appeal No. 34 of 1962  
(P.V. Dixit, C.J. and K.L. Pandey, J.)

14.02.1963

## JUDGMENT

**Dixit, C.J.**

1. This is an appeal under Section 116-A of the Representation of the People Act, 1951 (hereinafter referred to as the Act), against an order of the Election Tribunal, Ratlam, setting aside the election of the appellant Mohansingh to the Madhya Pradesh Legislative Assembly from Sitamao constituency. Eight persons, including the respondent-Bhanwarlal, filed their nomination papers for election from the said constituency. The nomination paper of Hussain Khan was rejected by the Returning Officer. Himmatsingh withdrew his candidature. The appellant Mohansingh secured the largest number of votes and was declared as the returned candidate. The respondent-Bhanwarlal, who was defeated at the election, filed an election petition, out of which this appeal arises, praying that the election of the appellant be declared void and that he, who had secured the largest number of votes after the appellant, be declared duly elected. The election of the appellant was sought to be set aside on several grounds which included charges of corrupt practices committed by the appellant. For the disposal of this appeal, it is unnecessary to mention all of them because the Election Tribunal found that excepting the corrupt practices to which we shall refer presently the election petitioner had not proved the commission of any other corrupt practice set cut in the election petition.

2. The Election Tribunal has first found the appellant and his agents guilty of publishing two pamphlets (annexures-D and E to the petition) containing certain statements of facts which were false and which they either believed to be false or did not believe to be true in relation to the personal character or conduct of the

respondent-Bhanwarlal and which were likely to prejudice his prospects at the election. The material allegations in paragraph 11(c) and (d) of the election petition relating to this corrupt practice are as follows: -

< heading leaflet published 1962 February 18th about or here) appellant (who 1 No. respondent That (c)>

and therein made statements of fact with regard to the personal character or conduct of the petitioner, which is false, and which he believed to be false and did not believe to be true. This being a statement reasonably calculated to prejudice the prospects of the election of the petitioner (Sic). The leaflet is appended herewith as Annexure-D. The full particulars of this corrupt practice mentioned in this para are given in schedule A which forms part of this petition. (d) That respondent No. 1 published another leaflet under the signature of Gosai Ratangir of Chanderpura and therein made statement of fact with regard to the personal character or conduct of the petitioner, which is false and which he believed to be false or did not believe to be true. This being a statement reasonably calculated to prejudice the prospects of the election of the petitioner (Sic).

The leaflet is appended herewith as Annexure-E. The full particulars of this corrupt practice mentioned in this para are given in Schedule B which forms part of this petition." In schedules A and B to the petition Bhanwarlal, while giving the particulars of this corrupt practice, stated that Mohansingh distributed the said pamphlets on of about 20th February 1962 and 23rd February 1962 at Digao, Gujarbardia, Malia, Semli, Udpura, Bansakhedu Afjalpur, Sitamau, Bilantri, Dhundharka, Lasudava, Badvan, Salaria, and Khajurigoud; that Kailash, an agent of Mohansingh, distributed the pamphlets with his consent at Era, Dhakadpiplia, Salria, Kyampur, Kotda, Bahadur, on or about 20th 21st, 22nd and 23rd February 1962; that Laxmansingh, another agent of Mohansingh, distributed and published the pamphlets at Khejdia, Dhikria and Belara between 20th and 23rd February 1962; that Jamunalal, also an agent of Mohansingh, punished and distributed the pamphlet Annexure-D with Mohansingh's consent at Badvan between 20th and 23rd February 1962; that satyanarayan, an agent of Mohansingh, distributed the leaflets at Kyanrpur on 20th and 21st February 1962 and at Ranayra on 23rd February 1962; and that so also Bherulal, Mehtabsingh, Shivsingh, all agents of Mohansingh, distributed the pamphlets at Nahargarh, Dalavda, Dhandhera, Halduni, Sagor, Sardulgarh etc.

between 20th and 23rd February 1962.

3. Mohansingh denied all these allegations, made by the respondent Bhanwarlal, in paragraph 11(C) and (d) of his counter-statement which runs thus-

"(c) The contents of para 11(c) are not admitted. It is denied that on or about 18th February 1962 or on any other date the respondent No. 1 published the leaflet referred in this para. The authors of the pamphlet in question appear to be the electorate of the Sitamau constituency who had formed a Nahta Virodhi Morcha. A perusal of the pamphlet indicates that it contains factual and fair criticism of the public activities of the petitioner as a member of legislative assembly. The respondent No. 1 is not the author of it nor he ever believed these facts either to be false or not true. It is denied that this statement is reasonably calculated to prejudice the prospects of the petitioner's election. There is nothing in the leaflet which can fall within the mischief of corrupt practices or which can in any way affect the result of election of the respondent No. 1. The allegations as mentioned in schedule A are denied.

(d) The contents of para No. 11(d) are not admitted. It is denied that the respondent No. 1 published the pamphlet under the signature of Gosai Ratangir. It is also denied that to the knowledge and belief of respondent No. 1 the statements made therein were false or not true. It appears that the statements made in the said leaflet contains factual and fair criticism of the public activities of Shri Nahta and other congressites. The facts mentioned in the leaflet appears to be the reaction of an individual against Dr. Raghuvirsingh and the petitioner. This respondent No. 1 has nothing to do with the said leaflet. There is nothing in the said leaflet which could be reasonably calculated to prejudice the prospects of the petitioner nor it has in any way affected the result of the election. The allegation made in the schedule B are also denied.

He also denied the allegations contained in schedules A and B to the election petition. The two issues that the Tribunal framed on the basis of these pleadings of the parties were –

"6. (a) Whether the respondent No. 1 and his agents on or about 18-2-1962 published the pamphlet at annexure 'D' of the petition ?

(b) Whether the allegations therein were false to the knowledge and belief of the respondent No. 1 ?

(c) Whether the allegations in the pamphlet were made with the knowledge fiat

they would reasonably prejudice the election chance of the petitioner ?

7. Whether the respondent No. 1 and his agents under the signature of Gosai Ratangir in leaflet of Annexure-'E' of the petition made false allegations against the character of the petitioner prejudiced the election chances of the petitioner ?"

The Tribunal held that the appellant and his agents published the pamphlet, annexure-'D', on or about 18th February 1962; that the statements contained in the pamphlet were false to the knowledge and belief of the appellant; and that they were made "with the knowledge that they would reasonably prejudice the election chances of the petitioner", that is, Bhanwarlal. It further held that the appellant and his agents got the pamphlet, annexure-'E', published under the signature of Gosai Ratangir; that this pamphlet contained statements which were false and which they believed to be false in relation to the personal character of Bhanwarlal; and that the pamphlet prejudiced the prospects of Bhanwarlal at the election.

4. The finding of the Tribunal that the pamphlets, annexures-'D' and 'E', were get printed by Mohansingh is based on the evidence of Rameshchandra (P.W. 6), who deposed that at the material time he was a compositor in the Maheshwari Printing press of mandasaur; that Mohansingh brought the manuscripts of these pamphlets to the Press for printing; and that the work was executed and the printed pamphlets were delivered to Mohansingh. The appellant sought to prove by the evidence of Babulal Toshiliwal (P.W. 16) that the pamphlet annexure 'D' was got printed by Babulal who had organised an opposition front against the respondent-Bhanwarlal under the name HINID MATTER and that was Babulal and his men who on their own published and distributed the pamphlets in the constituency. He also examined Gosai Ratangir (R.W. 18) to show that the leaflet, annexure-'E' was got printed and published; by Ratangir; and that the appellant had nothing to do with the printing and publication of that pamphlet. The Tribunal found Babulal and Ratangir as unworthy of any credit and preferred to accept the evidence of Rameshchandra. It was observed by the Tribunal that Rameshchandra gave evidence "in a very straightforward manner" and that he had not "broken down" in his cross-examination. The Tribunal also stated certain circumstances persuading it to act on the evidence of Rameshchandra. They were that Mohansingh admittedly got all this printing work in connection with the election campaign done at the Maheshwari Printing Press; that the pamphlet, annexure-'D', contained a picture of the appellant Mohansingh and Babulal admitted that he never

gave any photograph or a block of a picture of Mohansingh to the Press; that while giving evidence Babulal produced a receipt to show that he had paid Rs. 13/- to the Press as charges for the printing of the pamphlet, annexure-'D'; that Mohansingh had never disclosed that Babulal would give evidence with regard to this receipt; that the receipt had the appearance of a fresh receipt and the statement of Babulal that he had the receipt with him for about seven months and he had kept it in his pocket in quadruple fold was belied by the fresh appearance of the receipt which did not have any creases; and that Ramakant Sharma, the proprietor of the Press who was said to have issued this receipt to Babulal, had written to Bhanwarlal the letter Ex. P-15, the next day after Babulal gave evidence, saying that he had not issued any such receipt to Babulal, and that the pamphlet, annexure-'D' was got printed by the appellant himself. The Tribunal also observed that Ramakant Sharma was first cited as a witness by the petitioner, but though served with a summons he did not appear to give evidence pleading illness; that when at the close of the evidence the respondent Bhanwarlal applied for an examination of Ramakant Sharma as a Court-witness, the application was vehemently opposed by the appellant; that this opposition was inexplicable for if Ramakant Sharma had been examined as a court-witness, that would have given to the appellant Mohansingh an opportunity of cross-examining him; and that the omission to examine Ramakant Sharma in no way displaced the affect of the testimony of Rameshchandra. The Tribunal said that the appellant-Mohansingh was responsible for "keeping back Ramakant Sharma from the witness-box." Criticizing this conduct of the appellant, the Tribunal made the following observations-

"The reason for his keeping back is obvious. If Ramakant Sharma was allowed to appear in the witness-box as the witness for the Petitioner he would have let the cat out of the bag. He would have admitted some most incriminating circumstances against the respondent No. 1 and therefore it was thought safer to keep him back. Ramakant Sharma obliged the respondent No. 1 in not appearing as a witness because he is a partyman of his. Ramakant Sharma not appearing as the witness for the petitioner however does not weaken the case of the petitioner. On the ether hand the petitioner being-examined as a Court witness strengthened the case of the petitioner and weakened the stand taken by the respondent No. 1".

Another reason which weighed with the Tribunal in discarding the evidence of Babulal and Ratangir was that they could not give any convincing reason for getting

printed the two pamphlets against Bhanwarlal and publishing them at their own expenses and neither of them possessed the literary ability evidenced by the language of the pamphlets.

5. The Tribunal accepted the evidence of Bhanwarlal and his witnesses that the two pamphlets were distributed by the appellant and his agents, Kailash, Satyanarayan and Tamakhimal, in various villages in the constituency named by Bhanwarlal. The appellant and his witnesses no doubt deposed that the pamphlets were not distributed by Mohansingh or his agents. The Tribunal found itself unable to accept their evidence. The Tribunal observed that it was not impressed by the evidence given by some of the appellant's witnesses. In regard to the statements contained in the pamphlets, annexures-'D' and 'E', the Tribunal reached, the conclusion that the caption of the pamphlet, annexure 'D' namely, "and the following statements made therein amounted corrupt practice"

It is clear from this provision that the essential requirements of a 'corrupt practice' falling under Sub-Section (4) are that (i) the publication in question must be by a candidate or his agent or by any other person with the consent of a candidate or his election agent; (ii) the publication must be in regard to a statement of fact which is false and which he either believes to be false or does not believe to be true; (iii) the statement must be in relation to the personal character or conduct of the candidate, or in relation to the candidature or withdrawal of any candidate; and (iv) the statement must be one reasonably calculated to prejudice the prospects of the candidate's election. The appellant admitted that all his printing work in connection with the election were used to be done by the Maheshwari Printing Press, and it is common ground that the pamphlets in question were printed in that Press. That the pamphlets were printed on the order of the appellant and printed copies were delivered to him is conclusively established by the evidence of Rameshchandra who was a compositor in the Press and who actually did the printing work. He deposed in an-unequivocal and categorical manner that the printing work was executed on the order of the appellant. Learned counsel for the appellant was not able to point out to us any feature of the evidence of Rameshchandra sufficient to discard his testimony. All he could say was that best evidence about the printing of the pamphlets in the Press on the order of the appellant would have been furnished by Ramakant Sharma, the proprietor of the Press, but he was not examined by the respondent Bhanwarlal. We do not think that the appellant is justified in making this criticism against the respondent Bhanwarlal who had actually summoned Ramakant Sharma to give evidence on his behalf and was also

prepared to get his evidence on record as a Court witness when Ramakant Sharma did not in obedience to the summons issued attend the Court pleading illness, and when the appellant himself stoutly opposed the prayer of the respondent Bhanwarlal that Ramakant Sharma should be examined as a Court witness.

8. Be that as it may, the Tribunal should not have abandoned the idea of examining Ramakant Sharma as a Court witness merely because of the opposition of the appellant. The evidence of Ramakant Sharma as well as of the District Magistrate of Mandsaur district was very material in the case in view of the provisions of Section 127-A of the Representation of the People Act, 1951. That Section specifically lays down that no person shall print or cause to be printed any election pamphlet or poster unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate; and, unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document, if it is printed in the capital of the State, to the Chief Electoral Officer; and in any other case, to the District Magistrate of the district in which it is printed. It is thus plain from Section 127-A that the question whether the appellant was responsible for getting the pamphlets, annexures 'D' and 'E', printed and published could not be decided solely on the evidence of Rameshchandra examined by the respondent Bhanwarlal or on the evidence of Babulal and Ratangir tendered in evidence by the appellant. The value of the evidence given by these witnesses could only be judged with reference to the fact whether or not the declaration required by Section 127-A was given by the printer and by the statements made in the declaration if it was given. As we formed the opinion that the evidence of Ramakant Sharma and the District Magistrate, Mandsaur, was necessary to enable us to pronounce the judgment in this appeal, we recorded an order to that effect on 15th January 1963 and summoned these witnesses to give evidence before us, with regard to the declaration under section 127-A, if any, relating to the printing of the two pamphlets in question. Their evidence was recorded by us on 11th February 1963.

9. Shri Rai, who was the Collector and District Magistrate of Mandsaur, during the last General Elections has made the statement before us that no declaration was received in his office from the owner of the Maheshwari printing press or from any person as required by Section 127-A with regard to the pamphlets, annexures 'D' and 'E'. In his evidence Ramakant Sharma, the owner of the Press, admitted that he did not

send to the District Magistrate, Mandsaur, copies of declaration under Section 127-A about the two pamphlets. He, however, produced before us two documents, Annexures-C-1 and C-3, both dated 19th February 1982, as containing "declarations" which he had taken from Babulal and Ratangir for the printing of the two pamphlets. Ramakant said that Babulal gave the declaration 'C-1' with regard to the pamphlet, annexure 'D' and that Ratangir gave the declaration 'C-3' with regard to the pamphlet, annexure 'E'. These declarations are valueless, first, because they are not in conformity with Section 127-A(2)(a), and, secondly, because no valid reason has been assigned by Ramakant Sharma for not sending copies of the declarations to the District Magistrate if they had really been obtained by him when the manuscripts of the pamphlets were handed over to him for printing. The witness sought to explain his omission to send the copies of the declarations to the District Magistrate by saying that he was not aware of the fact that he had to send the copies to the District Magistrate. He added that one Onkarlal Sharma, a son of his brother-in-law, had asked him to take the declarations from Babulal and Ratangir and so he took them. If Ramakant Sharma had in fact taken the declarations from Babulal and Ratangir before the printing of the two pamphlets in question, and thus knew of his obligation to take such declarations under Section 127-A or was made aware of it by his brother-in-law's son, then it is really surprising that he did not know that he had to send copies of the declarations to the District Magistrate. The truth seems to be that the declarations 'C-1' and 'C-3' were never obtained by Ramakant Sharma from Babulal and Ratangir before printing of the two pamphlets and that they were procured from them by the witness after the service of summons on him for giving evidence before us. In the absence of the declarations contemplated by Section 127-A relating to the two pamphlets, the question whether the pamphlets were got printed by the appellant Mohansingh or by Babulal and Ratangir must be decided on an appreciation of the evidence given by Rameshchandra, Babulal and Ratangir before the Tribunal and Ramakant Sharma before us.

10. (After discussion of evidence His Lordship proceeded :) If the evidence of Ramakant Sharma, Babulal and Ratangir is discarded, as it must be, then the statement of Rameshchandra about the printing of the two pamphlets on the order of Mohansingh stands un-rebutted. Learned counsel for the appellant said that Rameshchandra's evidence by itself did not prove beyond reasonable doubt the fact that Mohansingh was responsible for getting the two pamphlets printed and published. We are unable to accept this contention. It may be conceded that the burden of

establishing a corrupt practice is on the person alleging it and that the corrupt practice alleged must be established beyond reasonable doubt and by clear and unambiguous evidence. The measure of certainty that is required in cases in which the standard of proof of criminal cases is applicable is that the Court should be satisfied beyond reasonable doubt. But a doubt must be a 'reasonable' doubt. It must not be fanciful or a doubt based simply on the catch-phrase "anything may happen". It cannot be said of Rameshchandra's evidence that it is, of altogether inconclusive character and leaves the possibility of the two pamphlets being got printed by the appellant or anyone else. Rameshchandra was quite emphatic in his statement that it was the appellant alone who came to the Press and got the two pamphlets printed. In our opinion, there can be no doubt on the evidence on record that the appellant Mohansingh got the two pamphlets, annexures 'D' and 'E' printed in Maheshwari printing press.

11. On the question of the distribution of pamphlets in various villages in the constituency, namely, Basakhedi, Sitamau, Afzalpur, Khajuri, God-Gujar, Bardia, Digaon, Somli, Udpura, Basadwan, Kuchrod and Kyampur, Bhanwarlal's statement that they were distributed by the appellant Mohansingh and his agents Kailash and Satyanarayan must be accepted. The criticism that the learned counsel for the appellant made against the finding of the Tribunal with regard to the distribution of pamphlets by the appellant and his agents Satyanarayan and Kailash was that the statement of the appellant Mohansingh that these pamphlets were not distributed by him or his agents should have been accepted and that the Tribunal was not-justified in rejecting the evidence of the appellant's witnesses, who made a similar statement, by just observing that the witnesses did not impress the Tribunal. There is no force in this criticism. The negative statement of the appellant that the pamphlets were not distributed by him or his agents is not of much value in view of the numerous inconsistent and irreconcilable statements made by the appellant while giving evidence. The appellant admitted that Kailash and Satyanarayan were his agents. Kailash was not examined. It is true that the evidence of Satyanarayan (R.W. 13), Kishorsingh (R.W. 6), Ramsukh (R.W. 12), Kesrimal (R.W. 14), Babulal (R.W. 15), Onkarlal (R.W. 4), Shambhusingh (R.W. 2) and other persons, who said that they did not see the two pamphlets being distributed by the appellant or Satyanarayan or Kailash, was rejected by the Tribunal by observing that those witnesses did not impress it. It is also true that when the trial Judge's conclusion that the evidence of a particular witness should be believed or should not be believed is based on the observation of the demeanour of the witness in Court, the appellate Court can reverse

the finding of the trial Judge even on the question of credibility, if such question depends on a fair consideration of matters on record (see *Radha Prasad v. Gajadhar Singh*,<sup>1</sup> But the learned counsel for the appellant did not point out to us the special features and particular statements of the appellant's witnesses which according to him had in important bearing on the question of their credibility and which had not been taken into account or properly weighed by the Tribunal and which indicated the probability of the respondent's version that the pamphlets were distributed by the appellant and his agents being untrue. It is well settled that in an appeal the burden of showing that the judgment appealed from is wrong lies on the appellant. Even if the appellant shows nicely balanced calculations leading to the equal possibility of the judgment on either one side or the other being right, he cannot be said to have succeeded. A 'fortiori', when all that has been done on behalf of the appellant is to offer a general criticism that the Tribunal should not have based its conclusion of rejecting the evidence, of his witnesses on the observation of their demeanor when no note about it had been recorded by the Tribunal while they were giving evidence, the appellant cannot be said to have succeeded in discharging the burdens of proving that the Tribunal's finding on the question of distributing is wrong. The absence of a note with regard to the demeanor of a witness while he was giving evidence is wholly immaterial and does not preclude the trial Judge from rejecting the evidence of that witness on the ground of his demeanor at the time of the writing of the judgment.

During the course of arguments in *Sitalakshmi Ammal v. Venkata Subrahmanian*,<sup>2</sup> Lord Atkin remarked that

"when the Judge writes his judgment a few days after the close of the evidence and before his recollection of the witness's demeanor in the box has become dim, the absence of a separate note is immaterial".

In the present case, the evidence of the material witnesses was recorded in the last week of August 1962 and in the first week of September 1962, and the judgment of the Tribunal was delivered on 17th September 1962, that is to say, only a few days after the close of the evidence, There can, therefore, be no room for the suggestion that at the time of the judgment the Tribunal's recollection of the witnesses' demeanor had become dim or faint. Again, it is not correct to say that Satyanarayan's evidence was rejected solely on the observation of his demeanor before the Tribunal. In the judgment under appeal, the Tribunal has referred to certain statements of Satyanarayan showing that his statement that he did not distribute the pamphlets was

not true. In the circumstances stated above, we see no ground to disagree with the Tribunal's finding that the two pamphlets were distributed in several villages in the constituency by the appellant Mohansingh and his agents Satyanarayan and Kailash.

12. Turning now to the question whether the two pamphlets contained statements falling within the mischief of Section 123(4), and taking first the pamphlet, annexure 'D', a perusal of that pamphlet is sufficient to show that it made an appeal to the voters to cast their votes in favor of the appellant Mohansingh with statements condemnatory of the respondent Bhanwarlal. The pamphlet ran into nine paragraphs, and only the last one spoke in eulogistic terms of the appellant-Mohansingh. The remaining paragraphs contained nothing but an attack against Bhanwarlal. In determining whether any statement contained in the pamphlet amounts to a corrupt practice under Section 123(4), it is no doubt necessary to read the document as a whole. The pamphlet, annexure "D", had the caption which, as translated into English, was thus –

"Let us go to Sitamau for getting Sri Nahta's security forfeited as he had cheated the public and had shown his face now after five years for getting votes." The Tribunal has found this heading as one being in relation to the personal character of Bhanwarlal and containing the accusation that he has cheated the electors. We do not agree with this view. Bearing the one statement in the pamphlet, to which we shall presently refer, all other statements made therein relate to the public and political character and conduct of Bhanwarlal. The title of the pamphlet cannot be read quite independently of the statements made in the pamphlet. It does not contain any reference at all to the personal character or conduct of Bhanwarlal. On the other hand, the title in plain terms only emphasizes that Bhanwarlal cheated the public in the political field. The suggestion is obviously that he did not fulfill the promises which he had held out to the electors some five years back. The Tribunal concluded that in the title the attack was on the private character of Bhanwarlal as the word 'cheating' had been used in it. But it is plain that the word had been used with reference to non-fulfillment by the respondent-Bhanwarlal of his election promises. In our opinion, the title does not contain any statement in relation to the private character of Bhanwarlal.

13. The Tribunal also found the allegations in paragraph 2 of the pamphlet as attracting Section 123(4). We do not see in that paragraph anything having even a

remote bearing on the personal character or conduct of the respondent Bhanwarlal. In that paragraph what was stated was that Bhanwarlal had not served the public of Sitamau; that when the distressed public went to his bungalow of the value of Rs. 66,000/- to see him they had to wait for a considerable time and when he met the public he made enquiries about their name and residence and told them that he was going to Delhi and did not want their votes; and that thus those who went to see him had to return disappointed. The Tribunal made no attempt to indicate how these statements had any relation to the personal character or conduct of Bhanwarlal as expounded by the Supreme Court in *Inder Lal v. Lal Singh*,<sup>3</sup> to which the Tribunal made a reference as applying to the case. No allegation made in paragraph 2 of the pamphlet attributed any corruption, dishonesty, or vice to Bhanwarlal. The statement that he did not serve the public of Sitamau region only criticized his public character. The other statements in that paragraph only suggested an inference that Nahtu was rude and indifferent to the members of the public when they went to see him at his bungalow. They clearly did not amount to any 'corrupt practice' specified in Sub-Section (4) of Section 123 of the Act.

14. The last sentence in paragraph 5, which the Tribunal found objectionable, only told the voters that in case they vote for Nahta he would wield power and there would be strictness in the realization of bank dues and that they should make him a "powerless wanderer" by not voting for him. This is clearly no statement of fact relating to the personal character or conduct of the respondent Bhanwarilal. The statement that if elected the respondent would become powerful and become strict in the realization of co-operative bank dues is merely a statement of opinion about his future conduct and cannot by any stretch of reasoning be regarded as a statement of fact. The Tribunal was in error in holding that the active statement amounted to a 'corrupt practice' within the meaning of Section 123(4).

15. In paragraph 3 of the pamphlet, annexure-'D', it was stated that the respondent Bhanwarilal had collected Rs. 28,000/- from some cultivators on the representation that they would get opium-farming licenses, and that the cultivators did not get these permits and those who got the licenses had to spend a lot of money. In this paragraph there was a clear imputation that Bhanwarlal collected funds and utilized them for his own purposes. This was no doubt a statement of corrupt practice falling under Section 123(4). Bhanwarlal denied on oath that he had utilized the funds for his own purposes. His statement was that the receipts were given by the District Congress Committee to

the opium cultivators for the amounts received from them and the money went to the funds of the District Congress Committee. It is not necessary to consider whether the District Congress Committee was justified in collecting funds in this manner. The fact remains that the statement that Bhanwarlal collected money from the opium cultivators for securing to them farming licenses and that they did not get the permits was a statement of fact in relation to the personal character of Bhanwarlal and imputed dishonesty to him. No attempt was made by the appellant Mohansingh to show that this statement contained in paragraph 3 about Bhanwarlal was true. The burden of showing that the statement was true when Bhanwarlal had said on oath that it was false was clearly on the appellant.

Section 123(4) no doubt casts on the election-petitioner the burden of showing that certain allegations made against him are false. But that burden is discharged when the election-petitioner denies on oath the truth of the allegation. The denial on oath is sufficient, as when the allegation concerns the personal character or conduct of a person the ordinary presumption of law that he is innocent would apply and the burden would be upon the person who has made the allegation that it is true. In *Bhim Rao v. Ankush Rao*,<sup>4</sup> Mudholkar, J. expressed a similar view. He said at p. 399 :

"Just as a person who is standing his trial for an offence before a Court of law is presumed to be innocent unless he is shown to be guilty, similarly, in our opinion, when a person's character is assailed he must be presumed to be of good character until and unless it is proved that he is of a bad character. No doubt the section is so worded that the petitioner in the election petition must show that the allegations made against him were false but that provision is a general provision. Where the allegation concerns the character of a person, the ordinary presumption of law must prevail. If that be the correct legal position, the burden would be upon the person who has made defamatory allegations concerning the character of another to prove that they are true."

On this principle, in this case it must be held that the bare denial on oath of the respondent about the truth of the allegation made against him in paragraph 3 is sufficient to hold that the statement of fact made therein was false. In our judgment, the tribunals' finding that the statement in paragraph 3 of the pamphlet, annexure-D, amounted to corrupt practice, is right.

16. In pamphlet, annexure-'E', the respondent was put a categorical question whether

he had not cheated the cultivators in regard to opium Pattas. The question was put in Hindi language and ran thus –

This question clearly contained an allegation that Bhanwarlal cheated the cultivators. No doubt, the allegation was made in an interrogative form. But that is wholly immaterial. A statement of fact can be made directly as well as by putting a categorical question inviting a distinct and positive statement of fact and which can only be answered by 'yes' or 'no'. This form of interrogation is often employed to emphasize a statement of fact and for eliciting an answer to it. The decision of the 'Supreme Court in AIR 1962 Supreme Court 1156 clearly shows that to call a candidate a cheat is to make a statement in regard to his private character and conduct, and if the statement is shown to be false it would undoubtedly be a corrupt practice. As already stated, the respondent Bhanwarilal denied on oath the allegation that he had cheated any cultivator in respect of opium farming licenses and the appellant led no evidence to prove the truth of this allegation.

17. Thus in regard to the statements contained in paragraph 3 of the pamphlet, annexure-'D,' and the question put by the appellant in annexure-'E' all the requirements of Sub-Section (4) of Section 123 are satisfied. It was not disputed before us that if the said statement and the question contained statements of fact in relation to the personal character of Bhanwarlal and if they were false, then they were reasonably calculated to prejudice that prospects of Bhanwarlal's election. In our view, the statement and the question referred to earlier clearly constituted statements of corrupt practices under Section 123(4) of the Act.

18. The further corrupt practice of which the appellant has been held guilty by the Tribunal by its finding on issue No. 8 is that the appellant during the course of his speeches delivered at meetings held in several places on diverse dates made false statements about Bhanwarlal that he had cheated the opium cultivators by collecting from them Rs. 28,000/- on the pretext of grant of opium licenses; that he had cheated the public for nearly five years and misappropriated thousands of rupees and as a result of this act he was living in a bungalow of Rs. 66,000/-; and that he had utilized bank-money for his own purposes. The material allegation of the respondent Bhanwarlal with regard to this alleged corrupt practice is set out in paragraph 11(e) of the petition and is as follows :

"That respondent No. 1 and his agents made statements in public meeting in regard to the personal character or conduct of the petitioner which is false and which they believed to be false or did not believe to be true. These being statements reasonably calculated to prejudice the prospects of the election of the petitioner. Full particulars of the corrupt practice mentioned in this para are' detailed in schedule C which forms part of the petition."

In schedule 'C' to the petition, the respondent-Bhanwarlal stated that the appellant made statements of the above type at public meetings held at Laduna on 13th January 1962, Kuchrod on 5th February 1962, Nahargarh on 20th January 1962, Sunthi on 13th February 1962, Sitamau on 21st February 1962, and at Basaknear and Afzalpur on 22nd February 1962. These allegations of Bhanwarlal were traversed by the appellant in his written statement and in his reply to schedule C wherein he denied having addressed any public meeting at Laduna or having made the statements attributed to him at any meeting at other places. The respondent Bhanwarlal gave no particulars about the meeting held at Laduna. He adduced no evidence about the meetings said to have been held at Laduna, Nahargarh and Sunthi. The Tribunal, however, held that the appellant made the statements as alleged in schedule-C to the election petition at the meetings held at Kuchrod, Basakhedi, Afzalpur and Sitamau and that the statements were false and were calculated to prejudice the prospects of Bhanwarlal's election.

19. Having perused the entire evidence bearing on the point, we are unable to agree with the Tribunal that the appellant committed the corrupt practices set out in paragraph 11(e) of the petition. The appellant did not deny that meetings were held at Kuchrod on 5th May 1962, at Sitamau on 21st February 1962, and at Basakhedi and Afzalpur on 22nd February 1962. He, however denied having made any speech in Kuchrod or having made any statement attributed to him during the course of his speeches at Sitamau, Basakhedi and Afzalpur. The evidence adduced by the respondent to prove that the appellant did make the statements mentioned above at public meeting held in Kuchrod, Basakhedi, Afzalpur and Sitamau is neither convincing nor conclusive. It is necessary to refer in some detail to this evidence as it forms the foundation of the Tribunal's findings on the other corrupt practices dealt with by issues Nos. 11, 12 and 14, and as in the discussion of the evidence and its appreciation by the Tribunal there is no method or completeness or reason or

judgment.

20-23. (After discussion of some evidence His Lordship proceeded). In regard to the meeting held at Sitamau on 21st February 1962, the evidence consists of the statements of Abdul Sattar a constable, (P.W. 12), Narayansingh (P.W. 13), and Mumtaz (P.W. 22). The respondent-Bhanwarlal admittedly did not attend this meeting. In fact, he made a statement that he did not attend any meeting in which Mohansingh gave a speech (paragraph 44 of his deposition). The contents of the speech of Mohansingh at this meeting were sought to be established mainly by the notes of his speech, Ex. P-12, which Abdul Sattar was said to have taken down. Abdul Sattar did not give any direct evidence as to the subject-matter of Mohansingh's speech. He did not repeat in the witness-box what Mohansingh had actually said. He merely said that he had attended the meeting which was addressed by Mohansingh and took down 'short-notes' of his speech. He admitted towards the close of his cross-examination that in his notes he took down some words which Mohansingh had actually uttered and some words-used in the note were his impressions of the words used by Mohansingh. Abdul Sattar said -< or statement case.? present done however This case. evidence primary becomes itself document cases witnessed. heard what recorded correctly further forgotten circumstances other time lapse owing happened memory state unable depose must presence, correct contains say merely open some testimony. oral corroborate note writing usand can made. speech down taken notes referring refresh course stated. actually latter witness-box repeat expected another spoken something prove professes who A> In this connection a reference may also be made to a decision of the Madras High Court in *Mylapore Krishnasami v. Emperor*,<sup>5</sup> where it has been held that where a person records, not the actual words used, but simply notes of the impressions made on his mind by a speech, such notes are inadmissible under Section 160 of the Evidence Act to prove the actual words used. The circumstances that Abdul Sattar did not make any noting of speeches delivered at any other meeting, attended the meeting in question at Sitamau on his own, took special unusual precaution of having his notes vetted by some persons, and that the notes only contained those statements which the respondent found objectionable under Sub-Sections (3) and (4) of Section 123 of the Act only go to show that the notes, Ex. P-12, were taken down for a particular purpose to wit for an election petition and raise a reasonable suspicion that what the witness recorded was not a correct record of the speech of the appellant. In our opinion, Ex. P-12 must be ex-eluded from

consideration, and on its exclusion the evidence of Abdul Sattar becomes utterly unhelpful to the respondent in supporting his allegation about the appellant having made a false statement in relation to Bhanwarlal's personal character at the meeting held at Sitamau on 21st February 1962.

25. Narayansingh's (P.W. 13) statement does not improve the matter any further. He only deposed that he was present at the Sitamau meeting right from the beginning till the end, that Abdul Sattar read out to him Ex. P-12, and that he signed Ex. P-12 as it embodied a correct report of the speech. The witness admitted that he did not remember what exactly Mohansingh said. But he could give a summary. If Ex. P-12 cannot be taken into consideration, then Narayansingh's statement that he signed the report and that it was a correct record of Mohansingh's speech is of no consequence. Mumtaz (P.W. 22) no doubt said that he attended the Sitamau meeting at which the appellant charged Bhanwarlal for having collected thousands of rupees on the pretext of granting opium Pattas. But not much weight can be attached to this statement when the witness could not give any explanation as to why he remembered this particular statement of Mohansingh. He did not attend any other meeting of Jan Sangh or Congress held at Sitamau. He could not say what Dr. Raghuvir Singh spoke at the Sitamau meeting. He sought election to Sitamau Municipality as an independent candidate but did not remember whether the Congress had set up any candidate against him in that election. When he was pressed for details of the speeches delivered by the appellant and other speakers at Sitamau, he said that he had not kept a written record of those speeches. It is obvious that the witness was not able to stand the test of cross-examination, and resented the questions that were being put to him in cross-examination about the details of the speeches. The Tribunal itself discredited this witness as unreliable while dealing with his evidence on the question whether the appellant made an appeal to the voters of Sitamau to vote for him on the ground of his being a Rajput. It is not necessary to consider the testimony of the appellant and his witnesses which was rejected by the Tribunal. Their evidence was of a negative character, and even if it is rejected that does not relieve the respondent-Bhanwarlal of establishing the charge of corrupt practice made by him against the appellant by independent, positive and clear evidence. The respondent failed to discharge this burden.

26. From what has been said above, it is clear that the respondent-Bhanwarlal has not been able to make out the allegations of corrupt practice set out in paragraph 11(e) of

the petition and schedule C to it. His own evidence was of the most general character. The statements which his own witnesses gave with regard to their presence at the meetings held at Kuchrod, Basakhedl, Afzalpur and Sitamau and to the speeches said to have been made by Mohansingh at those meetings were varying, vague, discrepant and improbable. Their evidence is extremely weak and unreliable and many excuses have to be made for them if they are to be believed at all. On their evidence a certain and positive finding that they attended all the meetings referred to above and heard Mohansingh utter during the course of his speeches the several statements attributed to him by the respondent Bhanwarlal cannot clearly be reached.

27. It was also found by the Tribunal that the appellant and his agents had appealed to Rajput voters in the constituency to vote for him on the ground of his being a Rajput and that he had also appealed in the name of religious symbols like cow and 'Nanda-deep' for furthering his own prospects at the election and for prejudicially affecting the election of the respondent-Bhanwarlal. This conclusion is embodied in the findings which the Tribunal gave on issues Nos. 11 and 12. The material allegations relating to this corrupt practice have been stated in sub-paragraphs (h) and (i) of paragraph 11 of the election petition which run as follows:

"(h) That the respondent No. 1 and his agents appealed to the Rajput voters to vote for respondent No. 1 in the name of respondent No. 1's caste and refrained them from voting for the petitioners on the ground that the petitioner is a Bania by caste. This appeal was made by respondent No. 1 and his agents for the furtherance of the prospects of the election of the respondent No. 1 and also to prejudicially affect the election of the petitioner.

The full particulars of this corrupt practice mentioned in this para are detailed in schedule F which forms part of this petition.

(i) That the respondent No. 1 and his agents appealed to the voters in the name of religion and religious symbols for the furtherance of the prospects of the results of the election of respondent No. 1 and to prejudicially affect the result of the election of the petitioner by arranging meetings, showing posters, distributing leaflets, playing records and using slogans. Cow is considered as religious symbol in this part of the country and worshipped as mark of religion by Hindus. The respondent No. 1 and his agents aroused the religious feelings

of the voters in the name of cow and affected the prospects of the results of the election of respondent No. 1 and prejudicially affected the results of the election of the petitioner.

The full particulars of this, corrupt practice mentioned in this para are detailed in schedule G which forms part of this petition."

In schedule F the respondent-Bhanwarlal stated that the appellant Mohansingh made an appeal to the Rajput voters on the ground of caste at largely attended meetings held on 22nd February 1962 at Sitamau, on 22nd February 1952 at Basakhedi and Afzalpur, on 5th February 1962 at Kuchrod, and on 17th February 1962 at Ghundharka. He also mentioned in the schedule that on 23rd February 1952 Mohansingh made a similar appeal to the voters of villages Salriya and Khajuri-Goud.

28. In schedule G it was stated by Bhanwarlal that the appellant-Mohansingh made an appeal to the voters in the name of cow protection saying that the Congress was a body of cow-slaughterers and to vote for Congress was "pap", (sinful), at largely attended meetings held on 13th January 1952 at Laduna, on 20th January 1962 at Nahargarh. On 5th February 1952 at Kuchrod, on 13th February 1962 at Sunthi, on 21st February 1962 at Sitamau, and on 22nd February 1962 at Afzalpur and Basakhedi. His further statement in schedule G was that on 23rd January 1962 his (Mohansingh's) agent, Mishrilal Fafria, appealed to the voters of Nahargarh in the name of cow and Nanda-deep; that the appellant's agent Kailash Mahajan made a similar appeal to the voters at Kayampur, Salriya, Era, Dhakapdipluya and Kothada-Bahadur between 21st and 23rd February 1962; and that in almost all villages of the constituency an appeal was made to the voters by playing records to the purport that the religion, property and everything that the voters possessed would disappear if they voted for Congress. In the last paragraph of schedule G the respondent said that 'Dainik Dashpur Kesari', a newspaper published from Neemuch, was conducting the election propaganda of Jansangh party, and the members of the Jansangh party including Mohansingh appealed to the voters by various publications in the said newspaper to vote for Jansangh in the name of religion and religious symbol, namely, 'Nanda-deep'; and that the copies of the newspaper were distributed by Mohansingh and his agents. All these averments made by Bhanwarial, and the particulars given by him in schedule F and G were denied by the appellant.

29. The finding of the Tribunal on issue No. 11, which concerned the making of art

appeal to the Rajput voters on the ground of caste, is based partly on the acceptance of the evidence of those very witnesses who said that they were present at the meetings held at Kuchrod, Basakhedi, Afzalpur and Sitamau where according to them Mohansingh during the course of his speeches made a statement accusing Bhanwarlal of having extracted money from cultivators on the pretext of grant of opium Pattas and also appealed to the voters on the ground of caste, and partly on the evidence of Bhawansingh (P.W. 5) and Shankarlal (P.W. 14) who deposed to an appeal on the ground of caste having been made by the appellant at Khajuri and Dhundharka.

30. (After discussion of evidence His Lordship proceeded :) In our judgment, the evidence tendered by the respondent-Bhanwarlal to substantiate the averments made by him paragraph 11(h) and schedule F must be rejected as utterly unreliable, and it must be held that the charge of the appellant having made an appeal to the Rajput voters on the ground of caste is not established.

31. Equally, so far as the allegations of the commission of corrupt practices by appealing to voters in the name of religion and religious symbols narrated in paragraph 11(i) of the petition and schedule-G thereto are concerned, there is no reliable evidence to support them. These allegations were the subject-matter of issue No. 12 framed by the Tribunal in the following terms :

"12. (a) Whether the respondent No. 1 and his agents in the name of religion, and religions symbol like the cow appealed to the voters by arranging meetings, distributing leaflets, showing posters, playing records and shouting slogans for vote for him ?

(b) Whether such appeal prejudiced the chance of the petitioner in the election ?"

While dealing with this issue, the Tribunal dealt at length on the evidence tendered by the respondent-Bhanwarlal to show that the Dainik Dashpur Kesri, a newspaper published from Neemuch, was carrying on election propaganda on behalf of the Jansangh party; that in several issues of this newspaper appeals were made to voters in the name of religion and religious symbols, such as the protection of cow and Nanda-Deep, to cast their votes for the appellant; and that copies of these issues were distributed by the appellant and his agents. The Tribunal found these allegations substantiated and observed that Bhanwarlal's allegation that the paper carried on

election propaganda on behalf of the appellant-Mohansingh was not denied by Mohansingh in his reply to the allegation and that this meant that the said newspaper was doing election work for the appellant-Mohansingh with his implied consent. In our opinion, the Tribunal was not justified in letting in all the evidence that Bhanwarlal tendered in connection with the publications in Dashpur Kesri and in considering that evidence when he had nowhere alleged in the election petition or in any of the schedules of particulars that this newspaper acted as an agent of the appellant and printed and published the alleged appeals in the name of religion with the appellant's consent. In paragraph 12 of schedule G Bhanwarlal only made a general statement that the Dainik Dashpur Kesri

"was conducting the election propaganda by Jansangh party including the respondent No. 1 (sic)"

and the paper

"appealed to voters .....to vote for Jansangh and the respondent No. 1 (the appellant) in the name of religious symbol Nanda-Deep end religion."

The statement only meant that as the appellant belonged to Jansangh the propaganda which the newspaper carried on behalf of that party was also on behalf of the appellant. That statement is clearly not one alleging that the newspaper acted as an agent of the appellant and printed and published the alleged appeals with his consent. The Tribunal was also not justified in adopting the course that it did when no issue had been framed by it at all on the question whether the said newspaper acted as an agent of the appellant and printed and published the appeals with his consent, whether the appeals were in the name of religion and religious symbols, whether 'Nanda-Deep' was at all a religious symbol, and whether the appellant and his agents distributed the copies of that newspaper. It cannot be disputed that in an election petition the allegations of corrupt practice, if made, must be clearly and specifically stated and their full particulars must be given. These requirements are of paramount importance. If evidence in regard to any corrupt practice is allowed to be given in the absence of clear statements and full particulars, material prejudice is likely to be caused to the party against whom the allegations are made. In this case, in the absence of any clear and specific statement in the election petition about the newspaper publications and its control and of the full particulars relating to it, the evidence which the respondent-Bhanwarlal had was of very general and vague character proving none of the matters

which were necessary to be established for holding that the publication in the newspaper amounted to a corrupt practice under Section 123(3). That provision makes the making of an appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of religion, race etc., a corrupt practice. On the question whether the newspaper publications were by Mohansingh or his agents or whether the newspaper published the appeals with the consent of the appellant or his agent, no issue was framed and no specific positive evidence was led by Bhanwarlal. Shri Dabir, learned counsel appearing for Bhanwarlal, rightly and frankly conceded that the Tribunal was not right in embarking upon an investigation of the publications in Dainik Dashpur Kesri in the circumstances stated above.

32. In reaching the finding that the appellant committed the various corrupt practices mentioned in paragraph 11(i) and schedule G, the Tribunal was mostly influenced by the view it formed with regard to the publications in Dainik Dashpur Kesri. The finding is thus vitiated. If the publications in the Dainik Dashpur Kesri are ignored, as they must be, then the only evidence bearing on issue No. 12 comprises of the statements, which we have already rejected, of the persons who deposed to their presence at the meetings held at various places and who said that they had heard Mohansingh make during the course of his speeches the various statements attributed to him by Bhanwarlal including the appealing to voters in the name of cow and Nanda-Deep, and of the statements of Parwatibai (P.W. 9) and Fakirchand (P.W. 20). The respondent stated in schedule G that the appellant made an appeal in the name of cow and Nanda-Deep at largely attended meetings held at Laduna, Nahargarh, Sunthi, Kuchrod, Sitamau, Basakhedi and Afzalpur. But no evidence was led with regard to any of the meetings said to have been held at Laduna, Nahargarh and Sunthi. The evidence of witnesses who deposed that they were present at the meetings held at Sitamau, Basakhedi, Afzalpur and Kuchrod and heard Mohansingh make an appeal in the name of cow and Nanda-Deep and other statements attributed to him by Bhanwarlal must be rejected for the reasons we have already given while discarding their evidence in connection with issue No. 8. It was further stated in paragraph 8 of schedule G that Mishrilal Fafria appealed to the voters of Nahargarh in the name of cow and Deep of Mahadeoji. No evidence was led to substantiate this allegation. The statement in paragraph 10 of Schedule G that the appellant exhibited a poster wherein Pandit Nehru was portrayed as cutting the head of a cow is also unsupported by any evidence. Besides, if any such poster was exhibited that would not have constituted an

appeal in the name of religion or any religious symbol. It would have been at the most a poster condemning the supposed misdeeds of the Congress party.

So also the vague statements made in paragraph 11 of schedule G that an appeal was made to the voters that their religion, property and everything they possessed would disappear if they voted for the Congress did not even remotely carry the suggestion that an appeal was made to the voters in the name of religion or religious symbols.

(After discussion of some evidence His Lordship proceeded :) On a consideration of the evidence on record, we have formed the view that the respondent-Bhanwarlal has not been able to establish the allegations of corrupt practices averred in paragraph 11(1) of the petition and schedule G thereto.

33. It may be mentioned here that if the appellant made an appeal to the voters to vote in the name of cow and for protection of cow that is not an appeal on the ground of religion as held by this Court in *K.C. Sharma v. Krishi Pandit Rishabhkumar*, 20 Ele LR 401 . An appeal in the name of Nanda-Deep is also not an appeal to any religious symbol. In the petition Bhanwarlal stated that "Nanda-Deep" was a religious symbol inasmuch as it was the "Lamp of Shivji's Nandi". In schedule-1 to the petition in which particulars of the exercise of undue influence were given, the Deep was said to be a symbol of Durga. The persons who gave evidence about Mohansingh and his agents appealing to the voters in the name of religious symbols said that they (Mohansingh and his agents) asked the voters to vote in the name of Mataji's Deep. The respondent thus gave varying versions of Nanda-Deep. In our opinion, 'Deep' is not any religious symbol. It does not stand for, or represent, any particular god or goddess. The squatting Nandi before Shivlinga has never been regarded as a God. He only represents the released soul and no lamp ever burns before him. In common parlance, Nanda-Deep does not represent the symbol of any deity, Mata or goddess and it requires some etymological research to know that 'Nanda' also means 'Durga', and Nanda-Deep is the symbol of Durga. Durga is no doubt worshipped by Hindu's. But a 'Deep' has never been regarded as a symbol of Durga though it is used in the worship of Durga.

34. Coming now to the finding of the Tribunal in relation to issue No. 14 that the appellant and his agents exercised undue influence on the voters, that also cannot be accepted as correct. The precise pleading on the point appears in paragraph 11(k) of the petition which is as follows :

"(k) (i) That the respondent No. 1 and his agents exercised undue influence on the voters by threatening them that they and their families and children shall be rendered an object of divine displeasure or spiritual censure if they do not vote for the "Nanda-Deep" (i.e., Jan sangh) which is "Religious Symbol" (Lamp of Shivji's Nandi'.)

(ii) That the respondent No. 1 and his agents exercised undue influence on the voters by saying that if they do not vote for the petitioner, all the loans advanced by the Co-operative Bank shall not be either realized or at least there shall be no strictness for the legislation of the debt.

(iii) Further undue influence was exercised by the respondent No. 1 or his agents by making an extensive propaganda that if they do not vote for Congress, all the Taxes shall be removed, opium cultivation shall be made free.

(iv) That undue influence was exercised on Bagri community by appealing to them by respondent No. 1 and his agents that Congress had made you Harijans whereas you are Chandravanshi Rajput. If you vote for respondent No. 1 Arms licences shall be made free to you.

(v) That the respondent No. 1 and his agents threatened to the voters by saying that if you vote for Congress all your kheti shall become property of Government and you shall become landless, labourless. This was done by exhibition of posters also.

The full particulars of this corrupt practice mentioned in this para are detailed in schedule-1 which forms part of this petition."

In schedule-1 giving the particulars of the time, place and the manner in which undue influence according to the respondent-Bhanwarlal was exercised, it was stated that Mohansingh appealed to the voters in the name of Nanda-Deep, which was a symbol of Gouri and Durga, on 13th January 1962 at Laduna, on 20th January 1962 at Nahargarh, on 5th February 1962 at Kuchrod, on 13th February 1962 at Sunthi, on 21st February 1962 at Sitamau, and on 22nd February 1962 at Basakhedi and Afsalpur; that on 23rd and 24th February 1962 Mishrilal Fafriya made a similar appeal to the voters of Nahargarh and that between 21st and 23rd February 1962 Kailash Mahajan also appealed to the voters in the name of Nanda-Deep and the Suhag of the ladies at Kayampur, Salario, Era, Dhakad Pipla and Kothada Bahadur. It was further mentioned in the schedule that the appellant also told the voters in the constituency that if they did not vote for the respondent-Bhanwarlal bank dues would not be realised from them and that if they voted for him (the appellant) there would be

no taxes, the cultivation of opium would be made free and all laws relating to Harijan uplift and untouchability would be repealed.

35. The Tribunal's finding with regard to exercise of undue influence at Laduna, Narhargarh, Kuchrod, Suntni, Sitamau, Basakhedi and Afzalpur, is based substantially on evidence no other than that of witnesses who said that they were present at the meeting addressed by Mohansingh at these places and heard him make the statements which the respondent-Bhanwarlal alleged in paragraph 11(e), (h) and (i) and in schedules 'C', 'P' and 'G'. The evidence of those witnesses has already been discarded by us. The other evidence on which the Tribunal relied consists of the statements of Parwatibai (P.W. 9) and Fakirchand (P.W. 20). Their statements have also been rejected by us. It follows, therefore, that there is no evidence in support of the respondent's allegation that Mohansingh exercised undue influence on voters by asking them to vote in the name of Nanda-Deep or in the name of the Suhag of their ladies. The statements in paragraph 11(k) of the petition and schedule-1 thereto that Mohansingh made promises to the voters about non-recovery of bank dues, removal of taxes and repeal of some laws in no sense embody any allegation of undue influence. They are only statements which are generally made at election time by candidates boosting up their programme and achievements and running down the policy and failure of the opponents. Such declarations do not amount to exercise of undue influence on the part of the declarant. In our judgment, the respondent has failed to establish that Mohansingh exercised undue influence on the voters.

36. It now remains to consider three objections raised by the appellant to the maintainability of the election petition. First, it was said that Hussain Khan, whose nomination paper was rejected by the Returning Officer, was not joined as a respondent to the petition and his joinder was necessary as the respondent had challenged in his petition the validity and correctness of the order of rejection. The objection is unsubstantial. It is true that Bhanwarlal assailed the decision of the Returning Officer rejecting Hussain Khan's nomination paper and the Tribunal has found that the rejection was right. But having regard to the provisions of Section 82 of the Representation of the People Act, 1951, it was not obligatory on the respondent to make Hussain Khan a respondent to the petition. That provision does not require that a person whose nomination paper has been rejected shall be joined as a respondent to the election petition, whether or not his rejection is challenged. That being so, it cannot be urged that the election petition should have been dismissed because of non-

joinder of Hussain Khan. Under Section 90(3) the Tribunal can dismiss an election petition if it does not comply with the provisions of Sections 81 or 82.

37. The second objection raised on behalf of the appellant is that Section 81(3) requires that every election petition shall be accompanied by as many copies thereof as there are respondents to the petition and that every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition, and that the copy which the appellant received from the Election Commission did not bear any attestation by the respondent. The Tribunal overruled this objection by an order passed on 18th July 1962 holding that the appellant addressed no evidence to show that the copy which he produced before the Tribunal as having been received from the Election Commission was the same which he had actually received from the Commission. That the appellant did not want to produce any such evidence, and did not in fact do so, is clear from the order recorded by the Tribunal on 13th July 1962. It was absolutely essential for the appellant to have produced this evidence if he desired an investigation of his objection that as there was no compliance<sup>1</sup> with the provisions of Section 81(3) the election petition should be dismissed. Sub-Section (3) of Section 81 speaks of attestation of copies of an election petition presented to the Election Commission. The allegation of the appellant that a copy of the petition, which he received from the Election Commission, did not bear the requisite attestation could, therefore be substantiated only by the evidence of the Election Commission and not by the mere production before the Tribunal by the appellant of a copy said to have been received from the Commission. As there is no such evidence of the present case. It is not necessary to consider whether non-compliance with Section 81(3) entails dismissal of the petition.

38. Lastly, it was urged that as in paragraph 11(b) of the election petition Bhanwarial had made an allegation of a corrupt practice against one Himmat Singh, who withdrew his candidature under Section 37 of the Act, he should have been joined as a respondent to the petition; that as this was not done there was non-compliance with Section 82; and that consequently the election petition should have been dismissed by the Tribunal under Section 90(3). The aforesaid paragraph of the election petition contained the following statement :-

"That on 20th January 1962 respondent No. 1 offered at Nahargarh to Shri Himmatsingh, an independent candidate to help him in procuring a job for him

in Dalauda Sugar Factory or elsewhere to withdraw his candidature from the Election. That as a consequence of this offer of illegal gratification Shri Himmatsingh withdrew his candidature from the Sitamau Assembly constituency." By an order dated the 13th August 1962 the Tribunal rejected this objection of the appellant taking the view that the statement of Bhanwarial in paragraph 11(b) that the appellant offered to help Himmat Singh in procuring a job for him if he were to withdraw his candidature did not amount to an allegation of any 'corrupt practice' as defined by Section 123(1)(B) and that in that paragraph there was no allegation whether Himmat Singh received "the reward" or agreed to receive "the reward" said to have been promised by the appellant. The Tribunal, however, relying on the decision of that Bombay High Court in *B.T. Bhosle v. M.S. Aney*,<sup>6</sup> expressed the view that a candidate who laid withdrawn, his candidature under Section 37 after filing his nomination was "any other candidate" within the meaning of Section 82(b) and, therefore, he must be made a party to an ejection petition if allegations of any corrupt practices are made against him in the petition.

39. In our judgment, regard being had to the averment made in paragraph 11(b) of the petition, the objection that Himmat Singh should have been joined as a respondent is untenable. Section 82(b) no doubt lays down that

"any other candidate against whom allegations of "any corrupt practice are made in the petition" shall be joined as respondent to the petition. Now, it is obvious from Section 123(1)(a) and (b) that so far as the person accepting of agreeing to receive any gratification is concerned, the allegation of corrupt practice as against him consists not in the making of the offer of gratification by the offer but in his receipt or agreement to receive the gratification. When, therefore, a candidate is said to have withdrawn because of some gratification and thus committed a corrupt practice, then in order to bring Section 82(b) into play there must be a specific and positive assertion in the election petition that he received or agreed to receive a gratification whether as a motive or a reward for withdrawing his candidature.

Section 82(b) uses the words "against whom allegations of any corrupt practice are made in the petition". An allegation is a positive assertion and not a mere suggestion. A positive allegation of corrupt practice is necessary in order to give the candidate against whom it is made, a clear idea of the charge he has to meet and to give an

opportunity of defending himself against it. This is necessary as under Section 140 any charge of corrupt practice, as specified in Section 123, if proved entails disqualification for membership of Parliament and of the Legislature of every State for a period of six years counted from the date on which the Tribunal's finding as to the corrupt practice takes effect under the Act. Now, in paragraph 11(b) all that Bhanwarial alleged was that on 20th January 1962 Mohansingh offered his help to Himmat Singh in procuring a job for him in a sugar factory or somewhere, else and that in consequence of this offer Himmat Singh withdrew. In that paragraph, there is no allegation whatsoever that Himmat Singh accepted or agreed to accept this offer of 'gratification'. Therein, it was no doubt stated that Himmat Singh's withdrawal was a consequence of this offer. But in this statement relating to Himmat Singh's withdrawal because of the offer said to have been made by Mohansingh, it would not be legitimate to read an 'assertion' that Himmat Singh received or agreed to receive the gratification of the offer of help in procuring a job for him. The consequence that is stated in the paragraph is of the offer and not of the acceptance of, or agreement to accept, the offer on the part of Himmat Singh. The paragraph only made an oblique or indirect suggestion that Himmat Singh accepted the offer as he actually withdrew his candidature after the offer was made. But merely because Himmat Singh withdrew it would not be right to think that he accepted the offer said to have been made by Mohansingh and withdrew because of it. It is possible to conceive that Mohansingh made, such an offer to Himmat Singh but the latter did not care for it and his actual withdrawal was for reasons of his own and not because of the acceptance of the offer. His withdrawal from candidature would then just be a coincidence. It is noteworthy that under Section 123(1)(B) it is not necessary that the person who receives or agrees to receive any gratification for standing or not standing as, or for withdrawal from being, a candidate should have actually stood or refrained from standing or withdrawn his candidature. Cases may well arise where persons even after the receipt, or the agreement to receive, such gratification decide to do just the contrary to what they are expected to do for which they received or agreed to receive the gratification. A person receiving or agreeing to receive any gratification for withdrawing his candidature would still be guilty of the corrupt practice specified in Section 123(1)(B)(a) even if he does not withdraw his candidature. The point to be emphasized is that the fact of actual withdrawal is not an essential ingredient of the corrupt practice specified in Section 123(1)(B)(a). What is essential is the receipt of, or agreement to receive, the gratification for the purpose mentioned in Clause (a). In our opinion, it is impossible to read paragraph 11(b) as containing an allegation of corrupt practice against Himmat

Singh or to regard the suggestion therein that Himmatsingh withdrew his candidature because of the alleged offer of Mohansingh, as an allegation attracting Section 82(b).

40. Again, the allegation in paragraph 11(b) that Mohansingh offered to render help to Himmat Singh in securing a job is clearly not an offer of 'gratification', within the meaning of Explanation to Section 123(1)(B), the receipt of, or agreement to receive, which constitutes a corrupt practice under Section 123(1)(B)(a). That Explanation is as follows:-

"Explanation - For the purposes of this clause the term 'gratification' is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it" does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in Section 78."

It is clear from this Explanation that what is included inter alia in the term 'gratification' is "all forms of employment for reward" and not mere offers of securing an employment. That the expression "all forms of employment for reward", according to its natural import, does not include an offer to secure an employment is too plain to require any argument. It would be against all canons of construction to widen the meaning of the expression "all forms of employment for reward" when the legislature by using the word "includes" in the Explanation enlarged the meaning of the word "gratification". The enlarged meaning of the term "gratification" must be confined to what the Explanation by specific enumeration of certain matters declared that the term shall include. The legislature deliberately used the expression "all forms of employment" so as to distinguish employment of any kind from offers of help in securing employment. It may well be that in doing so the legislature thought that offers of help in securing a job may take a variety of forms; they may be real or illusory and of evanescent character and may mean nothing; and that it may well-nigh become impossible for a person to rebut the accusation that he received or agreed to receive such art offer of help. The case of *Dera Ghazi Khan Hazrat Hafiz Sadiduddin v. Khwaja Ghnlam Murtaza*,<sup>7</sup> is of no assistance here when the Explanation to Section 123(1)(B) specifically speaks of only "forms of employment for reward" as included in the term 'gratification'. In that case only a casual observation was made that a mere offer or promise to secure some post or situation may constitute a corrupt practice. We

are aware of some English decisions in which it has been held that a mere offer or promise to secure some post or situation amounts to a corrupt practice. But those decisions are distinguishable by the fact that under the relevant English statutes "procuring an office" is bribery at a Parliamentary or local election, and this includes giving or procuring or agreeing to give or procure, promising to procure or endeavoring to procure any office or employment. Those decisions cannot be of any help in the construction of the terms "all forms of employment" and "gratification" for the purposes of Section 123(1)(B).

41. The view we have taken of the content and effect of paragraph 11(b) of the election petition strictly renders it unnecessary for us to consider the question debated at the Bar as to whether a candidate, who has withdrawn his candidature under Section 37 after filing his nomination paper and against whom an allegation of any corrupt practice is made in the petition, is "any other candidate" within the meaning of Section 82(b). But if we are compelled to answer that question, we must answer it in the affirmative and say that such a candidate must be made a party to the election petition. The language used in Sections 79(b) and 82 is fully apt to make Section 82(b) applicable to a case where an allegation of corrupt practice is made in the petition against a candidate who had withdrawn. Section 79(b) defines "candidate" as meaning a person who claims to have been duly nominated as a candidate at any election. This definition clearly covers the case of a candidate who has withdrawn his candidature after he had been duly nominated. Section 82(a) deals with the joinder of returned, candidates and all contesting candidates in the circumstances mentioned in that provision. Bearing clause (a) of Section 82 in mind, the plain construction of clause (b) is to make necessary the joinder of a candidate other than those whose joinder is obligatory under clause (a), if allegations of any corrupt practice are made in the petition against that candidate. Thus, if, as in the present case, the election petitioner claims a declaration that the election of a returned candidate is void and claims a further declaration that he himself be declares as duly elected, then all the contesting candidates are necessary parties under clause (a) and the expression "any other candidate" occurring in clause (b) can only mean a person who has withdrawn his candidature and his joinder would be necessary if the petition contains allegations of any corrupt practice against him. If this is not the true construction of Section 82(b), we are unable to see what candidates are covered by the words "any other candidate" used therein. The view we have taken is fully reinforced by the analysis of Section 82 that has been given by the Supreme Court in *Kamaraja Nadar v. Kunju Thevar*,<sup>8</sup>

42. The view expressed by the Bombay High Court in 22 Ele LR 321 : AIR 1961 Bombay 29, that a candidate who has withdrawn his candidature under Section 37 after filing his nomination does not cease to be a candidate and, therefore, so far as Section 82(b) is concerned, must be made a party to the election petition allegations of corrupt practices are made against him in the election petition, appears to us to be correct. A contrary view has no doubt been taken in *Kapildeo Singh v. Sural, Narayan Singh*,<sup>9</sup> and following that decision, in *Badri Narain v. Kamdeo Prasad*,<sup>10</sup> It is noteworthy that though the learned judges deciding the case of Badri Narain, AIR 1961 Patna 41 (supra) did not find themselves in agreement with the view expressed in AIR 1959 Patna 250 (supra), they preferred to bow down to that decision as according to them' being a Division Bench decision it was binding upon their Court. In AIR 1959 Patna 250 (supra), the learned Judges took the aid of the meaning of the expression "any other candidate has been duly elected" used in clause (a) of Section 82 for construing the expression "any other candidate" used in clause (b) and said that no question under clause (a) could arise of a candidate, who had withdrawn, being declared duly elected and that, therefore, the words, "any other candidate" used in clause (b) on a similar construction could not be said to include a candidate who has withdrawn his candidature. With all respect to the learned Judges of the Patna High Court, this reasoning does not appeal to us. It is contrary to the analysis of Section 82 given by the Supreme Court in Kamraj Nadar's case, 14 Ele LR 270 . There does not appear to us any "arrant for giving to the words "any other candidate" used in clause (b) the same meaning which the words "any other candidate has been duly elected" used in clause (a) connote.

43. In conclusion, as we find ourselves in agreement with the Tribunal's finding that the appellant, by publishing the pamphlets, annexures-'D' and 'E', committed corrupt practice under Section 123(4) of the Act, the decision of the Tribunal setting aside the election of the appellant Mohansingh must be upheld. The result is that this appeal is dismissed with costs of the respondent Bhanwarlal. Counsel's fee is fixed at Rs. 300/-.

Appeal dismissed.

Cases Referred.

1. AIR 1960 SC 115)

2. 34 Cal WN 593
3. AIR 1952 SC 1156
4. 22 Ele LR 385 (Bom)
5. ILR 32 Mad 384
6. 22 Ele LR 321
7. 1 I.E.C.D., Vol. 1, p. 107
8. 14 Ele LR 270 at p. 282: (AIR 1958 SC 687 at D. 692)
9. AIR 1959 Pat 250
10. AIR 1961 Pat 41