

RAJASTHAN HIGH COURT

Krishna Kumar

Vs.

Krishna Gopal

Civil Misc. Appeal No. 5 of 1963
(Jagat Narayan And P.N. Shinghal, JJ.)

07.05.1963

JUDGMENT

Jagat Narayan. J.

This is an appeal under Section 116-A of the Representation of the People Act, 1951, by Sri Krishna Kumar, against an order of the Election Tribunal, Kota, declaring void his election to the Rajasthan Legislative Assembly from the Kota City Assembly Constituency and holding him guilty of the corrupt practice mentioned in Section 123(5). The appeal is contested by the respondent Sri Krishna Gopal who had filed the election petition to challenge Sri Krishna Kumar's election. Sri Krishna Gopal is an elector of the constituency who had worked for the furtherance of the prospects of the Congress candidate Sri Rameshwar Dayal in the election. The candidature of Sri Krishna Kumar was sponsored by the Jan Sangh party. The votes polled by the contesting candidates at the polling which took place on 22nd February 1962 were as follows :

1	Sri Krishna Kumar, Jan Sangh	11886
2	Sri Rameshwar Dayal, Congress	9474
3	Sri Purshottam Das, Socialist	6261
4	Sri Abdul Gaffor Khan, Seerat Committee	2786

	(Independent)	
5	Sri Salya Prakash, Independent	2057
6	Srimati Nagangi Devi, Independent	500

In the petition it was alleged that the petitioner was guilty of corrupt practices of the nature mentioned in Sub-Sections (3), (3A), (5) and (7) but the Tribunal found that the only charge proved against him was that he had procured truck No. R.J.R. 2326 in which some electors were conveyed to Rangbari polling station at 2 P.M. on 22-2-62 by one Shankerlal. The Tribunal further held that Shankar Lal was an agent of Sri Krishna Kumar and that he so conveyed the electors by truck with his implied consent. The contention on behalf of the appellant was that these findings are erroneous. On behalf of the respondent the findings of the Tribunal on the above points were supported and further it was contended that it erred in disbelieving the other evidence adduced by him to prove other instances of the corrupt practice under Section 123(5) and to prove that on 21-2-62 Sri Krishna Kumar directed Shanker Lal to convey voters from Lakhava, Anandpura, Shivpura, Amlji Rojhadi and Nayagaon to Kishorepura and Rangabari polling stations. The findings of the Tribunal that the corrupt practices of the nature specified in Sub-Sections (3), (3A) and (7) of Section 123 had not been proved, were however not challenged before us.

2. Before dealing with the evidence produced by the respondent we would like to express our opinion on some questions of law which arise in the case. One of these is the standard of proof required in such cases. On behalf of the appellant it was contended, and rightly so in our opinion, that proceedings for getting an election declared void are quasi-criminal in nature and the standard of proof required is similar to that in criminal cases. The following decisions were referred to :

Badri Narain v. Kamdeo Prasad, ¹ *Braj Bhushan v. Anand Brahma*, ² *Ahmedmiya Sherumiya v. Chhippa Ibrahim*, ³ *Jamuna Prasad v. Ramnivas*, ⁴ *Amjad Ali v. Hazmul Haque*, ⁵ *V.B. Raju v. V. Ramchandra Rao*, ⁶ *Harish Chandra v. Triloki Singh*, ⁷

The learned counsel for the respondent was unable to cite any decision of any High Court in which a contrary view was taken. When a candidate for election, either to the

State Legislature or the Parliament, is charged with the commission of any corrupt practice, the charge is almost in all respects similar to a criminal charge as the law prescribes severe punishment for it. Hence the criterion to assess the evidence must also be the same as in a criminal case and the evidence must establish the charges conclusively beyond all reasonable doubt.

3. Next, we come to the question of interpretation of the provisions of Section 100 and Section 123 of the Representation of the People Act, 1951 as amended by Act No. 27 of 1956 and Act No. 58 of 1958 relating to the corrupt practice-specified in Section 123(5), namely, the hiring or procuring of a vehicle for the conveyance of the electors to and from a polling station. Under the Representation of the People Act, 1951, as originally enacted, two kinds of corrupt practices were recognized, namely, major corrupt practices and minor corrupt practices. The corrupt practice of transporting voters by vehicles was a minor corrupt practice under Section 123(5) of the Act as it then stood. It ran as follows:

"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 connivance of a candidate or his agent for the conveyance of any elector....."

"Agent" was defined under Section 79(a) as including an election agent, a polling agent and a counting agent and any person who, on the that of an election petition or of an offence with respect to any election was held to have acted as an agent in connection with the election with the knowledge or consent of the candidate. The election was to be declared void on account of this corrupt practice under Section 100(2)(b) if the Tribunal were of the opinion that it had been committed by a returned candidate, or his agent, or by any other person with the connivance of a returned candidate or his agent.

After the amendment of the Representation of the People Act 1951 by Act 27 of 1956 the distinction between major and the minor corrupt practices was removed. Further the hiring or procuring of vehicles for the conveyance of voters by any other person was made a corrupt practice even if the act was done without the connivance of the candidate or his agent. The definition of "agent" was incorporated in Section 123 and this definition was made applicable to Section 100 also. The definition was however substantially the same as was contained in Section 79(a) of the original Act. Section 100 was re-drafted as follows :

"Grounds for declaring election to be void (1) Subject to the provisions of Sub-

Section (2), if the Tribunal is of opinion :

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

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

(ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such candidate or election agent, or.

.....

The Tribunal shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Tribunal, a returned candidate has been guilty by an agent, other than his election agent of any corrupt practice but the Tribunal is satisfied :

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent of the candidate or his election agent :

(b) that all such corrupt practices were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the Tribunal may decide that the election of the returned candidate is not void."

This section was not happily worded. Whereas Section 123 referred to acts of a candidate of his "agent" or of "any other person" Section 100 referred to the acts of the candidate, his election "agent" or "any other person". It did not expressly refer to the acts of an "agent" other than an election agent and thus created some difficulty as Sub-Section (1) was subject to the provisions of Sub-Section (2) which, dealt only with corrupt practices committed by "agents" other than election agents. There can however be no doubt that "agent" was included in the expression "any other person" in clause (b) and in the expression "a person other than that candidate or his election agent" in clause (d (ii) of Sub-Section (i). Sub-Section (2) which dealt only with corrupt practices committed by an agent other than the election agent without the

consent of the candidate or his election agent was thus a proviso only to clause (d)(ii) of Sub-Section (i) of Section 100. This was the view taken by this Court in *Sheopat Singh v. Narishchandra*,⁸ The same view was taken by the Allahabad, Bombay and Assam High Courts in *Rustom Satin v. Dr. Sampooranand*,⁹ *Sudhir Hendre v. Sripat Dange*,¹⁰ and *Khagendranath v. Umesh Chandra*,¹¹ An appeal was preferred against the decision of the Assam High Court in the above case before the Supreme Court but the correctness of the above view was not challenged. The decision is reported as *Sarat Chandra v. Khagendranath*,¹²

The result of the above interpretation was that when a corrupt practice was committed by a returned candidate or his election agent the question of consent did not arise but if it was committed by "any other person" which expression, would include an agent other than an election agent then it had to be shown that the corrupt-practice had been committed with the consent of the returned candidate or his election agent before an election was rendered void. The Mysore High Court dissented from the above view in *Anjaneya Reddy v. Gangi Reddy*¹³ That decision was examined by the Kerala High Court in *Abdul Majeed v. Bhargavan*,¹⁴ and it was found that the reasoning adopted by the Mysore High Court was defective. The Kerala High Court arrived at the same conclusions as the majority of High Courts by an independent line of reasoning.

The Representation of the People Act, 1951 was again amended by Act 58 of 1958. Section 123(5) was amended by adding the words

"with the consent of the candidate or his election agent"

after the expression "any other person" so as to qualify the latter expression. The result of this amendment is that if the act in question is committed by an agent of the candidate without his consent it is a corrupt practice but if it is committed by any other person without his consent it is not a corrupt practice.

A consequential amendment was made in clause (d)(ii) of Section 100(1) which now reads :

"by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent."

The combined effect of the existing provisions with regard to corrupt practices committed by persons other than candidate may be summarized as follows :

(1) Acts of election agents - Corrupt practices committed by election agents have the same effect as those committed by the candidate himself; whether the candidate has consented or not is immaterial,

(2) Acts of other agents :

(a) if done with the consent of the candidate or his election agent - election will be void;

(b) if done without such consent;

(i) election will be void if result is materially affected;

(ii) election will not be void if the conditions in Section 100(2) exist.

(3) Acts of persons other than election agents or agents :

(i) if done with the consent of candidate or election agent - election is void;

(ii) if done without such consent - They do not come within the definition of corrupt practice and the election is not void even if the result is materially affected.

It is therefore clear that before an election can be declared to be void on account of a corrupt practice committed by an agent other than the election agent it has to be proved that the act was done with the consent of the candidate or his election agent or that it materially affected the result of the election. In the present petition it has not been alleged that on account of the acts of Shankar Lal the result of the election was materially affected. All that has been alleged is that Shankar Lal committed the corrupt practice with the consent of Sri Krishna Kumar thereby rendering the election void under Section 100(1)(b). It is therefore immaterial whether Shankar Lal was an agent of the appellant as denned in Section 123, or was some person other than agent.

4. Next we come to the plea taken by the appellant in his written statement that full particulars of the alleged corrupt practices, as required by Section 83(1)(b) of the Act had not been given in the petition. The Tribunal framed issue No. 16 on this point but failed to decide it as a preliminary issue in spite of the request of the appellant. When Ajit Singh P.W. 5 who was the first witness examined on behalf of the petitioner to prove the allegation of corrupt practice under Section 123(5) was in the witness box, a prayer was made to the Tribunal to direct the petitioner to furnish the names of the electors who, according to him, were conveyed in the truck to the polling stations. That prayer was repeated when Ram Charan P.W. 6 was being examined. On August 7, 1962, a reply was filed by Sri R.C. Dhariwal, advocate on behalf of the petitioner, in which it was stated that it was not necessary to give the names of the voters who

were carried in the truck as it was a matter of evidence and that the petitioner could not be called upon to disclose his evidence. The objection of the petitioner was upheld in the Tribunal's order dated August 8, 1962. It is contended that this order was erroneous and affected the appellant prejudicially. The petitioner admitted in his statement that he had no personal knowledge of the corrupt practices alleged by him in the petition and that before filing it he had gone to all the concerned villages and made enquiries from the electors. It is argued that in these circumstances he could have furnished the names, of some of the voters who were alleged to have been conveyed in the truck and he deliberately withheld the information to embarrass the appellant in the trial. Reliance has been placed on an unreported judgment of a Division Bench of the Patna High Court in *Chandreshwar Narain v. Basu Prasad* ¹⁵ which was followed by that High. Court in *Chandrashekar Singh v. Sarjoo Prasad Singh*, ¹⁶ In the unreported case of the Patna High, Court, a certified copy of which has been filed, the validity of the election was, inter alia, challenged on the ground of the commission of the major corrupt practice of hiring or procuring of motor trucks for the conveyance of electors to and from polling stations. The Tribunal was of the opinion that the names of the electors who were carried in the trucks, to various polling stations, should have been furnished by the petitioner. As this was not done, it estopped the petitioner from leading evidence in respect of the corrupt practice. The order was upheld by the High Court holding that the disclosure of the names of electors alleged to have been carried by trucks to the polling stations did not amount to a disclosure of the evidence but was merely a disclosure of facts of which the petitioner intended to rely in support of the charge of the commission of the corrupt practice. So also, in AIR 1961 Patna 189 it was held that the particulars of corrupt practices necessarily include the names of the electors alleged to have subjected to them and that an election petition which did not set out the names of such voters suffered from an incurable infirmity in that respect. On behalf of the respondent our attention has been drawn to a decision of a learned single Judge of the Madras High Court in *Kandaswami v. S.B. Adityan*, ¹⁷ in which it was held that where the charge for corrupt practice falling under Section 123(5) specified the motor vehicles which were alleged to have been hired for the carriage of voters, with reference to their registration numbers, and also particularized two villages amongst others where they were used, the particulars could not be held to be insufficient merely because the names of the voters who were conveyed by the vehicles were not given. It was observed that where a large number of voters are taken to cast their votes it would be almost impossible to give their names. The decision of their Lordships of the Supreme Court in *Balwan Singh v. Lakshmi Narain*, ¹⁸ has also

been referred to. It has been held in that case as follows –

"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. The corrupt practice being the hiring or procuring of a vehicle or the conveyance of the electors, if full particulars of conveying by a vehicle of electors to and from any polling station are given. Section 83 is duly complied with even if the particulars of the contract of hiring, as distinguished from the fact of hiring, are not given."

The question before their Lordships in that case was whether it was necessary to set out particulars of the contract of hiring or the arrangement of procuring, and not whether it was necessary to give the names of the voters who were alleged, to have been conveyed in vehicle procured by the candidate. The following observations made in that case are, however, relevant :-

"The practice to be followed in cases where insufficient particulars of a corrupt practice are set forth in an election petition is this. An election petition is not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged in the petition, are not set out. Where an objection is raised by the respondent that a petition is defective because full particulars of an alleged corrupt practice are not set out, the Tribunal is bound to decide whether the objection is well founded. If the Tribunal unholds the objection, it should give an opportunity to the petitioner to apply for leave to amend or amplify the particulars of the corrupt practice alleged; and in the event of non-compliance with that order the Tribunal may strike out the charges which remain vague. Insistence upon full particulars of corrupt practices is undoubtedly of paramount importance in the trial of an election petition, but if the parties go to trial despite the absence of full particulars of the corrupt practice alleged, and evidence of the contesting parties is led on the plea raised by the petition, the petition cannot thereafter be dismissed for want of particulars, because the defect is one of procedure and not one of jurisdiction of the Tribunal to adjudicate upon the plea in the absence of particulars. The appellate Court may be justified in setting aside the judgment of the Tribunal if it is satisfied that by reason of absence of full particulars, material prejudice has resulted; and in considering whether material prejudice has resulted failure to raise and press the objection about the

absence of particulars before going to trial must be given due weight."

We are of the opinion that the disclosure of the names of ejectors alleged to have been carried by trucks to the polling stations did not amount to disclosure of evidence in the circumstances of the present case but only amounted to disclosure of facts on which the petitioner intended to rely in support of the charge of the commission of the corrupt practice, and, since the petitioner alleged that he had ascertained the names of some of those electors, he was not justified in withholding the information. We are, however, unable to subscribe to the view that in every case in which a corrupt practice under Section 133(5) is alleged the names of all the electors said to have been transported should be specified. For it is the hiring or the procuring of a vehicle for the conveyance of electors that constitutes the corrupt practice. We think that, in appropriate cases, a petitioner may be able to prove that voters were conveyed to and from a polling station, by the evidence of witnesses who may not be knowing any of the voters either by name or by face. For example, a witness may testify that he saw persons coming by a truck, hired or procured by a candidate, to the polling station, that those persons went to the camp office of the candidate and after taking identity slips from there, they went inside the polling station to cast their votes. Thus the particulars required under Section 83(1)(b) would vary from case to case as the section itself contemplates that full particulars should be specified "as far as possible." As was held by their Lordships of the Supreme Court in Balwan Singh's case, AIR 1960 SC 770, failure to give the particulars required by Section 83(1)(b) is only a defect of procedure and not one of jurisdiction and is not incurable. So far as the present appeal is concerned, however, we do not think that any prejudice was caused to the appellant by the prior non-disclosure of the names of the voters alleged to have been conveyed by truck. These names were disclosed by the witnesses of the petitioner in their evidence. The trial continued for a long time thereafter and the appellant had ample opportunity to rebut the evidence of the witnesses of the petitioner who had named certain, electors. Further, the petitioner, it appears, only objected to being required to give the names of the electors under the *bona fide* belief that he was not bound to do so, but offered to furnish their names if the Tribunal was of the opinion that he should do so. He cannot therefore be said to have deliberately withheld the information. We may observe here that a plea in a written statement about the omission of full particulars is meaningless unless it is also stated what particulars are left out. The Tribunal should apply its mind forthwith to any such specific plea and give a finding on it before proceeding further with the trial of the petition.

5. It will be convenient to deal here with another grievance of the appellant that he was prejudiced in his trial by the refusal of the Tribunal to allow him an inspection of the marked copies of the voters' lists of Kishorepura and Rangabari polling stations. The order of the Tribunal (page 77) dated November 17, 1962, goes to show that the application for inspection was made after all the witnesses of the petitioner had been cross-examined. The Tribunal declined to allow an inspection of the marked lists until the witnesses of the appellant had also been examined, so that the appellant might not get an unfair advantage over the petitioner. From the marked copies of the lists it could be ascertained as to what electors had received ballot papers at a particular polling station, and in what order. The veracity of the statements of the witnesses who alleged that they voted at the election at a particular time and saw others entering into or coming out of the polling station near about that time could be tested with the help of the marked lists of the electors as the serial numbers of the ballot papers are noted in them against the name of each elector. As the petitioner had no opportunity of making use of these lists for leading his evidence, the Tribunal must have felt that the appellant should also not be given such an opportunity. The order of the Tribunal could not, in these circumstances, be said to be unfair. The Tribunal, it seems, allowed the inspection of the lists after the close of the evidence of the parties and itself made use of them in judging the evidence of the witnesses.

6. Coming now to the facts of the case, it is not disputed that truck No. R.J.R. 2326 belonged to one Hira Lal. It had been requisitioned by the Collector for election purposes. Sri Krishna Kumar asked Hiralal's uncle Lalchand to lend him a truck for use during the election and so he agreed to make available Hira Lal's truck if the Collector agreed to release it. Sri Krishna Kumar accordingly addressed an application (Ex. 1) to the Collector for the release of the truck and on that application an order of release was passed on the day on which it was made. A copy of the release order was subsequently sent to Sri Krishna Kumar but it appears from the evidence on the record that it was misdelivered. Sri Krishna Kumar alleged in his statement before the Tribunal that he left application (Ex. 1) in his election office and forgot about it, that it was presented in the office of the Collector by one Kanhaiyalal without his knowledge and that he was not aware of the release order. But the evidence of Sri Ratan Lal P.W. 49 shows that Sri Krishna Kumar personally took the application to the Collector and naturally he must have found out what order had been passed on it as it was made the same day. The allegation that the application was presented by Kanhaiya Lal has

undoubtedly been made up subsequently as it was not even put to Ratan Lal in his cross-examination. We are satisfied that the finding of the Tribunal that Sri Krishna Kumar got the truck released and was aware of that fact cannot be seriously challenged.

The case of the petitioner, as put forward in the petition, was that on 21st February, 1962, a day before the poll, Sri Krishna Kumar visited Lakhava, Anandpura, Shivpura, Amli, Rojhadi and Nayagaon villages in the company of Shankar Lal and told the electors that he would send a truck with the latter for conveying them to the polling station for casting their votes for him, that on 22nd February, 1962, Sri Shankar Lal brought voters from Lakava, Amli, Rajbadi and Nayagaon to Rangbari polling station and from Anandpura and Shivpura to Kishorepura polling station, in a truck, with the knowledge and consent of Sri Krishna Kumar, that Shankar Lal was a leading member of the Jan Sangh Party and that being a member of the Kota Municipal Council on the Jan Sangh ticket for the last one year he worked for Sri Krishna Kumar throughout the election campaign as his agent. It was also alleged that Lalchand was the brother-in-law of Sri Krishna Kumar. These allegations were denied by the appellant in his written statement. He alleged that Lalchand was not related to him at all, that he was a Congress worker who had supported the Congress candidate Sri R.C. Dhariwal who stood for election from the Digod Assembly Constituency in 1957 and that he again worked for him in the election of 1962 and therefore he declined to allow him the use of truck No. R.J.E. 2326. Sri Krishna Kurnar denied having visited Lakhava, Anandpura, Shivpura, Amli, Rejhadi and Nayagaon on 21 February, 1962, or having told the electors that he would send a truck with Shanker Lal for taking them to the polling stations. He asserted that Shanker Lal did not work for him in his election campaign as his agent and that he never requested him to act in furtherance of his election campaign. In the alternative, it was pleaded that if any corrupt practice was committed, it was without his consent or the consent of his election agent and was committed contrary to his instructions. The time at which the voters from different villages were alleged to have been taken to the different polling stations by the truck was not mentioned in the petition. The petitioner, however, led evidence to prove that the truck went round like this : One batch of voters was brought to Kishorepura polling station at 8 a.m. and the truck went away, after leaving them there, to Amli, Rajdadi and Nayagaon to pick up other voters. Those voters were taken to Rangbari polling station at 11 a.m. and the truck again came away after leaving them there. Then it went to village Lakhava and took voters from there to Rangbari polling station at 2 p.m. and remained there. It was seen by the Presiding Officer who

came near it and noted its number. According to one witness, the truck brought another batch of voters to Rangbari polling station at 3 p.m. Finally, it took some voters to Kishorepura polling station at about 5 p.m.

7. The Tribunal has found that some of these instances have not been proved and we shall deal with them first of all. (The Judgment then discussed the evidence in paras 7 and 8 and concurring with the Tribunal held that the transporting of the voters by Shankerlal in the Truck No. R.J.R. 2326 had been proved only in the case of Rangbari polling station at 2 P.M.)

9. We now proceed to examine the evidence of the witnesses of the petitioner who were produced to prove that Sri Krishna Kumar visited Lakhava, Nayagaon, Rejhadi and Anandpura villages on 21st February, 1962, in the evening, accompanied by Shankar Lal, and told the electors that Shankar Lal would take them to the polling station in a truck on the next day. They are –

Dhanna Lal P.W. 30) from village Nsyagaon
Ram Ratan P.W. 33)
Kajod P.W. 31)
Ram Lal P.W. 32) from village Rejhadi
Heera Lal P.W. 34)
Devia P.W. 35)from village Lakhava
Omkar P.W. 50) from village Anandpura
Abdula P.W. 53)

Issue No. 5 was framed by the Tribunal on this point which runs as follows : -

"Whether on the 21st February, 1962, the respondent along with Sri Shankar Lal visited villages named in para 1 of the Schedule A and instructed the voters that he would send truck along with Sri Shankar Lal for carrying them to the polling station to cast their votes for him ?"

The issue was not pressed before the Tribunal by the learned counsel for the petitioner.

The finding on this issue is recorded in the judgment of the Tribunal in the following words : -

"Learned counsel for the petitioner has laid emphasis on the implied consent of the respondent for the use of the truck R.J.R. 2326 by Sri Shankar Lal at Rangbari polling station and therefore has not pressed this issue before me. Even the evidence produced in support of this issue is far from conclusive. To cite an instance Sri. Dhanna Lal P.W. 30 has deposed that Sri Goyal (Krishna Kumar) and Shankar Lal came to their village in the morning one day before the poll while Sri Ram Ratan P.W. 33 has deposed that they came in the evening. I therefore decide this issue against the petitioner."

On behalf of the petitioner it has been argued before us that it was not open to the learned counsel conducting the petition before the Tribunal not to press any issue. For this argument reliance has been placed on *Kapildeo Singh v. Suraj Narain Singh*,¹⁹ and *Inamati Kallappa v. Basavaraj Ayyappa*,²⁰ On behalf of the appellant the decision in *K.C. Sharma v. Kishab Kumar*,²¹ has been referred to. We are of the opinion that if a petitioner does not press an issue at the time of arguments, that does not amount to a withdrawal or abandonment of a part of his claim. In the present case there was a trial of the issue inasmuch as both parties, adduced evidence in respect of it. It was only at the stage of arguments, that the petitioner's learned counsel did not press the issue. It is not suggested that this was due to any collusion between the petitioner and the appellant. It was therefore open to the petitioner not to press the issue before the Tribunal. Further, we think that as the issue was not pressed on behalf of the petitioner before the Tribunal, it is not open for him to reagitate it before this Court as it relates to a finding of fact. (The Judgment then discussed the evidence and proceeded :) For reasons given above, we are of the opinion that the Tribunal rightly held that the petitioner failed to establish this part of his case.

10. As has been shown, it has been established that truck No. R.J.R. 2326 was procured by Sri Krishna Kumar. There is no direct evidence to show that this was done with the intention of using the truck for conveying voters to any polling station. It may well be that the truck was procured for a lawful purpose and this inference is strengthened by the fact that Sri Krishna Kumar openly applied to the Collector for the release of the truck for his election campaign. Vehicles are needed by candidates for the transport of workers for propaganda and canvassing, as well as for taking camp

equipment etc., to and from the polling stations. But it has been proved that voters were conveyed in truck No. 2326 to Rangbari polling station by Shankar Lal at 2 p.m. on the day of poll. If it could further be proved that this was done with the consent of Sri Krishna Kumar, it would be reasonable to infer that he procured the truck for the conveyance of voters to that polling station. The Tribunal was of the opinion that this implied consent could be inferred from the mere fact that Shankar Lal, who transported the voters, was a member of the party which set up Sri Krishna Kumar as a candidate at the election and canvassed for him. We are, however, of the opinion that the Tribunal seriously erred in drawing such an inference.

11. In reaching its conclusion, the Tribunal purported to rely on the decisions in *Nani Gopal Swami v. Abdul Hamid*,²¹ and *Bhagwan Datta v. Ram Ratanji*.²² In the former case the following observations have been made,-

"The case, however, of an "agent", who has been proved to be regularly working for the candidate during the election, stands on a somewhat different footing. In his case, approval or consent to any act done by him to promote the candidate's election is implied. Where, therefore corrupt practice in the course of the election proceedings is attributed to an "agent", it raises a strong presumption that it was done at the instance or with the express or implied consent of the candidate himself. The candidate is himself vicariously responsible for the act and conduct of his "agent" during the election. The language of Sub-Section (2) of Section 100 strengthens the above inference."

12. An examination of the judgment shows that these observations were merely obiter. The decision was based on the finding that the publication which constituted the corrupt practice was made with the consent of the returned candidate. We are, however, unable to subscribe to the view that approval or consent of the candidate to a corrupt practice committed by the agent to promote his election prospects, is implied. In our opinion, it is not even correct to say that there is any presumption, either of law or of fact, that such an act is done at the instance of or with express or implied consent of the candidate. The drawing of any such presumption would be repugnant to the well established rule of practice that such proceedings are quasi-criminal in nature. Their Lordships of the Assam High Court have specifically stated that they had not laid down a rule of law different from that in AIR 1958 Assam 183. In that case it was proved that two of the agents of the Congress candidate procured motor vehicles for

the conveyance of electors to polling stations in an election run by the local Congress of which one of them was the President. But it appears that no such presumption was drawn by their Lordships in that case. Nor was it held that the candidate was vicariously responsible for the acts of the agents. It was held that there was no "definite evidence of consent" on the part of the candidate and the decision of the Tribunal setting aside the election was reversed. The case went up to the Supreme Court on special appeal but the decision was upheld in AIR 1961 SC 334. This aspect of the matter was brought to the notice of their Lordships as is clear from the following statement of facts at page 338,-

"The High Court as well as the election tribunal held that though Birendra Kumar Nath and Bholaram Sarkar might be deemed to be the agents of the successful candidates for purposes of election and though the tiring of mechanically propelled vehicles by the agents for conveyance of electors to polling booths had been proved, there was no proof that this was done with the consent, express or implied, of the successful candidates. The High Court pointed out that consent, express or implied of the candidates was necessary for purposes of Section 100(1)(b) and was of the view that on the facts proved in this case such consent could not be inferred and the circumstances did not convincingly lead to an inference that the corrupt practice in question was committed with the knowledge and consent of successful candidates."

13. The other decision in AIR 1960 SC 200 is distinguishable. That decision was given in 1956 and related to an election held in 1952 under the Representation of the People Act, 1951 as originally enacted, under the law as it then stood, an election was rendered void by a corrupt practice committed by an agent without the consent of the candidate. Bhagwan Datta was the parliamentary candidate from the Shahdol-Sidhi constituency on the Socialist party ticket, and one Achutanand was the assembly candidate of the same party. It was admitted that the workers did not canvass for any candidate by name but they canvassed for the party candidates generally. Bhagwan Datta had no workers of his own in his individual capacity. All the expenses in connection with the election campaign of the party candidates were met out of party fund. The return of election expenses of Bhagwan Datta showed the payment of some amount by him to the Socialist Party. It was held that Achutanand had two motor trucks on which he and his other workers had transported voters to the polling stations. On the basis of this evidence, the Tribunal came to the finding that Achutanand was

the agent of Bhagwan Datta within the meaning of Section 79(a) as it then stood. It having been proved that he had committed a major corrupt practice under Section 123(6) (as it then stood), the election of Bhagwan Datta to the Parliament was set aside. On special appeal by Bhagwan Datta, their Lordships of the Supreme Court considered the direct evidence bearing on the two points mentioned above and confirmed the findings. It was further observed –

"It is to be noticed that in the Act the word 'agent' has been defined in Section 79(a) as follows : -

" 'agent' includes an election agent, a polling agent and a counting agent and any person who, on the trial of an election petition or of an offence with respect to any election is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate." The question as to the limits of the doctrine of agency in election matters and the exact scope and effect of the statutory definition of 'agent' may require to be carefully considered by this Court when they become necessary in a proper case. These are important questions bearing on the whole structure of elections run on party lines and have not been adequately dealt with in this case. In the present case the finding arrived at by the Tribunal against the appellant in this behalf is based on clear evidence, which may properly form the basis of a positive finding of agency."

Their Lordships went on to observe that it was necessary to understand the system on which election campaign was conducted by the Socialist Party in that case and, after discussing the evidence of some witnesses on the point, they made the following observations –

"On this evidence it cannot be said that the Election Tribunal was not justified in holding that the carrying of the voters to the polling station in the trucks of Achutanamad was with the connivance of the appellant who was a party candidate. That by itself would be enough to bring his case within Section 123(6) of the Act. It is not unreasonable to impute to the candidate the knowledge of the work done by his party in this area and to impute the consequent connivance on his part. This appears from the fact that the return of the election expenses of the appellant at page 78 of the printed record shows the payment of some amount by the appellant to the Socialist Party for expenses and from the fact that the Appellant on the very evidence of his own witnesses

had no other independent workers of his own in this area.

We are, therefore, satisfied that the finding of the Election Tribunal in this behalf is also well-grounded."

The question of the candidate's connivance, it seems, was not material under the law as it then stood in a case where a corrupt practice was proved to have been committed by an agent. As it has been held that Achutanand was the agent of Bhagwan Datta and had committed the corrupt practice, that, by itself was sufficient to avoid the election.

14. The case before their Lordships is also distinguishable on facts inasmuch as in the present case there is no proof that Sri Krishna Kumar did not have any worker of his own in his individual capacity and that there was no canvassing, for any candidate by name. On the other hand, the petitioner himself led evidence to the effect that Krishna Kumar has taken round the various villages for personal canvassing and was introduced to the voters. Moreover, Sri Krishna Kumar has stated that his election office was separate from that of Sri Onkar Lal who contested the parliamentary election on the Jan Singh ticket. He has been corroborated on this point by Dr. Trilok Asnani D.W. 2. The facts of the present case are therefore different. We are accordingly of the opinion that knowledge of the acts of Shankar Lal cannot be imputed to Sri Krishna Kumar even if it is assumed that Shankar Lal was his agent.

15. We may here mention in passing that the observation made by the Tribunal in its judgment that any person who acts in furtherance of the prospects of the candidate's election may be regarded to be an agent of the candidate, is not correct. As we have already pointed out, the expression 'agent' has been defined in the Explanation to Section 123 as including an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate. Any person acting in furtherance of the prospects of the candidate's election cannot thus be regarded as an agent of the candidate unless it is proved that in so acting he had the consent of the candidate. The consent may, of course, be either express or implied.

16. It would follow that all members of a political party cannot be regarded as agents of the candidate set up by that party unless it is shown that they had acted in furtherance of his prospects with his consent. In this connection the following decisions may be referred to : -

AIR 1961 Patna 41; *Dina Nath v. Peer Mubarak*,²³ *Chenna Byre v. S.R. Ramiah*,²⁴ The Tribunal has observed that as the appellant had procured truck No. R.J.R. 2326 Shankar Lal could not have used it without his consent. From this circumstance, however, it cannot be inferred that Shankar Lal could not have used the truck for transporting the voters without the consent of Sri Krishna Kumar. The possibility that Sri Krishna Kumar gave the truck to Shankar Lal for his own use and for the conveyance of the other workers for propaganda and canvassing, as well as for the transport of the camp equipment to and from the polling stations, and that Shankar Lal used it for conveying voters without his knowledge or consent, cannot be ruled out. In our opinion, no fact or circumstance has been proved from which the implied consent of Sri Krishna Kumar to the use of the truck for the conveyance of the voters could have been inferred.

17. The learned counsel for the petitioner has relied on the decision in AIR 1960 SC 770 to support his argument that from a single instance of transport of voters by Shankar Lal, it can be inferred that Sri Krishna Kumar had consented to as doing so. We have carefully perused the decision, but we find that it has been based on the finding of fact that the conveyance in question, in which voters were transported, was hired by the returned candidate himself for the specific purpose of taking the voters to the polling station.

18. Another decision on which the petitioner's learned counsel has placed reliance is 21 Ele LR 1 (AP). That case is also distinguishable on facts. It was found in it that voters were carried in a large number of rickshaws and two cars. In the account book maintained by a worker belonging to the party of the returned candidate, the expenses for hiring 30 rickshaws had been entered. Further, it was found that one taxi was hired by the same worker and a car was procured on behalf of the party of the returned candidate from a sugar factory for carrying voters to the polling stations. From the numerous instances in which voters were transported by the workers of the party which had set up the returned candidate, and from, the other circumstances appearing in the case, the High Court was satisfied that the returned candidate allowed the hiring or procuring of the rickshaws and cars in order to facilitate his success in the election, and, accordingly, inferred that this was done with his consent.

19. We shall now refer some cases cited on behalf of the appellant. In AIR 1958 Rajasthan 324 the finding of this Court was that voters were carried to 7 polling stations, on 5 different dates, in trucks belonging mostly to the workers of the returned candidate. From these facts, the consent of the returned candidate to the transport of voters by mechanically propelled vehicles was inferred as the voters were also carried on successive dates of polling of which he could not have been unaware, and it was found that he did nothing to stop it. When the case went up in appeal *Sheopat Singh v. Harish Chandra*, ²⁵ it was argued on behalf of Sheopat Singh that consent to an act implied that it was given before it was done, but that knowledge of an act could mean that it was acquired after the act was done and that, therefore, knowledge could not in itself be equated with consent. In reply to this argument their Lordships of the Supreme Court observed,

"There would have been force in this argument if all that was established was a stray act or even a number of them committed on one day. But here, the acts were numerous and extended over a number of days From the above facts, it is not an unreasonable inference to draw that all the above acts were committed of haphazard but by design, and that the appellant must have consented to them."

20. Another decision relied upon is that in AIR 1958 Assam 183 to which we have already referred. The election campaign of the returned candidate had been carried out by the local congress of which Bholaram Sarkar was the President. This Bholaram Sarkar owned a bus in which voters were carried to the polling station under his orders. Voters were also carried in other trucks which were specially requisitioned for election work by Birendra Kumar Nath who was in charge of the electioneering campaign on behalf of the Congress. Both Bholaram Sarkar and Birendra Kumar Nath were held to be the agents of the returned candidate for purposes of the election. There was, however, no definite evidence to show that the returned candidate had consented to the conveyance of voters in trucks, on these facts, it was held that the circumstances proved in the case did not convincingly lead to an inference that the corrupt practices in question were committed with the knowledge and consent of the returned candidate." The decision was affirmed by their Lordships of the Supreme Court in appeal in AIR 1961 SC 334, which has also been referred to earlier.

21. In AIR 1961 Patna 41 it was held that a party candidate cannot be held responsible for all that the members of his party do in furtherance of the interest of the party

organization as a whole. In that case voters were conveyed in motor trucks by Naval Kishore Singh, Mathura Prasad Singh and Judhistir Prasad Singh who were all workers of the candidate. Mathura Prasad Singh was also the uncle of the candidate. Nawal Kishore Singh was entrusted with cash for defraying election expenses and did canvassing also. Naval Kishore Singh alone was however, held to be the agent of the candidate and not Mathura Prasad Singh or Judhistir Prasad Singh. Further, the consent of the candidate to the conveyance of voters was not inferred.

22. In 20 Ele LR 221 (All) it was proved that the canvassers and workers of a political party, who worked for promoting the election prospects of the candidate with his knowledge and consent, committed corrupt practices in the interest of the candidate. They were all held to be the agents of the candidate but the consent of the latter to the commission of the corrupt practices was not inferred.

23. It will thus be seen that the cases referred to by the Tribunal or relied upon by the respondent cannot persuade us to hold that Shankar Lal conveyed voters to Rangbari polling station at 2 p.m. in truck No. 2326 with the consent of Sri Krishna Kumar even if we assume that Shankar Lal was his agent. On the contrary, the decisions referred to on behalf of the appellant lead us to the conclusion that no such consent can be inferred in the circumstances of the present case. We have already held above that an election cannot be declared void on the ground of a corrupt practice committed by an agent unless it is further shown that the act was done with the consent of the returned candidate or that the result of the election was materially affected thereby. We have also pointed out that it was not the case of the petitioner that the result of the election was materially affected by the corrupt practice. The difference in the votes polled by Sri Krishna Kumar and the next candidate polling tile highest number of votes was more than 2000. Not more than 25 voters were transported to Rangbari polling station at 2 p.m. by the truck. Even if all these votes are excluded, the result is not materially affected.

24. In the result, we allow the appeal and set aside the decision of the Tribunal declaring the election of Sri Krishna Kumar to be void and holding him guilty of the corrupt practice specified in Section 123(5). We award costs of this appeal to the appellant against the petitioner-respondent who contested this appeal. We assess counsel's fee at Rs. 500/-

25. Further, we direct that the substance of this decision shall be communicated to the Election Commission and the Speaker of the Rajasthan Legislative Assembly forthwith and an authenticated copy of the judgment shall be sent to the Election Commission as required by Section 116-A(6).

Appeal allowed.

Cases Referred.

1. AIR 1961 Patna 41 : 21 Ele LR 64
2. AIR 1961 All356
3. 17 Ele LR 218 (Bom)
4. AIR 1959 MadPra 226
5. AIR 1961 Ass 81
6. 21 Ele LR 1 (AP)
7. 12 Ele LR 461: AIR 1957 SC 444
8. AIR 1958 Raj 324
9. 20 Ele LR 221 (All)
10. AIR 1960 Bom 249
11. AIR 1958 Ass183
12. AIR 1961 SC 334
13. , 21 Ele LR 247 (Mys)
14. AIR 1963 Ker 18
15. (Misc. J.C. No. 36 of 1954 D/-12-4-1955 (Pat))
16. AIR 1961 Pat 189
17. AIR 1959 Mad 288
18. AIR 1960 SC 770
19. AIR 1959 Pat 250
20. AIR 1958 SC 698
21. AIR 1959 Ass 200
22. AIR 1960 SC 200
23. AIR 1962 Jam and Kash 28
24. 20 Ele LR 37 (Mys); AIR 1960 Bom 249
25. AIR 1960 SC 1217