

PETITIONER:
BABURAO BAGAJI KAREMORE & ORS.

Vs.

RESPONDENT:
GOVIND & OTHERS

DATE OF JUDGMENT 27/11/1973

BENCH:
REDDY, P. JAGANMOHAN
BENCH:
REDDY, P. JAGANMOHAN
GOSWAMI, P.K.

CITATION:
1974 AIR 405 1974 SCR (2) 429
1974 SCC (3) 719
CITATOR INFO :
E 1975 SC 290 (3)
MV 1975 SC1417 (35)
RF 1976 SC1187 (31)
F 1976 SC1599 (32)

ACT:
Representation of the People Act, 1951--S. 100 read with
sub-secs. 1, 2, 3, 3A, 4,5 and 6 of s. 123-- Corrupt
practice--Scope of.

HEADNOTE:

The first respondent was declared elected to the Maharashtra Legislative Assembly getting the highest number of votes. His election was challenged by 4 electors on various grounds of corrupt practices under s. 100 read with sub-sections 1, 2, 3, 3A, 4, 5, and 6 of s. 123 and for contravention of the provisions of s. 127-A of the Representation of the People Act, 1951.

It was alleged in the petition that the first respondent did not keep separate and correct account of all expenditure incurred and authorised in connection with his election, nor were his accounts kept in accordance with s. 77 of the Act read with Rule 86 of the Conduct of Election Rules. He did not obtain vouchers for every item of expenditure incurred etc., as prescribed by s. 77 of the Rules framed thereunder. He suppressed many items of expenditure which were in excess of the authorised amount of Rs. 12,000/-. Secondly, it was alleged by the petitioners that in an election meeting held on February 18, 1972, the agent who was an active supporter of the first respondent, made a false statement of fact in relation to the personal character and conduct of respondent no. 2, as well as petitioner No. 1. It was alleged that he made a statement in his speech in that meeting that respondent no. 2 secured the withdrawal of the petitioner no. 1 by giving him a bribe of Rs. 60,000.

According to the petitioners, the first respondent got the said statement published in a weekly dated 23rd February 1972, and the statement was published with the consent of the first respondent as his election agent. Further, it was alleged that he printed election pamphlets and posters in which he appealed to the voters on the grounds of caste and community. The petitioners gave instances to show how the

propaganda was carried on the by issuing pamphlets containing false statement of facts and which the first respondent or its maker either believed to be false or did not believe to be true.

The first respondent denied that he made any statement in relation to the personal character or conduct of the second respondent, nor did his election agent or workers with his consent, make any such statements nor could it be said that any of the statements were reasonably calculated to prejudice the prospect of his opponent. It was also averred that the expenditure shown by him in the return of his expenses was correct and the return was in accordance with law and the rules framed thereunder ; that there was no contravention of s. 77 of the Act read with rule 86 of the Rules and denied that he incurred expenditure much more than Rs. 12,000/as alleged.

Although the third respondent filed his written statement, practically admitting all the allegations in the petitions against the 1st respondent, subsequently he filed an application for permission to withdraw the power of his counsel one Mr. Deshmukh through whom he filed the written statement. Deshmukh was permitted to withdraw his written statement. Thereafter, the third respondent did not take any apart proceedings. Respondent No. 4 neither appeared nor filed his written statement. Later, the trial proceeded ex-parte against both response Nos. 3 and 4. Respondent No. 2 though represented, did not file his written statement. On these pleadings, as many as 31 issues were framed by the High Court of which issue no. 1 related to a preliminary objection that the petition was liable to be rejected for non-joinder of all the persons who had filed their nomination papers for the election. The High Court decided the 1st issue against the first respondent, but all other issues were held not proved by the petitioners and therefore, the petition was dismissed with costs. Before this Court, the appellants restricted their case to the three heads of corrupt practices viz.(1) under s.

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123(4) of the Act, for Publication of false statement of facts in relation to personal character or conduct of the candidate or in relation to the candidature or its withdrawal; (2) under S. 123(6) for incurring or authorising expenditure in contravention of S. 77 of the Act and (3) under S. 123(3) for making an appeal on the ground of caste or community by printing, publishing and distributing pamphlets Ex. 42 and 43.

Dismissing the appeal,

HELD : (1) Taking the last head under issues 19 and 21 which relate to two pamphlets, Ex. 42 and 43 in which a communal appeal had been made to the electors to vote for the 1st respondent there is no doubt that Ex. 42 and 43 made a communal appeal to Kunbi and Teli voters to vote for respondent no. 1. If these pamphlets are proved to have been printed, published and distributed by the 1st respondent, then he will be guilty of corrupt Practice within the meaning of sub.S. (3) of S. 123 of the Act. The High Court found that they were neither printed, published or distributed by or on behalf of the first respondent nor by his election agent or by his workers with his consent or the consent of his election agent. On a perusal of the evidence as a whole and having considered the contentions advanced by both the parties, it cannot be said that the findings of the learned trial judge that Exts. 42 and 43 were not Printed. or published or distributed before the date of

polling, is vitiated and on evidence, this finding is clearly sustainable.

(ii) As regards the second head which relates to corrupt practice under Sub-s. (6) of Sec. 123 of the Act for incurring or authorising expenditure in contravention of S. 77, the learned trial judge was of the view that it had not been shown how there was non-compliance of S. 77 read with S. 86 and also no arguments were advanced on this point. Every item of expenditure that has been shown in the return has been supported by the original voucher which was not challenged. Nor anything had been brought to the notice of the Court to show that there had been any averment in the pleading that the accounts filed were not a true copy of the accounts maintained. Therefore, the requirements of ss. 77

JUDGMENT:

(iii) As regards addition of Rs. 2992-95 to the amount of Rs. 7,499-11 found by the High Court, it can be pointed out that there is no justification in adding this amount to the total because Exts. 86 ad 87 were given on behalf of Jan Singh and Congress parties, whose names also had been written on those chits by the persons signing them at the petrol pump. Further, in respect of the expenditure incurred in illuminating the truck and hiring the tractor, the evidence so adduced by the witnesses were rightly disbelieved by the trial court. The evidence in connection with hiring of cycles was also not reliable. Similarly the trial Court had rightly rejected the evidence in connection with Kirti Hotel expenses of Rs 1,959/-. As regards the amounts paid to Laxmi Litho works for printing etc. the High Court was right when it said that Ex. 62 was a consolidated receipt of Rs. 765/- and this amount had been included in the return of election expenses. Similarly, the High Court had rightly rejected the allegation of certain petrol expenses incurred by the 1st respondent. A sum of Rs. 1,938-50 however, is not accounted for and in absence of satisfactory explanation, this amount has to be taken as election expenses and must, therefore, be added.

(iv) Even if the contention of the petitioner is accepted that Rs. 1,939/- incurred by Bhan dalal for which no account was given, Rs. 100/- paid towards the salary of Hari, the driver, Rs. 695/- in respect of Sakhare Rs. 192-40 or say Rs. 192/- in respect of petrol, Rs. 600/- regarding hire charges of a taxi, hired by the father-in-law of the 1st respondent and Rs. 129/- incurred for Shende, respondent no. 1, the several items will amount to Rs. 3,655/-. If these amounts are added to the election expenses already shown, it would come to Rs. 11,154. Even on this seeking, the election expenses are well within the limit of Rs. 12,000/- and consequently the appellant's charge against the 1st respondent for committing corrupt practice under Sub-s. (6) of s. 123 of the Act is not established.

(v) As regards the statement made by a protagonist of a separate Vidarbha with the consent of the 1st respondent that the second respondent paid a bribe of Rs. 60,000/- to the first respondent to withdraw from the contest and the allegation that the said false statement appeared in a paper with the consent of the 1st respondent, the 1st respondent denied that the above statement was ever made or that

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it was made in his presence or with his consent, nor did he have any knowledge that it was published paper with this consent or that the paper was acting as his agent. Further, the trial court held that the witnesses who gave evidence in support of the allegations were not present at the meeting. it was not proved that the first respondent ever consented

at the second respondent to make the alleged false statement. The trial court, therefore, rightly rejected the allegations.

(vi) In examining the question whether the allegations about the commission of corrupt practices by a returned candidate, the Court has to keep in view that the allegations about the commission of corrupt practices are of a quasi-criminal nature, the proof whereof has a double consequence of not only setting aside the election of the returned candidate, but also imposing subsequent disqualification debarring him from becoming a candidate at any election for a period of 6 years. Inasmuch as the charge is a serious one and is of a quasi-criminal nature, the onus of Proving the essential ingredients prescribed by sub-s.(4) of s. 123 is on the person who allege them.

(vii) In the present case, from the evidence, it is not proved that the offending statement was made by Dhote an agent of respondent no 1, in the meeting or that it was made with the consent of respondent no. 1, The appellants have not established the corrupt practice under this head also by any credible evidence.

(viii) As regards the costs "incurred" in section 96 and 119 of the Act, it means what is actually spent,. Accordingly, in the present case, it was incumbent in the High Court to award costs to the first respondent which costs he was entitled to if he could show that he had incurred them. Admittedly, there was no proof of payment of any fee to counsel by the first respondent. As such, he will not be entitled to the amount of Rs.400/- per diem awarded by the High Court. The first respondent cannot be allowed to file any fee certificate before this Court since he had not done earlier.

Laxminarayan v. Returning Officer, C. A. No. 1014 of 1972 decided on September 28, 1973, referred to.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 901 of 1973. Appeal under Section 116A of the Representation of the People Act 1957 from the judgment and order dated the 12th February, 1973 of the High Court at Bombay, Nagpur Bench, Nagpur, in Election Petition No. 2 of 1972.

K. H. Deshpande, A. Shelat, N. M. Ghatate and S. Balakrishnan, for the appellants.

S. N. Kherdekar, V. S. Sirpurkar, K. V. Sirpurkar, C. K. Ratnaparkhi and A. G. Ratnaparkhi, for respondent no. 1. Gulab Rao Patel and Shiv Pujan Singh, for respondent Nos. 2-4.

The Judgment of the Court was delivered by JAGANMOHAN REDDY, J.-The first respondent Govind Ramji Shende was declared elected as a member of the Maharashtra Legislative Assembly from Bhandara general constituency on March 11, 1972. Fifteen persons had filed their nomination papers, before the last date for filing the nominations on February 8, 1972. These nomination papers were duly scrutinised on February 9, 1972 and accepted as valid. By the date fixed for withdrawal on February 11, 1972, eleven persons who had filed their nominations withdrew their candidature leaving only four persons to contest the election. Of these the first respondent contested the election as an independent

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candidate, the second respondent Tirpude contested on Congress (R) ticket, the third respondent contested as a

Republican Party (Khobragade Group) and the fourth respondent as a Republican Party (Gaikwad Group) candidates. These candidates polled respectively 41,511; 24,224; 3,585; and 564 votes. As we have said earlier, the first respondent was declared elected as he had polled the highest number of votes and with a substantial majority of 17,287 votes.

Four electors from the constituency, of whom the first petitioner Baburao Bagaji Karemore was one, filed a joint petition challenging the election of the first respondent on various grounds of corrupt practices under s. 100 read with sub-ss. (1), (2), (3), (3A), (4), (5) and (6) of s. 123 and for contravention of the provisions of s. 127A of the Representation of the People Act, 1951-hereinafter called 'the Act'. It was alleged in the petition that the first respondent did not keep separate and correct account of all the expenditure incurred and authorised in connection with his election between the date of the publication of the notification of holding the election and the date of the declaration of the results thereof. Nor were these accounts kept in accordance with the provisions of s. 77 of the Act read with r. 86 of the Conduct of Election Rules-hereinafter called 'the Rules' by not showing distinctly the date on which the expenditure was incurred or authorised, the nature of the expenditure, the amount of the expenditure, i.e., the amount paid and the amount outstanding, the date of payment, the names and addresses of payers, the serial number of bills and the names and addresses of the persons to whom outstanding are payable. It is also alleged that the first respondent has not obtained a voucher for every item of expenditure and the vouchers are not arranged serially in chronological order according to the date of payment as prescribed by s. 77 of the Act and the Rules framed thereunder. Although the outside limit of the expenditure which a candidate at an election to the Legislative Assembly was Rs. 12,000/- the first respondent suppressed many items of expenditure which were in excess of that amount such as expenditure on items relating to petrol, vehicles, printing, painting, loudspeaker and generator, hire charges of cycles, badges, serving of food and refreshment, processions and public meetings, bands, construction of booths, payment made to workers, office establishment etc. Apart from these suppressions, it is also alleged that M. T. Dalal 1 R. W. 1, and Shivshankar Ninave 1 R. W. 10 who were active agents of the first respondent were carrying on systematic propaganda on his behalf and they were also incurring expenditure with the consent of the first respondent as well as his election agent Bhole and were authorised to incur expenditure on behalf of the first respondent. Apart from these two persons it was also alleged that Kharabe and Wagner, father-in-law and maternal uncle respectively of the first respondent and Ramaji Gaidhane who were actually carrying on a systematic election campaign and propaganda on behalf of the first respondent also incurred expenses on various items with the consent and authority of the first respondent and his election agent Bhole, which expenses were not shown in the return of election expenditure submitted by the

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first respondent. Several other instances were also given by the petitioners and it was alleged that if all these items of expenditure were included in the return of expenditure, the limit of Rs. 12,000/would exceed.

Secondly, it was alleged by the petitioners that in an election meeting held at Shahid Maidan of Bhandara on February 18, 1972 on behalf of the first respondent

Jambuwantao Dhote, who belonged to the Maha Vidarbha Sangharash Samiti and was actively supporting the candidature of the first respondent, made a false statement of fact which he himself as well as the first respondent either believed to be false or did not believe it to be true in relation to the personal character and conduct of respondent No. 2 Tirpude as well as petitioner No. 1 Karemore. The said Jambuwantao Dhote is alleged to have made a statement in his speech in that meeting that the respondent No. 2 (Tirpude) secured the withdrawal of the petitioner No. 1 (Karemore) by giving him a bribe of Rs. 60,000/-. It was also alleged that these false statements were, made by Dhote in the presence of the first respondent and with his consent and that the first respondent was present in that meeting when Dhote delivered the speech and also spoke subsequently in the same meeting. According to the petitioners, the first respondent got the said statement published in the Bhandara Times, a weekly, in its issue dated February 23, 1972, which newspaper was for all practical purposes acting as his agent. At any rate, the statement was published with the consent of the first respondent and his election agent.

It was again alleged that the first respondent also got printed or caused to be printed election pamphlets and posters in which appeal to the voters on the grounds of caste and community was made. In this connection it was averred that the electors were asked to refrain from voting in favour of respondent No. 2 (Tirpude) and other candidates on the ground of their race, caste and community and were asked to vote for himself on the ground of his race, caste and community with a view to further the prospects of his election and to prejudicially affect the election of other contesting candidates. The petitioners gave instances to show how this propaganda was carried on by issuing pamphlets by making it appear to the voters by statements of facts which were false and which the first respondent or the maker either believed to be false or did not believe to be true.

The first respondent denied that he made any statements in relation to the personal character or conduct of the second respondent Tirpude, nor did his election agent or his workers with his consent or that of his election agent make any such statements, nor could it be said that any of those statements were reasonably calculated to prejudice the prospects of Tirpude's election. While admitting that Bhole P. W. 40 was his election agent, he denied that he himself or his election agent Bhole or any other person with his consent or that of his election agent committed any of the corrupt practices alleged in the petition, or that the alleged corrupt practices had materially affected the result of the election, It was also averred that the expenditure

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shown by him in the return of expenses was correct and the return was in accordance with law and the Rules framed in that behalf; that there was no contravention of the provisions of s. 77 of the Act read with r. 86 of the Rules and denied that he incurred expenditure much more than Rs. 12,000/- as alleged in the petition. It was also denied that M. T. Dalal 1 R. W. 1 and Shivshankar Ninave 1 R.W. 10 were his active agents and were carrying out systematic propaganda on his behalf or were incurring expenditure with his consent as well as of his election agent B.H. Bhole. All these all negations with respect to the part said to have been played by M. T. Dalal also known as Bhau Dalal and Shivshankar Ninave were denied. The first respondent, however, admitted that Bhau Dalal was only authorised to

purchase petrol and all the expenses incurred by him had been shown in the return of expenses but denied that Kharabe, Parashram Waghaya and Ramaji Gaidhane were actively carrying on a systematic election campaign and propaganda on his behalf or that they incurred expenditure on various items with his consent and authority or with the consent of his election agent Bhole. It was submitted that if these persons did incur any expenses it was on their own account and as friends or relatives, but he had not consented to their incurring the same nor did he authorise them to incur such expenses. In so far as the use of cycles, bands, loudspeakers, petromax and jeeps was concerned, he denied that all of them were hired by him or his election agent or with his consent or with the consent, of his election agent. Similarly the various other items of expenditure, besides those shown by him in the return of expenses, were also denied as having been incurred during his election propaganda either by him or his election agent or by any person with the consent of his election agent. All other allegations in respect of providing free conveyance for carrying the voters to polling booths or of having asked the voters to refrain from voting in favour of Tirpude respondent No. 2, or the other candidates on the ground of caste and community or in having asked the voters to vote for himself on the ground of his race, caste and community, or of having Promoted or attempting to promote feelings of class or religious hatred or of having printed and distributed the several pamphlets mentioned in paras 35 to 38 of the petition were denied. Nor was any of the alleged acts indulged in to further the prospects of his election and to prejudicially affect the election of the other contesting candidates. The averment that he and his election agent made allegations against the personal character or conduct of Tirpude respondent No. 2 were also likewise denied.

The first respondent further denied knowledge of the public meeting held on February 18, 1972, at Bhandara where Jambuwant Rao Dhote is alleged to have made a speech. He denied that any statement relating to the personal character and conduct of Tirpude (second respondent) as well as Karemore (first petitioner) was made either by Jambuwant Rao Dhote or by him or that those statements were made knowing them to be false or not believing them to be true. He denied all knowledge about Jambuwant Rao Dhote having made any statement assailing the conduct and character of the rival candidate Tirpude. He denied that he was present at the said meeting

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wherein Dhote is alleged to have delivered the speech or that he spoke in the said meeting. He also denied that the Bhandara Times, a weekly published at Bhandara was making a propaganda on his behalf or that the said weekly was acting as his agent. Accordingly he denied committing any corrupt practice within the meaning of s. 123 (1), (2), (3), (3A), (4), (5) and (6) of the Act.

Shende also denied that he got printed or caused to be printed election pamphlets and posters contrary to the provisions of s. 127-A of the Act nor did he make any appeal on the ground of caste and community and exploited the communal sentiments or appealed to the voters to refrain from voting for the other candidates belonging to the, scheduled caste.

At this stage we may point out that though the third respondent filed his written statement practically admitting all the allegations in the petition against the first

respondent, subsequently he filed an application that he be permitted to withdraw the power of his counsel A. M. Deshmukh through whom the written statement was filed and also to withdraw his written statement. A. M. Deshmukh was permitted to withdraw his power from the case, but the third respondent was not permitted to withdraw his written statement. Thereafter the third respondent did not take any part in the proceedings. Respondent No. 4 neither appeared nor filed his written statement. Consequently the trial proceeded ex parte against both respondents Nos. 3 and 4. Respondent No. 2 though represented did not file his written statement,

On these pleadings as many as 31 Issues were framed by the High Court, of which Issue No. 1 related to a preliminary objection that the petition was liable to be rejected for non-joinder of all the persons who had filed their nomination papers for the election. The High Court decided this issue against the first respondent, but all other issues were held not proved by the petitioners and consequently the petition was dismissed with costs of the first respondent together with the counsel's fee of Rs. 14,400/-. As the first respondent was represented by more than two counsel, and as there were 36 effective hearings courser's fees where the first respondent was represented by more than two counsel was assessed at Rs. 400/- per effective hearing, and where only one counsel represented him it was assessed at Rs. 250/- per effective hearing. Respondent No. 2 was not awarded any costs as he was held to be colluding with the petitioners who in fact were espousing his cause. Respondents Nos. 3 and 4 were also not awarded any costs as they were 'ex parte'. The petitioners were directed to bear their own costs.

In this appeal the learned Advocate for the appellants at the very outset indicated that the appellants are restricting their case to the three heads of corrupt practices, namely :-

1. Under s. 123(4) of the Act for publication of false statements of fact in relation to personal character or conduct of the candidate or in relation to the candidature or its withdrawal.

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2. Under s. 123(6) for incurring or authorizing expenditure in contravention of s. 77 of the Act.

3. Under s. 123(3) for making an appeal on the ground of caste or community by printing, publishing and distributing pamphlets Exts. 42 & 43.

issues under the first head are as follows

- 23 (a) Did the respondent no. 1 make statements of facts in relation to personal character or conduct of the contesting candidate N. K. Tirpude by himself, by his election agent or his workers and agents with his consent and that of his election agent ?

- (b) -Were these statements false and were believed by the respondent no. 1 or his workers to be false and not believed to be true ?

- (c) -Were these statements reasonably circulated to prejudice the prospects of the election of Tirpude ?

The finding of the High Court on all these Issues was in the negative.

26 (a) Did Jambawantrao Dhote address an election meeting on 18-2-1972 at Shahid Maidan, Bhandara ?

(b) -Did he in that meeting make a statement of fact in relation to the personal character and conduct of Tirpude and Karemore ?

(c) -Was such statement false to the knowledge of the maker as well as the respondent n. 1?

(d) -Did Dhote in his speech make a statement that Tirpude secured the withdrawal of Karemore by giving him a bribe of Rs. 60,000/- and was this a false statement ?

(e) -Was this statement made in the presence of the respondent no. 1 with his consent ?

(f) Was the statement published in the Bhandara Times purported to have been made by Dhote, published with the consent of the respondent no. 1 and his election agent ?

(g) -Was the Bhandara Times acting as the agent of the respondent no. 1 ?

The High Court though it held on issue No. 26 (a) that such a meeting was held at Bhandara found in respect of issues 26 (b) to (g) that they were not proved.

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Issues under the second head are as follows :

2.-Did the respondent no. 1 or his election agent B. H. Bhole and other persons with the consent of the respondent no. 1 Shende and his election agent commit acts enumerated hereunder :

(a) (i) Incurring or authorising of expenditure in contravention of section 77 of the Representation of the People Act ?

(ii) Not keeping the account as per provisions of section 77 read with rule 86 of the Conduct of Election Rules ?

(iii) Not arranging serially in chronological order the vouchers according to the date of payment as prescribed by section 77 and the Rules framed thereunder.

(d) -Did the respondent no. 1 take out a procession on 1-3-72 accompanied by loudspeaker, band, tube lights, petromax etc. and incur expenditure therefore through himself or his election agents and were not accounted for in the return ?

The finding of the High Court on issue 2 (a) (i) to (iii) was in the negative and that on issue 2 (d) was that expenses for the procession dated March 1, 1972 have been accounted for in the return.

3. Did the respondent no. 1 take cycles on hire as under

(d) 15 cycles for 20 days at the rate of Rs. 1.50 per day from Fakruddin Patel of Chhota Bazar, Bhandara?

The High Court found this. issue not proved.

4. (b) Did the workers of the respondent no. 1 take their meals at the cost of the respondent no. 1 at Kirti Boarding and Lodging Hotel, Bhandara ?

(c) Did the respondent no. 1 incur and expenditure of about Rs. 2,000/- on the meals

and refreshment of these workers ?

(d) Did the respondent no. 1 incur and expenditure at the Kirti Hotel of Rs. 630/- between 10-2-72 to 18-2-72, Rs. 715/- between 19-2-72 to 29-2-72, Rs. 650.55 between 1-3-72 to 6-3-72 ?

(e) Was this amount paid by the respondent no. 1 through Sheoshankar Ninave ?

Was this expenditure incurred by Ninave with the consent and authorisation of the returned candidate Shende or his election agent ?

The finding of the High Court on all these issues was in the negative.

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5. (a) Did the respondent no. 1 hire jeeps, Ambassador cars, taxies, tempos and tractors for the purposes of campaign in the constituency bearing nos. 1 MPC-9029-Jeep, (2) MRG-98-Taxi, (3) MHC- 191 taxi, (4) (4) MRG-2216-Car, (5) MHN-4391-Car, (66) BYJ-5107-Car (7) MHG-3105- Truck, (8) MHG-3638-Tractor, (9) MHX-5080-Tractor, (10) MHG-2902-Tempo and (11) MHG-143-

(b) Were the above vehicles taken on hire by the respondent Taxi ? no.1 and used by him and his workers and his election agent for the purposes of election propaganda?

(c) Did the workers of the respondent no. 1 use those vehicles with his consent or his election agent ?

The finding on issue 5(a) was that only Taxi No. MHG-191 was hired but not by the respondent no. 1 ; finding on issue 5(b) was that Taxi No. MHG-191 was used by the workers of the respondent no. 1 for the purpose of election propaganda and the finding on issue 5(c) was in the negative.

7. (d) Did the respondent no. 1 incur an expenditure of Rs. 8,000/ for the purchase of petrol and diesel oil for cars, jeeps, taxies, trucks and tractors from various petrol pumps, such as Gurjar Brothers Petrol Pumps, Bhandara, Petro] Pump of Sale and Purchase Society at Tumsar and from Kulwal and Sons of Tumsar for the purposes of the several vehicles used by him for an election propaganda, and

(e) Was this expenditure incurred by him or his workers with his consent or with the consent of his election agent ?

(f) Did the respondent no. 1 purchase petrol and diesel oil, through M. T. Dalal, Kharabe, Ninave and Saxena ?

(g) Were the charges for the purchase of this petrol and diesel actually incurred by the respondent no. 1 through his workers ?

(h) Did the respondent no. 1 take camouflage receipts in the name of Jana Sangh and Congress (0) parties to conceal the true nature of the transactions, though the expenditure, was incurred and authorised by him ?

The finding on issue 7(d) was that petrol oil etc. worth Rs. 2,992-95 was purchased from Gurjar Brothers in addition to the amount shown in the return of expenses ; the finding

on 7(e), (f) and (g) was in the affirmative as regards the total amount of Rs. 3,970-35; the finding on 7(h) was in the negative.

11. (a) Did the respondent no. 1 incur expenditure of more than Rs. 6,000/- for the pay of 10 drivers and for the meals, tea and refreshments for the workers at Panchsheel Lodge, Bhandara, Baba Rup Lodge, Bada Bazar, Bandara and Kirti Hotel, Bhandara ?

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(b) Was this expenditure incurred by the respondent, no. 1 personally as well as by his election agent and other workers: with the consent of the respondent no. 1 or his election agent at various places throughout the constituency, including Mohadi, Warthi, Bhandara, Shahpur and Kardi ?

The finding on issue 11(a) is that it is not proved except to the extent of Rs. 230-60 and on (b) that it does not arise except for Rs. 230-60.

14. (d) Did the respondent no. 1 get prepared printed.

posters in various sizes and got printed badges in 3 varieties of about 10,000 in number ?

(e) Did he incur an expenditure of Rs. 8,000/- for this purpose ?

(f) Did the respondent no. 1 incur an expenditure of Rs. 800 for preparing stencils for wall paintings and for painting the walls through paid workers at different places like Bhandara, Mohadi, Eklari, Warthi, Shahpur, Dhargaon, Dardha, Karadhi, Mundri, etc. ?

The finding of the High Court on issue 14(d) is that respondent no. 1 got printed from Laxmi Litho Works 5500 posters in two sizes and 25000 badges but the expenses have been accounted for ; on issue 14(e) the finding is that respondent no. 1 incurred expenditure of Rs. 765/- on printing of posters and badges which are accounted for and on issue 14(f) the finding is that besides what has been stated in the return, respondent no. 1 did not incur any more expenditure.

15. (a) Did the respondent no. 1 get more than lakhs of copies of pamphlets and incurred thereon an amount of Rs. 1,000/- ?

(b) Did the respondent no. 1 get printed and published the pamphlets such as (1) Lok Shikshan Karita Mat Patrika, (2) Naya Yuvkanche Awahan, (3) Nimra Nivedan, (4) Chhatra Chhatraya Nava Yuvak Bhaiyo Aur Bahno Jahir Paigam, (5) Chala, Cycle-la vote apan Devoo; (6) Namra Nivedan, (7) Jambuantrao Dhote Yanche Jagir Bhashan, (8) Jan Jagriti Parcha, (9) N. K. Tirpud Khalil Prashan Chettar dya, (10) Teli Matdar Bandhu Bhagini Na Awahan, (11) Kunbi Matdar Bandhu Bhagini Na Awahan, (12) Khoote Kadhi Bolnar Nahi ?

The finding of the High Court on 15(a) is that respondent no. 1 got printed only the pamphlets at serial Nos. 1, 3, 6, and 7 incurred expenditure thereon as shown in the return, and on (b) in that respondent no. 1 got

printed and published only the, pamphlets at S. Nos; 1, 3, 6 and 7.

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16. (b) Did the respondent no. 1 not show in his return all expenses aforesaid or any part of it and thereby contravened the provisions of section 77 of the Representation of the People Act and committed a corrupt practice within the meaning of section 123(6) of the Act ?

The finding is that respondent no.1 did not show the amount ,of Rs. 2,992-95 but that does not amount to a corrupt practice within the meaning of s. 123(6) of the Act.

The net result of these findings was that though the first respondent had shown in his election return a sum of Rs. 7,749-11 as election expenses a further sum of Rs. 2,992-95 was added by the High Court as amount spent on petrol but not included in the return. If this :sum was added to the amount shown in the election return the total amount of expenses as have been found by the High Court to have been incurred by the first respondent came to Rs. 10,741-96 which was still within Rs. 12,000/- permissible under the law to be incurred.

The issues under the third head are as follows :

19. (a) Did the respondent no. 1 issue a pamphlet which was printed at Bharat Seva Chhapakhana at Bhandara and published by S. G. Balpande, Eklari, which is signed by N. S. Motorola of Mohadi, Sakharam Narayan Singh Dipte and S. G. Balpande Alkari ?

(b) Was this pamphlet published with the consent of the respondent no. 1, or his election agent ?

(c) Was it widely distributed throughout the constituency by the respondent no. 1, his election agent, or his workers and agents with the consent of the respondent no. 1 and his election agent ?

On these issues the finding of the High Court was in the negative.

21. (a) Did the respondent no. 1 get a pamphlet printed and published from the Bharat Seva Chhapkhana, Bhandara published in the name of Tukaram Rakhlu Shende and signed by Tukaram Rakhlu Shende, Mandvi, making an appeal to the voters on the Kunbi community ?

(b) Was this pamphlet published by the respondent no. 1 or his election agent or Tukaram Rakhlu Shende with the consent of the respondent no. 1 or his election agent ?

(c) Did this pamphlet amount to an appeal to the voters on the basis of caste and was it meant to create hatred between the caste and community or class and soliciting votes in the name of caste and community ?

(d) Does this amount to corrupt practice within the meaning of section 123 of the Act ?

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The finding on issue 21(c) was in the affirmative and that on (a), (b) and (d) was in the negative. In other words

though the pamphlet specified in issue 21(a) amounted to an appeal to the voters on the basis of caste and meant to create hatred between the caste and community or class and soliciting votes in the name of caste and community. it was not printed and published by the first respondent or his election agent or Tukaram Rakhlu Shende with the consent of the first respondent or his election agent.

We will take the last head under issues 19 and 21 first. These relate to two pamphlets, Exts. 42 and 43, in which a communal appeal to the electors to vote for the first respondent was made. Exhibit 142 is a pamphlet which makes an appeal to the Kunbi voters while Ext. 43 makes an appeal to the Teli voters. The appeals in these exhibits are as follows

Exhibit 42 :

To Kunbi Voters Brothers-Sisters.

Appeal

Voters Brothers-Sisters, there are in all nine constituencies in Bhandara district; and out of them in Bhandara, Tumsar, Adyal and Pauni constituencies, there are only 70,000 Kunbi voters. While deciding the candidate in this area, the Congress has not taken notice of the strength of the Kunbi community and Congress leader Shri Tirpude of this district has purposely left aside the Kunbi community. This means there is no place of honour in this area to Kunbi community.

Therefore Kunbi voters

(1) be united and defeat Congress candidate Shri Tirpude to achieve its place.

(2) Community leader Shri Govind (Dada) Shende be elected by overwhelming majority.

On Cycle Symbol Symbol of Cycle] after affixing stamp, elect the Dada Shende.

Yours humbly,

(Vinit)

Tukaram Rakhlu Shende, Mandwavi,

Taluq, District Bhandara.

Publisher : Tukaram Rakhlu Shende, Printer : Bharat Seva Chhapakhana, Bhandara.

Exhibit 43 :

To Teli Voter Brothers-Sisters

Appeal

There are nine constituencies in this Bhandara district. out of them, in Bhandara, Adyal, Tumsar constituencies, there are about

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60,000 Teli voters. in this election, Congress has not taken any notice of the active workers of the Teli community in this constituency, and in the name of Teli community, an outsider rich lady is set up from Pauni constituency. Likewise, by denying a ticket granted to Shri the feelings of the Teli community are hurt.

Behind this misdeed of them, it is obvious that there is a hand of Shri N. K. Tirpude, a Congress candidate from Bhandara constituency.

For this misdeed of theirs, Teli community should teach him a lesson in this election.

It is requested that the voter brothers, sisters from Teli community should put mark on the Cycle symbol of Govind (Dada) Shende and elect him by overwhelming majority.

Yours humbly, (Vinit)

M.S. Motghare, Mohadi, Sakharam Narayanji Dipate, Mohadi, S.G. Balpande, Ekalari.

Publisher : S.G. Balpande, Printer : Bharat Seva Chhapakhana, Bhandara.

If these pamphlets are proved to have been issued by a candidate or his agent or by any other person with the consent of a candidate or his election agent, to vote on the ground of his religion, caste, race, community or language or they are used as an appeal to religious symbols for furtherance of the prospects of the election of that candidate which prejudicially affects the election of any candidate, then he will be guilty of a corrupt practice within the meaning of sub-s. (3) of s. 123 of the Act. There is no doubt that Exts. 42 and 43 make a communal appeal to Kunbi and Teli voters to vote for respondent No. 1. Not only do they have that effect, but they also impute to the rival candidate Tirdude respondent No. 2 a bias against those voters. The only question, therefore, is whether it is proved that these pamphlets have been printed, published and distributed by the first respondent or his election agent or by any other person with the consent of the first respondent or his election agent. The High Court, while holding that the pamphlets amounted to making a communal appeal, found that they were neither got printed, published or distributed by or on behalf of the first respondent nor by his election agent or by his workers with his consent or the consent of his election agent, and as such there was no corrupt practice committed within the meaning of sub-s. (3) of s. 123 of the Act. This finding has been attacked by the learned Advocate for the appellants on the ground that the appreciation of evidence by the learned Judge of the High Court is not warranted. It is needless for us to reiterate what has over a long course been observed in numerous decisions that a finding arrived at on an appreciation of conflicting testimony by a Trial Judge who had the opportunity of observing the demeanour of witnesses while giving evidence should not be lightly

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interfered with merely because an appellate court which had not the advantage of seeing and hearing the witnesses can take a different view, Before a finding of fact by a Trial Court can be set aside it must be established that the Trial Judge's findings were clearly unsound, perverse or have been based on grounds which are unsatisfactory by reason of material inconsistencies or inaccuracies. This is not to say that a Trial Judge can be treated as infallible in determining which side is indulging in falsehoods or exaggerations and consequently it does not preclude an appellate court from examining and appreciating the evidence in order to ascertain whether the finding arrived at by the Trial Judge is warranted. If that is not warranted, it can, on its view of the evidence, arrive at a conclusion which is different from that arrived at by the Trial Court. This aspect was discussed in detail in *Laxinarayan v. Returning Officer(1)*, - to which we were parties.

We have already set out in brief what the appellant's allegations and the respondent's answer to those allegations were. What has now to be ascertained is, firstly, whether the pamphlets Exts. 42 & 43 have been proved to have been printed by Bharat Seva Chhapkhana, Bhandara and in respect of Ext. 42 published by Tukaram Rakhalu Shende and in respect of Ext. 43 by S. G. Balpande, Ekalari; secondly, if they are proved to have been so printed and published, whether the first respondent or his election agent or Balpande or Tukaram Rakhalu Shende got them printed and published with the consent of the first respondent or his election agent and thirdly that these pamphlets were printed, published and distributed during the election

before the date of polling. In proof of these allegations the appellants sought to establish (1) by direct evidence of witnesses who were present at a meeting in Saxena's house in which respondent No. 1, Bhole P.W. 40 and others were present, where it was decided to appeal to the Teri and Kunbi voters; (2) by evidence of the printer who printed them; (3) by the pamphlets being taken delivery of on behalf of the first respondent; and (4) after taking delivery from the printer of copies of pamphlets, giving them in the election office of the first respondent. On the first circumstance, the evidence of P.W. 27 and P.W. 40 was relied upon by the appellants. P.W. 40 is an Advocate who became the election agent of the first respondent on February 21, 1972. Both P.W. 27 and P.W. 40 speak about a meeting held in the house of P.W. 27 on February 11, 1972 in which the first respondent Shende, Bhau Dalal (M.T. Dalal) R.W. 1, Saxena (P.W. 27), Bhaskar Ninawe (1 R.W. 7) and others were present where it was decided to appeal to the Teli and Kunbi voters who formed a majority of the electorate. The other witnesses who were said to have been present, namely, 1 R.W. 1 Dalal, 1 R.W. 7 Bhaskar Ninawe and the first respondent, 1 R.W. 15 Shende, denied that any talk of that nature took place or that any such decision was arrived at. The learned Judge did not accept the evidence of these witnesses for the reason that the evidence of P.W. 27 Saxena is not of any value for substantiating the printing and publication of Exts. 42 and 43 because he does not mention the name of (1) C. A. No. 1014 of 1972 decided on September, 1973.

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P.W. 40 at the meeting held on February 11, 1972, even though P.W. 40 says he was present not only at that meeting but also at a meeting held on February 12, 1972 in the house of 1 R.W. 1 Dalal at which the decision to print Exts. 42 and 43 was taken. Even 1 R.W. 15 Shende, 1 R.W. 1 Dalal, Bhaskar Hardikar (1 R.W. 5) and Bhaskar Ninawe (1 R.W. 7) did not mention the name of Bhole P.W. 40 as being present at the meeting held on February 11, 1972 in the house of P.W. 27 nor were they asked about the meeting on February 12, 1972 held in the house of Dalal. They also deny having placed any orders for printing the pamphlets or of publishing or distributing the appeal nor were they signatories to the pamphlets. The presence of P.W. 40, therefore, was held to be improbable. The evidence of P.W. 40 was further held to be improbable because at that stage he was not interested in the election.

The learned Advocate for the appellant contests this finding on the ground that the evidence of Saxena about the meeting on February 11, 1972 makes the printing of Exts. 42 and 43 probable; that the learned Judge did not discuss the evidence of respondent's witnesses on merits and probabilities; that Bhole eventually became election agent as such it is quite natural to presume that he must have been associated with the election campaign right from the start; and that in any case no suggestion was made to Bhole that he was not interested in the election at the stage when the matter of communal appeal was decided. On the other hand, it is submitted that a definite suggestion was made to 1 R.W. 1 Dalal and there was no point in cross-examining him when it was denied by Dalal that any such meeting had taken place.

We will now examine the evidence to see whether the learned Judge was justified in rejecting the evidence of the appellant that at the meeting held in P.W. 27's house it was decided to make a communal appeal, that on the next day the manuscripts of Exts. 42 and 43 were discussed and it was

decided to have the same printed and published, that they were got printed at the Printing Press of Jagdishkumar Gupta P.W. 35 and that delivery was taken of these pamphlets and thereafter distributed.

It is true that though Saxena says that in the evening of February 11, 1972 a meeting was held at his place which was attended by Dada Shende (1 R.W. 15), Bhau Dalal (1 R.W. 1), Parashram Waghaye, Bhaskarrao Hardikar, Bhaskar Ninawe, Ram Hadau, Sarwan Hedau and some others, he did not specifically mention P.W. 40. He, however, says that at that meeting it was considered that as there might be 32,000 Teli and 24,000 Kunbi voters in Bhandara constituency and that since the first respondent was a Kunbi, the support of Kunbi voters should be sought. He also says that since Karemore who was first given a ticket by the Congress was a Teli and since that ticket had been cancelled in favour of Tirdude, the support of Teli community should also be sought in favour of the first respondent as Teli candidate was deprived of the ticket. This witness also admits that Bhau Dalal was incharge of the election campaign. The learned

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Advocate for the appellant contends that though P.W. 40's name was not mentioned, the probability that he was present, cannot be ruled out inasmuch as P.W. 27 does not categorically exclude his presence when he says that others were also present there. The criticism that it was not suggested in cross-examination whether P.W. 40 was not present is, in our view, not tenable, because at that stage it could not be ascertained what P.W. 40 would say. Even so, whether at that meeting P.W. 40 was present and whether such a discussion took place to appeal to Teli and Kunbi voters, can only be ascertained from an overall consideration of the evidence and the probabilities in the case.

P.W. 40 who asserts that he was present at the meeting held on February 11, 1972 in the house of P.W. 27 Saxena says that on that day after the name of the candidate for election was finalised, the respondent came to the Bar-room to see Advocates Bhau Dalal, Waghaye and Saxena as to what the future programme in the election should be. It was then arranged that they should meet at the house of Saxena in the evening at 7 or 7-30 p.m. The meeting was accordingly held in the house of Saxena where Saxena P.W. 27, Dada Shende (1 R.W. 15), Bhau Dalal (1 R.W. 1), Bhaskar Ninawe (1 R.W. 7), Ram Hedau, Shrawan Hedau, Bhaskar Hardikar (1 R.W. 5), Parashram Waghaye and 4 or 5 other persons were present. At that meeting there were deliberations as to how best to conduct the election campaign and secure a majority of votes. In that meeting it was decided to make efforts to get votes of Teli voters for Dada Shende. The next day in the morning (ie. February 12, 1972) a meeting was arranged with him at the house of Bhau Dalal (1 R.W. 1). He went there. At that meeting Bhau Dalal, Shivshanker Ninawe (1 R.W. 10) and 2 or 3 others were present. Bhau Dalal said that some pamphlets are to be printed and that they should go to the Press. There were two manuscripts of the pamphlets which were to be printed. He says the manuscripts appeared to him to contain propaganda on communal basis and accordingly he expressed his doubts. Then they were satisfied that they could not be said to contain any propaganda on communal basis. The two manuscripts on the basis of which the pamphlets were to be printed had the caption "Teli Bandhawana Awahan and Kunbi Bandhawana Awahan". He also admits that while he and Shivshanker Ninawe were going to invite Jambuwantrao Dhote, on their way

to Pind Kepar, they went to Bharat Sewa Press and collected the two types of pamphlets referred to above. They then returned the pamphlets to the election office and deposited them there. He also says that he took out a few pamphlets from those bundles and they went to Pindkepar; that he read those pamphlets after they were printed and the printed pamphlets were the correct copies of the manuscripts which he had read earlier. Exhibits 42 and 43 were shown to the witness. He said that those pamphlets were similar to those taken by them from Bharat Seva Press. The manuscripts 42A and 43A were also shown to him and he said that they were the same which he had read earlier at the house of Bhau Dalal. He admits that he was appointed election agent of the first respondent on February 21, 1972

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and the declaration forms to that effect were submitted to the Returning Officer on the same day. In cross-examination he admitted that he took interest in this election in order to get himself acquainted with political life and to get an opening in politics. What is more, he went to the length of admitting that he had not so far read the election law though he took part in the mid-term Lok Sabha election of 1971 and the 1972 Assembly elections. When the manuscripts Exts. 42A and 43A of which Exts. 42 and 43 were the printed pamphlets were shown to him he said he could not recognise the handwriting though he admitted he knew Bhau Dalal's handwriting. He did not say they were written by him nor were they according to him in the handwriting of Bhole, Saxena, Bhaskar Ninawe, Shivshankar Ninawe, Bhaskar Hardikar. He says he does not know the persons whose names appear as signatories to the pamphlets Exts. 42 and 43, nor does he know the publishers of the two pamphlets. He only came to know the name of Gupta whom he had known by face when the pamphlets Exts. 42 and 43 were given for printing in his Press. According to him he had gone to Bharat Seva Press with Bhau Dalal and two or three others 2 or 3 days after the date of withdrawal. Two or three days after that date the printed pamphlets were delivered to them. 4,000 copies of each were taken and at the time of taking delivery about Rs. 50/or so were given by Shivshankar Ninawe (1 R.W. 10) to Gupta and a receipt was obtained from him by Ninawe. He also says that at the time of taking delivery, Ninawe had not with him the bill or the order copy from the Press nor does he know if Gupta had written any order for the printing work.

From this evidence, it emerges that on February 12, 1972 when the manuscripts of Exts. 42 and 43 were seen by him, the first respondent has not been stated to be present in the house of Bhau Dalal. While he specifically mentions the name of the first respondent as being present at the meeting in P.W. 27's house on the evening before, namely on February 11, 1972, his omission to mention Shende as being present on February 12, 1972 is significant. There is no warrant for the submission that no suggestion was made to the witness in cross-examination that Shende was present because when a witness has not mentioned the name of a person being present and it is the specific case of the first respondent that he was not present at that meeting, he could not be expected to suggest that he was present or even that he was not present. Secondly, it is rather strange that the witness being an Advocate and having admitted that he had taken part in the mid-term Lok Sabha Election of 1971 and Assembly Elections in 1972, he did not read the election law then or even by the time when he was giving evidence. Though ordinarily

unless one is concerned with a particular matter, he may not be expected to be conversant with that branch of the law with which he is not dealing, nonetheless an Advocate who is claiming to be an election agent and has earlier admitted to have taken part in the election work would be expected to be conversant with the election law. This admission shows that either he was very raw knowing nothing about the election law, and hence, as stated by the first respondent, was not entrusted with any important work, or that he had experience of election work and knowing that a communal appeal

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to voters would be a corrupt practice under the Act has changed his loyalty to support the petitioners and Respondent No. 2 against the first respondent.

It has been stressed with great emphasis that the first respondent admitted that Bhole P.W. 40 was his election agent and hence any admission made by him in this regard is binding on the first respondent. Though the first respondent admits appointing Bhole as his election agent, his case is that he had not known him personally but he was introduced to him by Saxena P.W. 27 an Advocate, who was the Vice-President of ' the Congress-0. It was at the instance of Saxena that Bhole was appointed as his election agent but was not entrusted to do any work in the election, nor was Bhole entrusted with any funds or with any work, nor were any of the workers of the first respondent approaching him for instructions, guidance and orders. It was alleged that Bhole volunteered to work as an election agent only for the purposes of getting some experience of election work, but was only figuring as a dummy and practically took no part in the election. At any rate, he was not appointed an election agent at the time when the pamphlets were said to have been printed but subsequently. It was then alleged that after the election, Saxena Advocate and Bhole who was his junior had been won over by Tirdude respondent No. 2 for whose benefit the petitioners had filed the election petition. There is no doubt that Bhole changed his loyalties along with Saxena as pleaded by the first respondent. He goes all out to depose to incidents alleged to have taken place which will injure the first respondent, particularly in respect of matters which others present did not speak of. For instance he is the only witness who says that Jambuwantarao Dhote at the meeting held on February 18, 1972, indulged in communal propaganda when no one else who is said to have been present at the meeting said so. He denies that he is a Junior of Saxena and yet admits that he worked in 10 or 15 cases with Saxena as his junior. Though he asserted that he saw the manuscripts of the pamphlets, is unable to give the correct heading of the appeal in Exts. 42 and 43. The actual heading on Exts. 42 is "KUNBI MATDAR BANDHU BHAGININA AWHAN" and on Ext. 43 "TELI MATDAR BAN. DHU BHAGININA AWHAN". if his evidence is further scrutinised in the light of the evidence of other witness, it is equally uninspiring. Bhau Dalai' 1 R.W. 1' while he admits that there was a meeting on February 11' 1972 at the house of P.W. 27 for deciding as to what action should be taken in respect of the election propaganda, he does not speak of any meeting in his own house on February 12, 1972 at which P.W. 40 was present, nor is there, any mention by him of the manuscripts Exts. 42A and 43A of which Exts. 42 and 43 are printed pamphlets, being shown or discussed. He also denies having either seen the proprietor of the Bharat Seva Chhapkhana or of his having gone to him to place any order for printing any pamphlets at that Printing Press including the offending pamphlets. Bhau Dalal, however, says that after the

election petition was filed, he was told by. Dada Shende (1 R.W.1) that two pamphlets regarding appeal to Teli

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and Kunbi communities have been filed along with the election petition and in consultation with others a letter under the signature of Dada Shende was written to the proprietor of Bharat Seva Chhapakhana about the printing of the pamphlets in his Press. After a few days, Shende told him that the proprietor of the Bharat Seva Press had given a letter explaining his position. Exhibit 126 is the letter which Shende wrote to the proprietor of the Chhapakhana in consultation with him and these letters were acknowledged on August 11, 1972 by the proprietor (Exts. 127 and 128). In October 1972 Shende and he (Dalal) saw the two pamphlets in the file of the District Election Officer, Bhandara. In cross-examination, it was suggested to the witness that there was a meeting in his house on February 21, 1972 at which P.W. 40 was present. He however, denied that there was any talk at the house of Sexena on February 11, 1972 about the details of election work, nor was any programme relating to election discussed at the house of Saxena on that evening, nor were Bhasker Hardikar, Bhasker Niwas, sheoshankar Ninawe, Ram Hedau, Shrawan Headau and Advocate Bhole asked to attend the meeting at the house of Saxena. There was also no thought given between February 11 and February 18, 1972, for the appointment of an election agent. It was on February 18, 1972, that it was decided to appoint an election agent. In the lengthy cross-examination spreading over 33 cyclostyled pages, there is not a suggestion that a meeting was held in Bhau Dalal's house at which Bhole was present or at which the manuscripts of the pamphlets Exts. 42A and 43A were considered and discussed. It is, in our view, idle to say that because a meeting at P.W. 27's house (Saxena's house) on the evening of February 11, 1972 was denied, the meeting on February 12, 1972 also would be denied, and, therefore, no questions were asked. If no questions were asked in respect of the meeting of February 12, 1972, at which the manuscripts of the two pamphlets were alleged to have been discussed, then the inference is that the appellant did not wish to challenge that any such meeting took place, particularly when Bhau Dalal ascertained that the first time he came to know about these pamphlets was after the election petition was filed. Surely, if the positive case of the appellant was as spoken to by P.W. 40 that a meeting had taken place at Bhau Dalal's house on February 12, 1972 at which the manuscripts of the offending pamphlets were seen and discussed, it should have been suggested that statement was false and that the witness had known about those pamphlets much earlier when the manuscripts were discussed in his house. Even according to P.W. 40, Shende was not present nor did he authorise at that meeting the printing or publication and distribution of any such pamphlets. Another significant statement of P.W. 40 is that though he expressed doubts at the meeting that the two manuscripts of the pamphlets which were to be printed might amount to a propaganda on communal basis, he nevertheless says that when they discussed the contents of the pamphlets they were satisfied that those pamphlets could not be said to contain propaganda on communal basis. If this is so, and for an election agent, particularly a lawyer who, said earlier, had admitted having taken part in election work previously, and would be expected to know what would amount

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to a communal appeal, then the inference would be that the manuscripts that were discussed and got printed were not the

offending pamphlets Exts. 42 and 43. It is however, contended that Bhau Dalal, Ninawe (1 R.W. 7) and the first respondent Shende admit that they met in Saxena's house and discussed election strategy in view of Tirpude filing his nomination. Dalal denies that he tried to find out the number of voters in Bhandara constituency caste-wise, while Ninawe merely admits that there was a general discussion about the election. Shende also does not admit that there were any discussions about strategy. Whether strategy for the election was discussed at that meeting or not, and there must have been some discussion of how the election campaign must be conducted, it will be too far fetched to infer from that admission that they discussed about making a communal appeal to the voters. In our view, the evidence of this witness was rightly disbelieved by the Court. Nor is it established from a reading of that evidence that a meeting as spoken to by P.W. 40 took place on February 12, 1972, or that the manuscripts of the impugned pamphlets, Exts. 42 and 43, were either discussed or it was decided to have been printed.

The next question is whether Exts. 42 and 43 were printed in the Bharat Seva Chhapakhana, and, if so, when were they printed. Jagdish Kumar Gupta, P.W. 35, asserts that Exts. 42 and 43 were printed at his Press, but the case of the first respondent is that they were not printed at his Press, and in any case they were printed subsequently after the election results were declared and for supporting the election petition. The learned Judge disbelieved the evidence of P.W. 35 on various grounds, namely, that since the Press was adjoining the house of Rambhat, Secretary of the Congress, it was unlikely that this Press would have been chosen; that the order book Ext. 125 is only a bill book; that Shende and Ninawe were not asked to produce original bills; that there is no signature of the person placing the order, and, therefore, an adverse inference can be drawn to hold that there was a separate order book and it was suppressed. The learned Judge also commented on the fact that the order was not taken in the name of the first respondent Shende; that there were no account books produced or maintained; that no acknowledgment of the delivery of the printed material was taken or produced nor do the manuscripts Exts. 42A and 43A bear the signature of the publishers. There was also no declaration filed by P.W. 35, the printer, as required by sub-s. (2) of s. 127-A of the Act and that the conduct of the witness while giving copies of Exts. 42 and 43 in the election office was unnatural, and it was also noticed that P.W. 35 was a polling agent of Tirpude respondent No. 2, who was a Congress candidate.

The several reasons given by the learned Judge were assailed by the appellants' Advocate and it was pointed out that Bhau Dalal knew the printer well; that his house was across the road; that Bharat Seva Chhapakhana was an obscure Press and that the owner Gupta P.W.35 could be persuaded to print them without much ado; that P.W.35 does not have a separate order book at least for the last 2 or 3 years but only a bill book; that the comment that he has not produced his

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account books assumes that he has account books, but which fact has not been suggested to him. It is also contended that the reason why the order was not taken in Shende's name was because the witness was asked to take the order in a different name. In support of other matters upon which reliance was placed, namely, that he did not maintain accounts; that no accounts were produced; that no acknowledgment of delivery of printed material was taken;

that Exts. 42 and 43 did not bear the signature of the publisher, it is submitted that no questions were asked. So far as non-filing of the declaration is concerned, the learned Advocate says that other printing presses like Bhandara and Sharda Printing Presses did not file declarations for all the pamphlets printed, as is clear from the evidence of P.W. 28 Sharad Hardikar and P.W. 16 Jagdish Kumar. While it is not denied that P.W. 35 was a polling agent of respondent No. 2, it is submitted that he became the polling agent at a very late stage which fact at the most will necessitate close scrutiny of the evidence, but this by itself does not warrant his evidence being rejected.

It appears to us that when an election of a successful candidate is challenged, particularly on ground of corrupt practice, it is not unknown that attempts are made to manufacture or bring into being subsequent to the declaration of the result, documents or other material, which could be used for unseating a successful candidate. At any rate when any impugned document is hotly contested on that ground and it is the case of the respondent that it was brought into existence subsequently, the onus on the petitioner who challenges the election on that ground is all the more heavy. It can be safely assumed that candidates who take part in elections are expected to know that any communal appeal to the voters will affect the result of his election, or expose him or any election agent or any other person on his behalf who indulges in such communal appeals to a charge of corrupt practice. The fact that P.W. 35 was the election agent of the second respondent would have deterred either the first respondent or any one acting on his behalf from entrusting such an agent with the work of printing pamphlets which ex facie make communal appeal to the voters to vote for him, unless it is assumed that they were rockless and oblivious to the consequences. In any case, what must be ascertained is whether in fact they were entrusted with the work at the time when it is alleged--that they were so entrusted.

In order to substantiate the averment that the evidence of P.W. 35 is trustworthy, it is contended that he had filed Exts. 42 and 43 with the election office even before the date of polling and that the Collector and District Magistrate as also his Deputy Ramteke P.W. 18 had seen those pamphlets two or three days before the date of the polling. The evidence of these witnesses, it is contended, corroborates the evidence of P.W. 35 that he printed those pamphlets before the date of the polling and had filed copies thereof at the election office. Apart from the fact that these pamphlets were printed by P.W. 35, it has also to be established that they were printed at the instance of the first respondent or his agent or some other person with his consent, and were published and distributed before March 5, 1972, the date of poll.

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It may be noticed that under sub-s. (2) of s. 127, a person is prohibited from printing or causing to print any election pamphlet or poster, (a) 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 (b) 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 where it is printed in the capital of the state to the Chief Electoral Officer, or to the District Magistrate of the District in which it is printed. Under sub-s. (4) any person who

contravenes any of the provisions of sub-s. (2) shall be punishable with imprisonment for a term which may extend to six, months, or with fine which may extend to two thousand rupees, or with both. Even assuming that a candidate who gets the pamphlets printed contrary to the above provision, the printer at any rate being unconcerned with the result of the election, will not expose himself to criminal prosecution or punishment or imprisonment by contravening the provisions. It is not denied that any such declaration as required under sub-s. (2) of s. 127 was obtained or filed by P.W. 35 in the election office.

P.W. 35 says that he has a printing press in his house and he has no servant and does the composing, printing etc. himself. He knows Bhau Dalal well since childhood though Bhau Dalal says he knows him by face but not by name. According to him on February 12, 1972 Bhau Dalal, Sheoshankar Ninawe, Bhole and two or four other persons whom he did not know, had come to his house at about 10 A.M. when Bhau Dalal asked him to print the pamphlets as per the two manuscripts brought by him. He quoted Rs. 13/- per thousand for 4,000 pamphlets. Then they went away. In the afternoon at about 3 P.M. Bhau Dalal, Sheoshankar Ninawe and Dada Shende again came to his Press. Shende gave him his order to print 4,000 pamphlets each according to the manuscripts and paid him Rs. 50/- as advance. He, however, asked him to take down the order in the name of Sheoshankar Ninawe. He asked that pamphlets and the bill for the remaining amount should be given to Sheoshankar Ninawe who will pay the balance. According to him, the order was taken on the printed order book of his Press and the original order form was given to Ninawe but that part of the order which gives details is in the order book. He produced the said book and counterfoil which was in his handwriting. It is Ext. 125 and the counterfoil is Ext. 125A. He produced the two manuscripts from which he printed the exhibits, Exts. 42A and 43A. He admits that he does not maintain any accounts and that his Press is registered under the Press Act in his name. He took no declaration from Sheoshankar Ninawe, Dada Shende, Bhau Dalal or any other person to print this material in his Press. About 8 or 15 days after he delivered the pamphlets to Sheoshankar Ninawe, he learned from one M.A. Khan, Proprietor, Taj Press, that copies of the pamphlet are to be given at the office of the Election Officer. He gave one copy each of the pamphlets to some person in the election office near the Treasury, but he did not get any acknowledgment for having given the two pamphlets in that office. He also admits that he had printed some pamphlets in connection with the election of

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1971 mid-term Lok Sabha. In cross-examination he admits that he was a polling agent for Tirpude in Tilak Ward at Bhandara. He made an attempt to identify Exts. 42A and 43A to be in the handwriting of Tukaram Hakudu Shende, but immediately resiled from that statement and said that he did not know in whose handwriting the manuscripts Exts. 42A and 43A were, nor does he know who had signed the manuscripts nor did he ask Bhau Dalal to put his signature on the manuscripts as it was a pamphlet containing an appeal to the Teli and Kunbi community, nor did he take any letter from Bhau Dalal authorising him to print the pamphlets in accordance with the manuscript. He does not know if Tukaram Shende was amongst the persons who came to him on that day either in the morning or in the afternoon. He does not know any of the three persons under whose name the pamphlet Ext. 43 is printed and whose name appears on Ext. 43. He is also

not aware that a declaration from the publisher is to be taken while printing. Even at the time of printing the pamphlets in connection with the mid-term Lok Sabha election he was not aware that a declaration from the publisher was to be taken or any such declaration was also taken. He did not also give a copy of the pamphlet printed in his Press in the election office. He further states that two or three days after he had a talk with M.A. Khan, Proprietor of Taj Printing Press, he submitted a copy of each of the two pamphlets in the election office. Though he admits he received a letter from Dada Shende demanding from him copies of the pamphlets which were distributed as having been printed in his Press, he denies that he gave any reply to this letter and says that he did not think it necessary to give a reply to it. When his two letters dated August 15, 1972 and October 27, 1972 were shown he says that the letter-heads are not his letterheads, nor are they printed in his Press, nor are the two letters in his handwriting, nor do they bear his signature. He, however, admits that the copy of the letter from Dada Shende (Ext. 126) which he acknowledged on August 11, 1972 bears his signature and endorsement at the back. He denies that any one on behalf of Dada Shende came to him to ask for the copies of the pamphlets or for a reply nor does he admit that he handed over the two letters Exts. 127 and 128 to Dada Shende personally saying that he had written the letters in the presence of Bhau Dalal.

A perusal of the letters Exts. 126, 127 and 128 which were put to him would show that Shende the first respondent had written to him to say that translations of the two handbills which were described in those letters were filed along with the election petition and since they were said to have been printed at the Bharat Seva Chhapakhana, Bhandara, he requested P.W. 35 to send him two copies of each of the two handbills. In that letter Shende also stated that he never saw those two handbills before, vide Ext. 126. To this, the replies purporting to have been given by P.W. 35 are Exts. 127 and 128 dated August 15, 1972 and October 27, 1972 respectively. In the first mentioned letter P.W. 35 is alleged to have stated that the pamphlets were not printed in his Press, that he did not know either the publishers referred to by Shende or the persons who had signed those pamphlets. A further statement was made in that letter that there was no body else working in his Press except himself, and that he himself singly did the entire
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work of the Press. This latter statement, it will be observed, is consistent with and is corroborated by what P.W. 35 has said in his evidence. In the letter dated October 27, 1972, which was sent after inspection was taken of the pamphlets in the election office, P.W. 35 made a statement denying that he had printed in his Press any type of pamphlets for any of the candidates in Shende's legislative assembly elections, and that he, therefore, did not produce printed copies of the pamphlets before the District Election Officer or in his office. As we have seen, the writing of both these letters has been denied by the witness, who in fact, admitted that he received Shende's letter Ext. 126, when it is admitted that he received the letter Ext. 126 from Shende, if the witness's case is that he printed the pamphlets and filed copies of the same before the District Election Officer or in his office, surely one would have expected him frankly to say so at the earliest opportunity when it was afforded to him, that he did print them and filed them in the election office. Nor, in our

view, is it likely for Shende having written Ext. 126 to P.W. 35 to have kept silent and not pursue the matter with P.W. 35. Nor is it likely that when these pamphlets were an important piece of evidence against Shende he would have remained silent and would not pursue the matter with P.W. 35.

No doubt the first respondent contended that the letters were genuine and prayed for their examination by an expert but actually did not examine the expert, and consequently we are asked to draw an adverse inference against the letters being genuine. The learned Advocate further contended that there were several discrepancies between the evidence put forward by R.W. 1 Dalal and the first respondent Shende regarding the manner in which Exts. 127 and 128 were obtained, and consequently that evidence should not be accepted. At any rate, it is pointed out that the effort on the part of the first respondent would clearly show an anxiety on his part to get out of Exts. 42 and 43. We do not quite appreciate this submission because the pamphlets, if proved, would certainly hurt the first respondent and he would, therefore, contest either the genuineness or the proof of those pamphlets. There would be minor discrepancies in the evidence in every case and we have no doubt that Bhau Dalal 1 R.W. I did not say that the letters were signed in his presence. In support of this submission an application dated November 29, 1972 filed on behalf of the petitioners was relied upon. In that application there was a reference to the suggestion made to P.W. 35 that Exts. 127 and 128 were handed over to Dada Shende by the witnesses saying that those documents were written by him in the presence of Bhau Dalal. As the witness denied this suggestion, it was prayed that the documents may be sent to the handwriting expert. Both the first respondent as well as the petitioners applied to have them examined, but neither of them led evidence of experts. The petitioners got them examined by an expert, but did not produce him as a witness while the first respondent did not name an expert but asked the Court to nominate. In any case no evidence of experts was produced by either side. It was not also suggested to Bhau Dalal that the letters were signed by P.W. 35 in his presence. Even Shende in his examination-in-chief does not say that the letters were signed by Gupta P.W. 35 in the presence of Bhau Dalal 1 R.W. 1. All that he says is

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that Ext. 127 was handed over to him by Gupta P.W. 35 while Ext. 128 was sent to him through a peon. The only suggestion made in cross-examination was that the draft of his letter Ext. 126 was prepared in consultation with Bhau Dalal to which Shende gave a negative reply. There is no suggestion that any of the letters said to have been written by P.W. 35 were written in the presence of Bhau Dalal or Shende. The story of Shende was that he sent Ext. 126 to P.W. 35 through his peon Waman and in reply thereto P.W. 35 had brought with him the letter of August 15, 1972 Ext. 127 and gave it to him in his house. On the other hand he said that P.W. 35 did not tell him as to in whose presence the letter was written. He stated that he had shown this letter of P.W. 35 to Bhau Dalal and told him that it was given to him by P.W. 35. Shende said that he had no occasion to see the handwriting of Gupta P.W. 35 nor did he ask Bhau Dalal or Sheoshankar Ninawe to make enquiries about the printing of the pamphlets. We do not see any discrepancy between this statement and the evidence of Bhau Dalal. In our view, the evidence of P.W. 35 does not inspire confidence not only because of this, but because of other inherent defects which

have been pointed out by the learned Judge of the High Court. The witness does not say that he became an election agent of respondent 2 Tirpude only towards the end as it sought to be contended. He merely says that he was a polling agent of Tirpude respondent No. 2 in that election in Tilak Ward at Bhandara which admission was elicited from him in cross-examination. There was also no reexamination to suggest that at the time when he printed the offending pamphlets he was not an election agent of Tirpude. It is, however, contended that the evidence of this witness that he filed Exts. 42 and 43 in the election office within 2 or 3 days from his being informed by Mr. Khan that election pamphlets should be filed, is corroborated by the fact that they were said to have been seen in the election office two or three days before the polling day.

The learned Advocate for the first respondent states that even this submission does not help the appellant's case. If the evidence of Bhole P.W. 40 is read with the evidence of this witness, it would appear that the pamphlets were delivered to Bhole and Sheoshankar Ninawe on February 16, 1972, eight or fifteen days after this date he came to know that the copies of the pamphlets have to be filed in the election office, and two or three days thereafter he filed them. On this reckoning, it is contended that the pamphlets were filed in the election office about March 5, 1972, which was the date when the poll was held. If so, the possibility of these pamphlets being printed and filed in the election office after the date of the poll becomes probable.

In support of this contention, it is pointed out that these two pamphlets did not find a place in the first list of documents comprising items 1 to 41 filed by 1 R.W. 12 in the fourth week of March 1972. These pamphlets were only shown in the supplementary list of documents prepared in September 1972 by T. Zanjali (1 R.W. 13). According to this witness the pamphlets were seen by him in May 1972. Though the Collector and District Magistrate, Bhandara, Mr. Narayan Wasudeo Patankar P.W. 38 says that he saw these two pamphlets sometime

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before the polling when they were brought to his notice by the District Deputy Election Officer, on going through them he did not find that they, raised any law and order problem. It is stated that this evidence has not been challenged in cross-examination. On the other hand, the contention is that this officer merely spoke from memory and could have been mistaken as to the exact time when the offending pamphlets were brought to his notice. In his examination-in-chief it has been stated by him that as far as he remembered the two pamphlets-were appeals to particular communities in the matter of voting. It is true that after a lapse of time, it is difficult to rely upon one's memory' and it is not possible to be certain when exactly an event occurred and what exactly took place at the time. After a lapse of time one may honestly think that a certain event took place at a certain time, but that may not be correct and particularly when there is no aid to assist him he can never be certain that it is so. Even so from the cross-examination of P.W. 38 it is evident that he was unaware whether any circulars were issued to all the Printing Presses in the District to send the printed material along with a declaration to the District Election officer. According to him, it was for the District Deputy Election officer to have done the needful. He said that he did not know if he had done so. He could not say who used to receive the pamphlets or other printed material in

connection with the elections as also the declarations in the election office. In these circumstances, the possibility of his recollecting the precise time when he saw those pamphlets is liable to error.. One thing is certain from the evidence of Ramteke P.W. 18 that Exts. 42 and 43 were put up before him by his clerk Zanjali R.W. 13. He however, says that this was done 4 or 5 days prior to the election. He, brought these pamphlets to the notice of the Collector and District Magistrate about two or three days prior to the date of election stating that these two pamphlets were of a communal nature. There was no writing, but they were brought to his notice in his personal talk. In his examination-in-chief and even in cross-examination he admitted that any printer of a pamphlet concerning an election matter must send the pamphlet to the Election Officer accompanied by a declaration of the publisher. He also said that the pamphlets and the declarations received in his office were noted in the inward Register and he followed the practice of making an endorsement on every paper that he received' as an Election Officer. He further stated that on the declaration that was received in respect of a pamphlet, an endorsement about the receipt was made when it was received and the Inward Register Number in which it was noted was also shown on that declaration. He, however, admitted that the pamphlet which was received as per that declaration, did not bear any endorsement or the inward register number. He, however, contradicted his statement when he said that they receive any paper brought to them by any body regarding an election matter. They also accepted a pamphlet brought to them even without a declaration of the printer or publisher, but again reiterated that every paper they received in connection with the election matter to be entered' in the Inward Register. Contrary to this categorical statements Exts. 42 and 43 neither bear an inward register number nor are they accompanied by any declaration of the publisher, nor is there an endorsement by any of the officers in the Election Office, nor did Ramteke P.W.18

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as Deputy District Election Officer enquire from Zanjali R.W. 13 as to why no endorsements were made on those pamphlets in order to show on which date those pamphlets were received, even though he had noticed, when he saw those pamphlets, that there was no endorsement on them. He also did not ask him to make any endorsement regarding the date on which those pamphlets were received nor did he direct him to make an endorsement on those pamphlets on the date when they were shown to him. He is unable to give reasons why no endorsement was made by either himself about the date on which they were shown to him nor did he make any note regarding the date on which he had shown those pamphlets to the Collector & District Magistrate. The witness Ramteke frankly admitted that he will not be able to tell on which date the pamphlets or the declarations were placed before him, nor will he be able to tell on which dates any poster or pamphlet, or declaration or a letter was placed before him, either before the election or after the election. Having regard to this frank admission of Ramteke, it is difficult to hold that these pamphlets were placed before him before the date of election. The significant facts to be noticed are that contrary to the established procedure these pamphlets have no inward register number, nor is there any endorsement thereon. In any case, one would have expected these witnesses to have placed their initials on those pamphlets when they were shown to them even if they

had not done so before. If the District Deputy Election Officer himself could not do it, he could have directed Zanjali R.W. 13 to do so.

The version of Zanjali R.W. 13 on the other hand shows that papers concerning election matters, if received in the Collector's i.e. District Election Officer's office, are sent to the Election Branch by the Head of the Branch (General) and received by the Receipt Clerk of the election office. He then puts up the papers to N.T. (Election) who in turn puts the papers before the District Election Officer. If the papers are directly brought to the Election Branch Office then they are received by the Deputy District Election Officer and in his absence by the N.T. (Election). No clerk is authorised to receive the papers concerning the elections. He also said that all the election material, i.e. pamphlets, posters, declarations etc. which are received in the election office are entered in an Inward Register as and when they are received. These entries are taken by the Receipt Clerk. According to him the original list of the papers was prepared by Kadhav, N.T. (Election) in the first or second week of April 1972 when an application for certified copies of the posters, return of election expenses etc. was received in the office. Thereupon the Deputy District Election Officer Ramteke had asked Kadhav N.T. to prepare a list of the papers which were in his custody and accordingly a list was prepared which he handed over to Ramteke. A supplementary list of three papers which were marked as S. Nos. 13-A, 42 and 43 in the file of the District Election Officer was prepared by the witness (Zanjali) sometime in the beginning of November 1972 before Diwali, as an application for certified copy of some documents had been received. At the time the witness handed over the papers to Kadhav N.T. for preparing the first list as asked by the Deputy District Election Officer the two pamphlets marked at 457

Sr. Nos. 42 and 43 were not amongst those papers. He was directed by the Deputy District Election Officer Ramteke to prepare the supplementary list in the beginning of November 1972. According to him he might have come across the pamphlets at Ext. Nos. 42 and 43 in the District Election Office file sometime in the month of May 1972 when the inspection of the record was taken by someone. In cross-examination he admitted that he could not say who had received the documents Exts. 42 and 43. Significantly, there was no cross-examination suggesting that this witness had brought to the notice of Ramteke Deputy District Election Officer, Exts. 42 and 43 before the date of polling as asserted by Ramteke, though according to his version the first time he saw those pamphlets was in May 1972 which was long after the polling.

It is for the appellants to prove that these documents were in fact filed in the election office before the date of polling and the surest way they could have done so is to have called for the Inward Register, which is admitted to have been maintained, in which according to all the witnesses P.W. 38, P.W. 18 and 1 R.W. 13 every document received in the office is entered and numbered. The onus is certainly not on the first respondent when he had denied that these documents were ever in existence before the date of election or were filed in the election office. Even the publisher Balpande, signatories M.S. Motghara and Sakharan Narayanji Dipate in respect of Ext. 43, and Tukaram Rakhalu, Shende in respect of Ext. 42, were summoned by the petitioners but were not examined. Balpande is said to be

a witness in the complaint (Ext. 93) filed by the first petitioner Karemore against the printer and editor of Bhandara Times in respect of the publication of Dhote's speech. All the above persons who were not examined are Congressmen or Congress workers (see the evidence of Karemore P.W. 29, Dayaram Banthe 1 R.W. 2 and Gaidhane 1 R.W. 14). The alleged signatory of Ext. 43 was also a signatory of Ext. 119 supporting a Congress candidate Vithal Prasad Dube in 1972 election (see Dayaram Banthe 1 R.W. 2). The omission to produce any of the above witnesses to prove Exts. 42 and 43 is significant particularly when they belong to the party., of respondent No. 2 who benefits from the election being set aside.

Evidence has also been adduced to show that the offending pamphlets were distributed at Warthi on February 17, 1972 (See Narayan Fuley P.W. 14, Prandas Wasnik P.W. 19 and Lambe P.W. 23); at Bhandra on February 22, 1972 (See Narayan Yelne P.W. 29 and Tizare P.W. 30); at Bhandara on February 23, 1972 (see Ramteke P.W. 34 and Kesho Hedau P.W. 37); and at Mohadi on February 18, 1972 (see Patre P.W. 13 and Lalit Mishra P.W. 25). The learned Trial Judge has disbelieved these witnesses and has given reasons therefore. But the learned Advocate for the appellants has assailed those reasons and has submitted his detailed comments. In considering the evidence of these witnesses, particularly in an election matter, the interest which these witnesses have in and the support they give to, any particular political party are relevant factors to be taken into consideration for determining their bias for speaking in favour of one party or against the other. Apart from this, there are other factors such as their

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knowledge of the contents of the pamphlets, whether they preserved those pamphlets, what action they took, whom they had informed if they had considered such pamphlets to be offensive, and whether they are chance witnesses or had an opportunity of knowing about the incident about which they are deposing. There may also be some witnesses who may claim to have supported the successful candidate, but after the election have changed their loyalty and have appeared as witnesses for the petitioners. This is also a circumstance to be taken into consideration. We have gone through each of the reasons given by the learned Judge and the comments submitted by the learned Advocate for the appellants for not accepting those reasons, but we find ourselves unable to reject the appreciation of the learned Judge for not accepting the evidence of these witnesses. We would have examined the reasons in the light of the comments submitted by the learned Advocate in detail, but we have not done so because of our anxiety to keep the length of this judgment within appreciable limits. If we may take one ground which uniformly has been admitted by most of these witnesses, it is that they have neither preserved the pamphlets nor do they even remember the contents of those pamphlets. (see Fuley P.W. 14, Yetne P.W. 29, Tizare P.W. 30-to name a few.) Even Ramteke P.W. 34 District Deputy Election Officer is not able to remember the caption of any of the pamphlets though as we have seen earlier he claimed to remember that those pamphlets were seen by him before the date of the polling. Keshao Hedau P.W. 37 is a member of the Congress Party who worked for respondent No. 2. P.W. 13 likewise is a staunch Congress worker. P.W. 25 does not say that he himself received or had occasion to see the pamphlets which are said to have been distributed. Though each of these circumstances may be insufficient to throw doubt on their

veracity, but junctz juvant.

On a perusal of the evidence as a whole and having considered the meticulous contentions advanced by both the parties, we cannot say that the finding of the learned Trial Judge that Exts. 42 and 43 were not printed, or published or distributed before the date of polling, is not warranted. We think, on the evidence, this finding is clearly sustainable.

The second head relates to corrupt practice under sub-s. (6) of s. 123 of the Act for incurring or authorizing expenditure in contravention of s.77. This section forbids a candidate at an election to expend more than the amount prescribed which under r. 90 of the Rules relating to Assembly Constituencies in the State of Maharashtra is Rs. 12,000/-. The first respondent has returned on expenditure of Rs. 7,749-11 out of which Rs. 6,371-61 have been paid and Rs. 1,377-50 are shown as outstanding. It is also alleged that the first respondent has committed a breach of s. 77 read with r. 86 of the Rules framed under the Act for not showing certain items of expenditure in the return filed with the District Election Officer as required by s. 78 of the Act. The learned Trial Judge was of the view that it has not been shown how there was non-compliance with s' 77 read with r. 86 and also that no arguments were advanced on that point. Section 77 of, the Act requires that ,every candidate at an election shall, either by himself or by his election

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agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive. It also provides under sub-ss. (2) and (3) that the account shall contain such particulars, as may be prescribed, and that the total of the said expenditure shall not exceed such amount as may be prescribed. Rule 86 of the Rules prescribes that the account of election expenses to be kept by a candidate or his election agent under s. 77 shall contain the particulars specified therein and that vouchers shall be obtained for every item of expenditure and lodged along with the account of election expenses.

The contention of the appellants is that the first respondent though he has admitted that he had kept an account in the Note-book from which he prepared the return of election expenses, did not file that Note-Book, nor has he shown that he had maintained the accounts in accordance with the law. It is submitted that under s. 78 of the Act, the first respondent should have lodged with the District Election Officer an account of his election expenses which shall be a true copy of the account kept by him or by his election agent under s. 77, and since the first respondent has not shown that the account filed by him was a true copy of the account kept by him he has committed default of the provisions of ss. 77 and 78 of the Act' Even assuming that this point had been argued, we do not think that there is any substance in the contention urged by the learned Advocate for the appellants that the return filed by the first respondent was not a true copy of the account kept by him. The obligation is to keep separate accounts and to file a true copy of that account along with the vouchers, but there is no requirement for him to file the account book, unless the authenticity of the true copy of that account is challenged.

There is validity in the submission of the learned Advocate

for the first respondent that no notice was given by the appellants to produce the account book, nor has the authenticity or veracity of the true copy of the account filed by the first respondent been challenged in any way. Every item of expenditure that has been shown in the return has been supported by the original voucher which was not challenged. Nor has anything been brought to our notice to show that there is any averment in the pleadings that the accounts filed were not a true copy of the accounts maintained. In our view, the requirements of ss. 77 and 78 have been complied with.

The next ground of challenge is that the amount shown in the return is not a correct amount and that there are amounts which had been incurred in respect of several items that have not been shown in the return. There is no dispute that the items of expenditure shown in the election return amounting to Rs. 7,749.11 are not correct. What is sought to be proved is that the expenditure in respect of several other items other than those shown in the return has to be added. It may be mentioned that a successful candidate at an election is entitled to

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deduct Rs. 250/- deposited so that actually the amount returned has to be reduced by that amount, which will come to Rs. 7,499.11.

The learned Trial Judge has added a sum of Rs. 2,992.95 in respect of two items of expenditure incurred towards petrol as evidenced by Exts. 86 and 87. The amount of Rs. 952.85 is in respect of chits issued by Saxena on behalf of Congress-0 and the amount of Rs. 1,984.30 is in respect of chits issued on behalf of Bharatiya Jana Sangh. These two amounts total upto Rs. 2,947.15 and though the High Court has added Rs. 2,992.95 the former figure seems to be the more accurate one. According to the petrol dealer Gurjar 1 P.W. 21 the accounts of Bharatiya Jana Sangh and the Congress-0 were separate as is evidenced from Ext. 87-D-Cash and Khata entries pertaining to Bharatiya Jana Sangh and Congress-0. This witness categorically denies that there is any account with him in the name of Govindrao Shende, sheoshankar Ninawe, Kharbe, Bhasker Ninawe, Saxena or Bhasker Hardinkar. He also says that Bhau Dalal had come to him to open an account in his name telling him that for all the purchases made in his account, he or Govindrao Shende would be liable. He said Saxena had also come to him to open an account for Sanghathan Congress (Congress-0) and stated that he would be responsible for the purchases made in the account of the Sanghathan Congress and that Bhaskar Ninawe had come to open an account for the Bharatiya Jana Sangh and stated that he would be liable for the purchases made in the account of the Bharatiya Jana Sangh. P.W. 21 also says that he submitted the bills to Saxena and Bhasker Ninawe separately and received the amounts from them. In any case the learned Judge was wrong in including the expenditure of Rs. 145/- on petrol between March 11 to March 14, 1972, which is after the date of polling. Ninawe 1 R.W. 7 admits that he is the President of the Bharatiya District Jana Sangh Party and that 39 requisition slips which were collectively marked as Ext. 86 were admitted to have been signed by him. He says that these requisition slips were given to the Gurjar Petrol Pump at the time the petrol was put in the cars, that he paid Rs. 1,000/- to Gurjar for the petrol supplied to him under these requisitions; that about Rs. 800/- or Rs. 900/- out of the total bill had remained unpaid; that the amount of Rs. 1,000/- had been paid by the Jana Sangh Party; and that the liability for the amount

remaining due was also of the JanaSangh Party. We have ourselves seen the chits in Exts. 86 and 87 and have no manner of doubt that those chits were given on behalf of the Bharatiya Jana Sangh and Congress-0 Parties, whose names also have been written on those chits by the persons signing them at the Petrol Pump. In these circumstances, there is no justification for adding Rs.2,992.95 to the amount of Rs. 7,499.11 as found by the High Court. In view of this evidence, the learned Advocate for the first respondent challenges the finding of the High Court that the amount of Rs. 2,992-95 was incurred on his behalf and should not have been added to his return of election expenses. In our view, the first respondent is entitled to challenge this finding of the High Court for supporting the conclusion that no corrupt practice has been committed in respect of this head. 461

in respect of the expenditure incurred for illuminating the truck and hiring the tractor which took part in the processions at Bhandara on March 2, 1972 and March 3, 1972, the Court after elaborately considering the evidence of P.W. 6, P.W. 34, P.W. 37, P.W. 39 and P.W. 40 disbelieved it.' It was a case of appreciation of conflicting oral evidence of petitioners and respondent 1 and we are unable to say that the conclusion arrived at by the Trial Court was unjustified.

Apart from this, there is also an item of expenditure of Rs. 450/incurred for hiring of cycles. In support of this expenditure the evidence of Fakhruddin Patel P.W. 2 was adduced. We, however, agree with the Trial Judge that this evidence is not reliable. The reasons given by the learned Trial Judge for disbelieving this witness are that there is a difference in the ink in entry on Ext. 36A, there is no receipt book and that P.W. 2 did not maintain a copy of the receipt. It was also not understood why Ninawe's name was mentioned in the entry Ext. 36A. That P.W. 2 had only eight cycles and that no signature was taken on the register. Nor does the entry mention the amount of hire money received, and that the last entry made on February 14, 1972 was also suspicious. We have seen this Ext. 36A which does not stand scrutiny and accordingly this amount is rejected.

In respect of Kirti Hotel a sum of Rs. 1,959/- is alleged to have been spent by Kanchanlal Saxena P.W.27 on account of food taken by the workers of the first respondent. The proprietor of the Hotel Inamur Rahman is a friend of P.W. 27. The account book produced by him was examined by us from which it is clear that it has not been kept in the regular course of business. There are many pages on which entries have been made at places where they could have been made subsequently. The carbon copy of the receipt Ext. 51A shows that the amount was paid in a lump sum, whereas the pleadings as well as the Register show that the amount was paid at different times. This witness's brother Abdur Rahman is a teacher in Nav Prabhat High School of which Tirpude respondent No. 2 is a member of the Governing Body of the School and an active worker of the Congress. P.W. 27 neither knows how many chits were issued, nor does he know who first respondent's workers were. The learned Trial Judge has given weighty reasons for rejecting this evidence and we do not think we would be justified in reversing this finding.

With respect to the amounts paid to Laxmi Litho Works for printing posters and badges, the case of the first respondent is that he paid a consolidated sum of Rs. 730/- and another bill for Rs. 35/- to Sakhare P.W. 12. The petitioners, however, contend that a further amount of Rs.

710/- under orders Nos. 61A and 61B was paid by Shende to Laxmi Litho Works which amount has not been shown in the return of election expenses. Shende, however, disputes that the above orders Exts. 61A and 61B were placed by him or that he had paid Rs. 710/- in addition to the payment admitted by him under the cash memo, receipt dated February 23, 1972. The contention of the first respondent is that Exts. 61A and 61B are fabricated documents. Ramesh Sakhare P.W. 12 the proprietor of the Laxmi Litho Works admits that he maintains a cash book which he had not brought in spite of M602Sup.CI/74

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being called upon to bring the same, nor is the Cash book up-to-date. The witness also admits that he did not file the annual sales tax return for the period April 1, 1971 to March 31, 1972. The order book Ext. 61A shown that pp. 117 and 118 are completely blank. The witness also admitted that in Ext. 61A there are alterations at some places and the figure of Rs. 390/- is over-written as also the date of placing the order. This order shows that Rs. 375/- were received- in cash which figure is changed to Rs. 390/- by ball-pen while the other entries are in ink. We have seen the order book Ext. 61A which contains the above over-writings and the blank order forms in the middle so as to raise an inference that those could be filled in at any time. The High Court has held that Ext. 62 is a consolidated receipt for all the orders and total payment of Rs. 755/- had been made by Shende, and that has been included in the return of election expenses. We do not see any reason to disagree with that finding.

Certain other petrol expenses which were alleged to have been incurred by the first respondent are said not to have been included in the return. These are in respect of petrol purchased from Kulwal & Sons of which P.W. 32 is the Manager. The High Court has not accepted the evidence of P.W. 32 nor the accounts of this witness. The witness admitted that whenever there was a credit sale, signature was taken on the credit memo, but no such signature had been taken in respect of petrol alleged to have been supplied to Shende. It is also not explained why the credit entries were shown in 'Unchant Khata' (Suspense Account). According to the first respondent, there is another Shende by name Govind Shende in Tumsar who is a Congress worker and it is possible that petrol might have been supplied to that Govind Shende of Tumsar. Taking advantage of this, in order to support the petitioners, the petrol taken by him is now being shown against the first respondent whose name also is Govind Shendi. (See evidence of Chandrakumar Khandelwal P.W. 32). It is also apparent that this Govind Shende of Tumsar was canvassing for the Congress candidate at Tumsar. Taking advantage of the similarity of the names, it is possible that the amount incurred by him is sought to be foisted on the first respondent. In our view, the High Court has rightly rejected that evidence.

A sum of Rs. 600/- was incurred by Kharabe father-in-law of the first respondent for hiring of Taxi No. MHG-191. In respect of this Taxi payments were made to Laxman Peshene P.W. 7 by Waghaye who is the maternal uncle of Shende. The High Court excluded this amount, because it is not proved that it was incurred with the consent or authorization of the first respondent. The learned Advocate, for the first respondent contends that Kharabe and Waghaye who are near relations of the first respondent have incurred the expenditure on their own to support the candidature of the first respondent. But that is not to say that the

expenditure is an election expenditure incurred by Shende. The evidence, however, as pointed out by the learned Advocate for the appellants, shows that the Taxi had been hired for bringing the workers of the first respondent to the election office of the first respondent and that Waghaye had paid the hire charges. In these

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circumstances, we think that the amount paid by Waghaye is an expenditure incurred for election of the first respondent, as this was paid at his election office which was the venue for carrying the workers to and fro in that Taxi.

The further contention of the appellants is that it is not denied that Shende had given Rs. 3,000/- to Bhau Dalal, but Dalal had only submitted account for Rs. 801/- as is said to have been admitted by him. Accordingly, we are asked to add at least a sum of Rs. 2,000/to this account. The first respondent contends that Dalal had paid through Sheoshankar Ninawe, P.W. 10, certain sums which amounted in all to Rs. 1040/-. Apart from the details of expenditure which were given for hiring loud-speakers amounting in all to Rs. 1,040/-, he paid to Gurjar Brothers for petrol to Parsodkar for stencils, to Lalit Mishra and Rao for publicity, to Murari Dongre for bamboo on different dates amounting in all to Rs. 1,930/50. It is, therefore, submitted that these items which add to Rs. 2,979.50 were paid out of Rs. 3,000/- given by Shende to Dalal. The Advocate for the appellants, however, submits that there is no evidence to show whether it is Shende who paid these amounts or it was Dalal who paid them from out of Rs. 3,000/given by Shende. It appears that out of Rs. 3,000/- which were admitted to have been received by Dalal from Shende, Dalal paid Rs. 977.50 to Gurjar Brothers, Bhandara on April 10, 1972 and a sum of Rs. 84/on February 19, 1972 for bamboo to Murari Dongre. These two items which have been shown in the returns amount to Rs. 1,061.50 so that a sum of Rs. 1,938.50 not accounted for will have to be added to the election expenses. According to the first respondent, the appellants' argument that the amount is not accounted for is built on answers of Dalal to stray questions asked in the cross-examination. We do not think there is any validity in this criticism. The appellants are entitled to rely on statements made during cross-examination as much as the first respondent is entitled to rely on answers given in examination-in-chief. It appears to us that the amount of Rs. 1,938.50 is not satisfactorily explained nor can we assume as the learned Advocate for the first respondent wants us to assume that the unaccounted amount was due to be refunded to Shende. In our view, in the absence of a satisfactory explanation, Rs. 1,938.50 have to be taken as election expenses and must, therefore, be added.

There is again a sum of Rs. 100/- which was paid towards the salary of Hari, the driver of the first respondent's jeep. It is submitted that Hari was the permanent driver of Shende. The first respondent admitted in his evidence that he does not drive a car and had kept a driver for his jeep car. one Hari was kept as driver for the jeep car, that Hari was driving the jeep during election and he was paid Rs. 100/p.m. It was suggested to him that there was another driver Sadasheo Bhure of Kaharad, but the witness said he was never his driver. He was asked that between February 2, 1972 and March 2, 1972 he had another driver for his jeep car besides Hari. From this it is sought to be contended that Hari was only engaged for election work and that Rs. 100/- paid as salary should be included in the election ex-

penses. The first respondent, however, says that admission does

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not amount to the driver Hari being appointed only for the election. When the witness said he had a permanent driver and that Hari was driving the jeep car during election and was paid Rs. 100/- p.m., it would mean that he was a permanent driver and also drove the car during the election. There may be some justification for this contention because the statement that Hari was paid Rs. 100/- p.m. might mean that he was a permanent driver. At the same time it could also mean that he was paid for one month during the election at Rs. 100/-p.m. Be that as it may, even if this amount is included, we do not think it would make much difference as we shall presently show.

The next item is Rs. 600/- incurred towards taxi hired for six days. The issue pertaining to this item is 5(a), (b) and (c). Though the finding of the High Court is that taxi was used for the election work of the first respondent, but the sum of Rs. 600/- for six days was incurred by Waghaye which was paid by him at the election office of the first respondent and hence it is contended that it was incurred by him as an election expense. The Court, however, held that though this amount was paid, the consent of the first respondent to this payment was not established. It is contended that since the amount was paid in the election office, this amount also would appear to have been paid for election on behalf of the first respondent. The fact of payment at the election office of the taxi being used for carrying the workers of the first respondent is tenaciously contested. Then again it is said that the first respondent admitted that he went to Nagpur from Bhandara on two occasions in his jeep on February 4 & 5 and February 10 & 11, 1972 for which according to him he purchased 50 liters of petrol. He has, however, only shown the amount incurred for 20 liters of petrol in his expenses. The first respondent also admits that he does not remember how much petrol he put into the jeep apart from the 50 liters. There is no doubt that the jeep was used for election work between February 1, to 8, 1972 in respect of which he has not shown any expenses in the return. As we have seen, he only showed 20 liters on February 10, 1972 but did not show any petrol expenses between 11th and 12th. He does not remember the quantity of the petrol put in the car between 12th and 15th February. He no doubt says that he did not use the car on the 1st and the 8th February in Bhandara town but that admission will not help him because he could use it outside. in the circumstances, it is open for the Court to make a fair estimate of the expenses which he could have incurred and if we consider 10 liters per day for 15 days, the excess amount after deducting the amount of 20 liters already included will come to 130 liters which at the rate of Rs. 1.48 Per liter would come to Rs. 192.40. The Court, however, added only 30 liters from which 20 liters was deducted and the balance of Rs. 44.40 was included in the election expenses. We, however, propose to add Rs. 192.40 on this account.

There are two other items-one of Rs. 695/- in respect of Sakhare and the other of Rs. 129/- said to have been incurred on account of Shende. Even if the contentions of the learned Advocate in respect of these amounts are accepted, namely, Rs. 1,939/- incurred by Bhau

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Dalal for which no account was given, Rs. 100/- paid towards the salary of Hari, Rs. 695/- in respect of Sakhare, Rs.

192/40 or say Rs. 192/- in respect of petrol, Rs. 600/- regarding hire charges of Taxi No. MHG-191 hired by the father-in-law of the first respondent, and Rs. 129/- incurred for Shende, the several items will amount to Rs. 3,655/-. If these amounts totalling to Rs. 3,655/- are added to the election expenses already shown, which after deducting Rs. 250/- would come to Rs. 7,498.89 or say Rs. 7,499/-, the total amount of expenditure incurred would be Rs. 11,154/-. Even on this reckoning, the election, expenses are well within the limit of Rs. 12,000/- and consequently the appellants' charge against the first respondent for committing corrupt practice under sub-s. (6) of s. 123 of the Act is not established.

Under the first head of corrupt practice as we have seen earlier, the allegation is that at the public meeting held on February 18, 1972 at Shaheed Maidan, Bhandara, Jambuwantrao Dhote, a protagonist of Maha Vidarbha. Sangharash Samiti which has as its object the formation of a separate State of Vidarbha made a false statement that the second respondent Tirpude paid a bribe of Rs. 60,000/- to the first appellant Karemore to withdraw from the contest. This statement, it was further alleged, was made in the presence of the first respondent Shende who, it is said, also spoke in the same meeting from which his consent to the false statement made by Dhote is sought to be inferred. The second allegation in this regard is that the report of Dhote's speech was published in the Bhandara Times of February 23, 1972, which publication, it was averred, was with the consent of Shende inasmuch as the Bhandara Times was acting as his agent.

The case of the appellants is that the meeting at Shaheed Maidan was arranged by the first respondent who had approached Dhote to visit his constituency for supporting his candidature and had got printed a notice of the aforesaid meeting to be addressed by Dhote. In paragraph-41 of the petition the appellants stated that the above statement was "believed to be false" by the maker as well as Shende and nobody could have believed it to be true. The first respondent of course denied that the above statement was ever made or that it was made in his presence or with his consent. Nor did he have any knowledge that any statement was published on February 23, 1972 in the Bhandara Times with his consent or with the consent of his election agent, or that the Bhandara Times was making propaganda on his behalf or that it was acting as his agent. In support of the allegations the appellants examined Haridas Khobragade P.W. 22, SharadChandra Lambe P.W. 23, Viswanath Shangarpawar P.W. 24, Saxena P.W. 27, Lalit Kumar Misra P.W. 25, Balwant Bhole P.W. 40, Sharad Hardikar P.W. 28 and Baburao Karemore P.W. 29. of these P.W.s 29, 24, 27 and 40 are Advocates, while P.W. 23 is the Headmaster P.W. 25 is a Journalist, P.W. 28 the printer, publisher and owner of the Bhandara Times and P.W. 39 the first appellant. The documentary evidence in support of these issues are Exts. 69 dated February 16, 1972 which is the notice dated February 16, 1972 announcing that Dhote will address a meeting on February 18, 1972, at Bhandara in support of the first respondent, Ext. 108 of the same date which is a
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declaration of Ext. 69 made under s. 127A; Ext. 157 dated February 14, 1972 is the application for permission to hold the aforesaid meeting addressed to the President, Municipal Council, Bhandara; Ext. 101 dated February 23, 1972 issue of the Bhandara Times; Ext. 18 dated February 26, 1972 which is a part of the notice given to Dhote by the first

appellant Karemore regarding the alleged statement said to have been made in the public meeting and published in the Bhandara Times; Ext. 100 dated February 26, 1972 the notice issued to shared Hardikkar P.W. 28 the owner, printer, publisher of the Bhandara Times, Ext. 103 dated March 2, 1972 the reply of Sharad Hardikar P.W. 28 to the notice Ext. 100 admitting that what was reported as spoken by Dhote was part of the speech of Dhote; and Ext. 143 dated February 21, 1972 is the issue of Lok Vani reporting the speech of Dhote.

The learned Trial Judge after noticing that the affidavit filed by the appellants in support of the various allegations did not disclose the sources of information expressed the view that in the absence of such a disclosure which would take the opposite party by surprise those allegations and the affidavit in support thereof would be viewed with some suspicion. It was also pointed out that even after an objection was raised by the first respondent that the petitioners should supply further and better particulars, they remained silent with respect to this matter which would raise an inference amongst others that at the time of drafting the petition, the petitioners were not informed by any one who was present at the meeting of February 18, 1972 about the statement alleged to have been made by Jambuwant Rao Dhote in the said meeting-. While there is no dispute that Jambuwant Rao Dhote addressed a meeting at Bhandara on February 18, 1972, the only question is whether he made the objectionable statement in that meeting that Tirpude paid Rs. 60,000/- to Karemore for inducing the latter to withdraw his candidature from the election. The learned Trial Judge, after a review of the evidence and after considering the various contradictions, improbabilities and the interestedness of the witnesses held that they were not present at the meeting and, therefore, they could have no knowledge of what was spoken by Dhote or by Shende at the meeting, because if they had been present at that meeting they would have certainly informed the petitioners and the second respondent Tirpude of what happened at the meeting; if they had informed them then the petitioners would have mentioned their names in the affidavit or in the subsequent further and better particulars. was further held that even if the first respondent was present at the meeting held at Bhandara on February 18, 1972 and spoke at the meeting as alleged, there is nothing to show what part of the speech was consented to by the first respondent. There is also no evidence that the statement in the Bhandara Times was published with the consent of the first respondent or that the Bhandara Times was the agent of the first respondent. The Trial Court, therefore, held that the allegations under this head were not established.

Lengthy arguments were addressed before us to show that the appreciation of the evidence as well as the conclusions arrived at by the learned Trial Judge were unwarranted. There is, according to

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the learned Advocate for the appellants, sufficient evidence to hold that these allegations were proved.

Before we refer to the comments and criticism challenging the findings of the High Court, it is necessary to set out the approach which this Court will have to adopt in examining the evidence in the case. While, as we have said earlier, it is open to this Court to reappraise the evidence and consider the propriety, correctness or legality of the findings recorded by the Trial Court, ordinarily it will be

slow to disturb the findings of fact recorded by the High Court, unless there are cogent reasons to do so. In examining the question whether the allegations about the commission of corrupt practices by a returned candidate, the Court has to keep in view that the allegations of corrupt practices are of a quasi-criminal nature, the proof whereof has a double consequence of not only setting aside the election of the returned candidate, but also imposing subsequent disqualification debarring him from becoming a candidate at any election for a period of six years. Inasmuch as the charge is a serious one and is of a quasi-criminal nature, the onus of proving the essential ingredients prescribed by sub-s.(4) of s.123 is on the person who alleges them. He has to show that the impugned statement has been published by the candidate or his election agent or by any person with the consent of the candidate or his election agent. He has further to show that the impugned statement is a statement of fact which is false; that the maker of the statement whether he is the candidate or his election agent or any other person either believed that the said statement was false or did not believe it to be true, and that the statement is in relation to the personal character and conduct of the complainant candidate or his candidature which statement was reasonably calculated to prejudice the prospects of the candidate's election.

There is no doubt that the alleged statement, if proved to have been made, is an imputation against the character or conduct of the petitioner Karemore and Tirdude. What has, therefore, to be established by the appellants, is (i) that the statement was made at the meeting held at Bhandara on February 18, 1972 by Jambuwantrao Dhote; (ii) that the statement was false; and (iii) that Shende consented to the making of that false statement. If all these ingredients are established, it has further to be proved that Dhote and Shende while consenting to it, believed the statement to be false or did not believe it to be true. We will now examine the evidence keeping in view the approach which this Court adopts in such matters, particularly having regard to the fact that where the electorate has chosen their candidate at an election, their choice ought not to be lightly upset, unless there are very cogent and compelling reasons.

There is no doubt that a meeting was held in the evening of February 18, 1972, at about 8-30 P.M. at Shaheed Maidan in Bhandara, at which Jambuwantrao Dhote spoke. It is also not disputed that the Maha Vidarbha Sangharsh Samiti had decided to give its support to the first respondent. What is, however, denied is that the first respondent did not advertise for this meeting, but only agreed to share the

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expenses of the meeting, and that he was not present at that meeting when Jambuwantrao Dhote addressed it. In support of the contention that the first respondent advertised this meeting, notice Ext. 69 dated February 16, 1972 was produced and it was sought to be established that the, first respondent for the printing of that notice. We think, this contention is well-founded because the first respondent in his evidence has admitted that he got printed some handbills with the caption "HAMRA NIVEDAN", some posters and slips for being given to the voters and some pamphlets regarding the meeting to be addressed by Jambuwantrao Dhote at Bhandara and Bhandra on February 18, 1972. He further admitted that he paid the amount of this printing which has been shown in the return. In his cross-examination, however, he said that he had not asked Bhau Dalal to print the pamphlets about the

public meeting addressed by Jambuwanttrao Dhote at Bhandara and Mohadi, even though he admitted having seen the pamphlets like Ext. 69. He also denied that he had told either Bhau Dalal or any, one else for taking permission for the holding of the meeting of Jambuwanttrao Dhote at the Shaheed Maidan. He said "Had I known that Jambuwanttrao Dhote was to come to Bhandara to address a meeting on February 18, 1972, I would have made efforts to attend the said meeting". It is a futile attempt on the part of the first respondent to deny that he had no notice of the public meeting or getting Ext. 69 printed or distributed. When a person says that he paid for it in examination-in-chief was bare denial ill cross-examination of that fact cannot reduce the efficacy of his previous categorical statement. At any rate, he admits having the knowledge that a notice like Ext. 69 was distributed and once this is admitted, there is no point in his denying later that he did not know of that meeting. If it was his case that he saw the notice Ext. 69 after the meeting, he should have stated when he had seen it.

There is also an application Ext. 157 dated February 14, 1972, submitted by Shivshankar Ninawe to the President, Municipal Council, Bhandara, for providing Shaheed Maidan Ground and granting permission for electric connection etc. for the election meeting to be held on February 18, 1972 at 6-00 P.M. at Bhandara. On that application an undertaking was taken from him on February 16, 1972 that the responsibility of any possible accident arising out of the electric current would be his. This witness was working for Shende and admits that this was done as per his instructions. He also admits that he is the printer and publisher of the pamphlet Ext. 69. The cross-examination he says that he got the pamphlet Ext. 69 printed, and had shown it to Bhau Dalal on February 17, 1972 on which date itself Bhau Dalal had prepared the draft. The witness says that he had not met Dada Shende on February 15 and 16, 1972. He also says that Bhau Dalal did not tell him to apply for permission to hold the meeting on February 18, 1972 but he himself had applied for the permission.

We have no hesitation on this evidence to hold that Shende knew or must have known of the meeting to be addressed by Jambuwanttrao Dhote on February 18, 1972 at Bhandara. The probabilities are also in favour of this conclusion, because it cannot be imagined that when

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a person like Jambuwanttrao Dhote who was coming all the way to Bhandara to support the candidature of Shende at the meeting to be addressed by him-, Shende would not know about it or that if he knew about it he would not have been present at the meeting. The omission to mention his name in the report of the meeting either in the Lok Vani or in the Bhandara Times, or his having made any speech at that meeting is, however, sought to be pressed into service in support of his denial that he was present. It may be that he was present but did not make any speech, or even if he did make a speech it was a speech which had no consequence for a report of it to be published in the Press'. In any case, on the evidence, it is reasonable to infer that Shende must have been present.

The evidence of P.W. 22 who is said to be an independent witness and an antagonist of Tirpude is relied upon by the appellants as establishing not only that Jambuwanttrao Dhote made the impugned speech, but that Shende was present on the dais and spoke after Dhote had finished his speech. It appears to us that in election matters, where the witnesses

who admittedly belong to the one or the other political party and are enthusiastic workers for canvassing support for their respective parties or candidates, will not be expected to appear and give evidence against the persons whom they supported, unless it be with some motive. It is, however, difficult to fathom the motives that impel them to change their front. Be that as it may, the learned Trial Judge has given several reasons why this witness cannot be relied upon. He is an Advocate, that he was once the Secretary of the Republican Party of India (Khobragade Group), that the third respondent was a candidate on behalf of that group; and that the witness himself was a candidate in the 1967 election. This witness says that he was standing near the gate of the Shaheed Maidan adjoining the public road and heard the speech made by Dhote. He also says that Dhote spoke in support of the candidature of Shende and Ramkrishna Katekhaye and said that he was inaugurating the election campaign of these two candidates and thereafter in token thereof a coconut was broken. He also said that thereafter Dada Shende spoke making a formal speech saying that Jambuwanttrao Dhote had already said what had to be said in connection with his candidature and that the voters should vote for him.

The reasons given by the learned Judge for disbelieving this witness are-(1) that since his own party candidate was also contesting the said election, it was doubtful whether he would attend the meeting; (2) that if he was a special inviting for attending the meeting, he would have been given a place of honour by seating him on the dais; (3) that he as well as the second respondent Tirpude both belonged to scheduled caste and would be more inclined towards Tirpude; (4) that when he was supporting his candidate, it was unlikely that he would support the second respondent in this election; (5) that after the meeting no action was taken by him to contradict the alleged statement made by Dhote; (6) that the Republican Party of India and the Congress had alliance in the past for the elections and it is not unnatural that he had come forward to depose in favour of respondent No. 2 Tirpude for such reasons. This witness does not say that he informed Tirpude or any

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of his workers about the objectionable speech of Jambuwanttrao Dhote, nor does he say that he had at any time, before or after the election petition was filed, inform the petitioners about the alleged objectionable speech made by Dhote at the said meeting.

Karemore, P.W. 29, also does not say that he or any of the other petitioners were told about the presence of P.W. 22 at the meeting addressed by Jambuwanttrao Dhote. It is pointed out that the observation of the learned Judge that the Republican Party of India and the Congress had entered into alliances in the previous elections are not supported by any evidence. It is true that no such suggestion was made to P.W. 22. In any case, it cannot be said that the other reasons given by the learned Trial Judge are irrelevant or are not factors which could not be taken into account in determining the credibility of his testimony.

P.W. 23 Sharadchandra Lambe is interested in the second respondent Tirpude and is under his influence. The learned Judge, while assessing the value of his evidence in connection 1 with Exts. 42 and 43, pointed out that this witness had stated that Karemore had asked him on November 16, 1972 whether he knew anything about the election propaganda, and in reply he had told him that he knew about it. Karemore, therefore, did not know of this witness till

then as is obvious 'from the fact that his name does not appear in the list of witnesses submitted on September 6, 1972. This witness also says that he was standing near the gate of the Maidan adjoining the public road, and though he knows Haridas Khobragade P.W. 22 and both of them were standing near the gate of the Maidan, he did not see him there. The discrepancies between the versions of this witness and P.W. 33 were also pointed out. For these reasons the learned Trial Judge has not placed any reliance on his testimony.

P.W. 24 Viswanath Shangarpawar is associated with the second respondent Tirpude as his colleague at the Bar for a number of years. His version that the first respondent was accompanied by--Ram Hedau when he asked everybody in the District Bar Room to attend the meeting of Jambuwanttrao Dhote on February 18, 1972, was not spoken to by P.W. 22. He says that he heard the speech from the window in the office of the Municipal Council which was at a distance of about 50 feet from the stage. The witness adds something which others have not spoken, when he says that Dhote addressing the public said that Shende and Katekhaye were the two pearls who were put before the public and if the public was willing to get them elected he would inaugurate the election campaign by breaking the coconut. Then Dhote asked the public thrice whether they would support the two candidates, and on their response he broke the coconut. The discrepancy between the evidence of this witness and the evidence of P.W. 23 Lambe was also referred to and it was pointed out that this witness was actively supporting Tirpude second respondent in the last election and that he was going from place to place, which though denied by him was spoken to by the witnesses on behalf of the first respondent. Though this witness knew the first petitioner Karemore and the second

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respondent Tirpude well, he did not mention to them the alleged objectionable statement made by Dhote imputing corrupt practices to Karemore and Tirpude. The witness is a regular reader of the Lok Vani and is a friend of Panditrao, the printer of that paper, and yet he did not inform him that the report of the speech of Dhote published in his Weekly was not complete and that he had omitted to mention the objectionable statement made by Dhote imputing corrupt practices to Karemore and Tirpude. The learned Trial Judge said' that if Jambuwanttrao Dhote had made such an objectionable statement as alleged, a notice would have been immediately sent to him taking objection to the alleged statement, but that was only done after the, publication of the report of the speech of Dhote in the Bhandara Times on February 23, 1972. Even though this witness says that at the time of filing the complaint against the printer, publisher and owner of the Bhandara Times he had told Karemore for the first time that he had attended the meeting on February 18, 1972 there would have been a reference in Ext. 93 that Dhote actually made such an objectionable speech in the said meeting. on the other hand, the only allegation is that the statement was wrongly published by the Bhandara Times and that the publication was offensive. The statement in Ext. 93 is that the accused persons did not make any inquiry for ascertaining the correct facts before its publication. According to the learned' Judge the import of the statements made in the complaint appears to be that this news or the statement attributed to Jambuwanttrao Dhote was a creature of the imagination of the accused themselves and not a correct reproduction of the speech of Jambawantrao

Dhote. He also referred to the omission to file any complaint against Jambawantrao Dhote and examined the reasons given by the witness for not going so, as indicating that his presence at the meeting was: highly improbable.

P.W. 25 Lalit Kumar Mishra gives a completely different version of what Dhote had spoken at the meeting, He says that he sent a report of the meeting for Yoga Dharma and Hindusthan Samachar News Agency, but admits that he did not include in that report the objectionable speech of Dhote as he considered it to be defamatory. It is rightly pointed out that this was not his duty. He was only expected to send a faithful report of the speech to his news-papers and it was for the Editors to delete and edit those portions which they found 'would offend the law or were objectionable. The learned Judge thought this witness was a sharp and intelligent witness and gave twisting answers to support the party for whichever had come to depose and, therefore, was not impressed by the manner in which he gave the evidence which was artificial and unnatural. Apart from this, his statement that he neither preserved the notes nor kept a copy of 'the report also belies his statement that he was present. Neither P. W. 22, nor P.Ws 23 and 24 mention about this witness to Tirpude or Karemore though he admits he knew them from 1947; it is difficult to understand how Karemore came to know what actually took place at the meeting. He was also not cited as a witness. 1 R.W. 15 denied that P.W. 25 was present at the meeting on February 18, 1972. No doubt the learned Advocate for the appellants tried to explain

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away each of the circumstances pointed out by the learned Judge for showing that they are really not such as should have been taken into consideration for discrediting the testimony of this witness. It is contended, for instance, that no questions were put to P.Ws 22, 23 and 24 that they were not present at the meeting. On the other hand, It is urged that P.W. 27 Saxena and P.W 40 Bhole said they were present. In our view, the depositions of these two witnesses are suspect, because while holding themselves out to be on the side of the first respondent they changed their loyalty and have gone all out to support the petitioners and the second respondent in trying to establish corrupt practices against the first respondent. As 'we have stated earlier, while dealing with their evidence in connection with Exts. 42 and 43, the learned Judge has, considered their evidence to be unreliable. If as the learned Advocate for the appellants contends that P.W. 27 (Saxena) lent substantial support to the first respondent then how is it that he was visiting the second respondent even during the election? It is said that he had only seen Tirpude in the company of Bhasker Ninawe which is admitted by the witness. But this admission does not mean that he had not seen or visited the second respondent on other occasions during the election. At any rate, Karemore did not see him before filing the election petition. Nor does P.W. 27 know why Katekhaya was present at the meeting. It was well-known that Katekhaya was a candidate in another neighbouring constituency and for this witness not to know why he was present is rather strange. Likewise, the evidence of Bhole P. W. 40 was also disbelieved. This witness says that Dhote called the public 'Rajhans' which was not spoken to by any of the other witnesses who alleged that they were present at the meeting, As we have seen. P.W. 40 was only appointed an election agent of the first respondent on February 21, 1972, i.e. after the meeting.

It is said that there was no suggestion made in cross-examination of either Saxena P.W. 27 or Bhole P.W. 40 that they had changed their loyalties. But the fact that they appeared on behalf of the petitioners and chose to depose against the first respondent makes obvious their intention and change in their loyalties. The learned Advocate for the appellants contends that when Bhole makes himself liable for his disqualification if corrupt practice is proved against him, any statement made by him would be a statement against his interest and hence his evidence cannot be rejected lightly. But neither Bhole nor Saxena have gone to the extent of saying that they have taken part in any corrupt practice but have imputed to the first respondent several corrupt practices indulged in by him. Bhole, as earlier noted, said that Exts. 42 & 43 did not amount to communal appeal, which, in our view, was an attempt to exculpate himself from any charge of corrupt practice.

Reading the evidence of the above mentioned witnesses as a whole and considering the circumstances which weighed with the learned Trial Judge for disbelieving them, we cannot say that the conclusion arrived at by him is not warranted.

There is, however, the circumstance of the publication of the report of the speech of Jambuwant Rao Dhote in the Bhandara Times in which the offending statement appears to have been printed on February

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23, 1972. From this fact, it is sought to be contended on behalf of the appellants, that the statements of the witnesses are corroborated. We do not think that the mere publication of a report in the Bhandara Times is by itself sufficient to corroborate the testimony of these witnesses. It is quite possible, as was the case of the first respondent, that the Bhandara Times being inimical to Tirpude may have published the impugned statement of Dhote without its being uttered by Dhote to affect the chances of Tirpude at the election. The fact that the Lok Vani which was supporting Tirpude did not mention it, nor has the reporter who was present at the meeting reported it, nor was action taken earlier to the publication of the report in the Bhandara Times to challenge that statement, nor was any notice given to Jambuwant Rao Dhote in respect of that statement, nor did any of these witnesses, having heard the said objectionable statement at the meeting, on February 18, 1972 mention it to Tirpude or to the petitioners, create considerable doubt in one's mind as to whether such a statement was made. No doubt neither the Lok Vani nor the Bhandara Times referred to Shende having spoken at that meeting. The excuse which P. W. 24 who was actively canvassing for Tirpude gave for not mentioning it either to Pandit-rao of Lok Vani or Hedau who was in charge of the election campaign on behalf of the second respondent Tirpude that Dhote had made the objectionable statement would also indicate that none of these witnesses was present at the meeting or if present did not hear any such offending statement being made by Dhote. In fact P. W. 24 has not specifically averred that Dhote made any such statement at the meeting when he drafted the notice on behalf of Karemore against the printer, publisher and the owner of the Bhandara Times in respect of the report published therein. We have already referred in that connection what the complaint alleged, from which it cannot be said that the learned Trial Judge drew an unwarranted inference that what was complained of was not that Dhote had made the speech, but that the Bhandara Times published a statement which was not made by Dhote. We are inclined to agree with the learned Trial

Judge that it is not proved that Dhote made the offending statement on February 18, 1972, at Bhandara.

Even assuming that such an offending statement was made and that Shende, as spoken to by the witnesses on behalf of the appellants, said at the end that they had heard from Dhote what he had to say and that they should vote for him, that statement does not establish that Shende had consented to what Dhote said about Karemore and Tirpude nor is there anything to prove that Shende believed the statement to be false or did not believe it to be true. It is not disputed that the first appellant Karemore was given the ticket by the CongressR, that he had actually filed his nomination paper but suddenly withdrew from the contest before the date fixed for withdrawal of nomination papers and Tirpude second respondent was nominated on behalf of the Congress-R who filed his nomination papers for the election. In these circumstances there must have been a considerable agitation in the public mind and the story may have been current which was expressed by Dhote or Shende. This assumption finds

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support from the evidence of the first appellant, Baburao Karemore P. W. 39, who admittedly did propaganda work for Tirpude. He says that though he did not apply for a ticket and though the Maharashtra Provincial Congress Committee recommended Tirpude he read in the newspapers on February 2, 1972 that he was given the ticket. A meeting was then held at Tumsar and it was decided that Tirpude should be given the ticket. He and Ramnarayan Mor then went to Bombay while some others went to Delhi. At Bombay they saw the Chief Minister and Patil the P.C.C. President but they told them to go to Delhi. At Delhi they met Sarva Shri Uma Shankar Dixit, Chavan and Fakhruddin Ali Ahmed and every one told them that they could do nothing because Tirpude did not apply for a ticket. The witness says that he returned on the night of February 4, 1972 after he gave a letter to Mor addressed to the Congress President and the Prime Minister requesting them to give the ticket to Tirpude. On February 7, 1972, he filed the nomination papers. That very evening he heard on the radio that Tirpude was given the ticket and Tirpude filed his nomination papers on February 8, 1972. Then the witness withdrew his nomination on February 11, 1972. He denied that Tirpude paid Rs. 60,000/- to him for withdrawing his candidature, but nonetheless admitted that the persons in the constituency were making allegations against him to this effect. He says when I used to go canvassing in the constituency, people used to say in my face that I had taken Rs. 60,000/- and that I had become a Mahar or that I must have been very happy in getting the amount of Rs. 60,000/- or that I sold myself to a Mahar. I belong to Teli community. Such kind of propaganda had started from 19th to 20th". The witness then says that he came across the report in the Bhandara Times on February 23, 1972. After that he gave notice to Dhote, Sharad Hardikar and Balwant Khisti, Editor through Zinjarde. From this statement in examination-in-chief it is obvious that though the members of the Congress Election Committee said that Tirpude was not given the ticket because he had not applied for it, nonetheless, he wishes us to believe that he got the ticket without making an application for it. Secondly, he confines the charges made against him by persons in the constituency between February 19 & 20, 1972 to give credibility to the allegation that this was after the speech was made by Dhote on February 18, 1972. In cross-examination, however, he made certain admissions which are significant. He said that the expenses for the election

petition were being met by others and that he had paid only Rs. 500/- towards the expenses. He says he does not know whether petitioners 2 to 4 had made any contribution, that he named certain persons whom he had consulted, but he denies that he had consulted Tirpude before filing the election petition. He says that he had filed his nomination as an independent candidate in 1967 election and admits that there might have been rumours, which according to him were false rumours, that he had withdrawn his candidature at that time by accepting money from Manohar Bhai Patel. He also says that it is always difficult to get a Congress ticket for the Assembly elections, but it was true that he was given the ticket without asking for it. He says that getting the Congress ticket is a coveted

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thing. Then he admits that Tirpude was a better and competent candidate, but he was confident that if he had contested the Assembly election he would have got elected. 'But in spite of his prospects he surrendered the ticket in favour of Tirpude. Then he makes a further admission that after he surrendered the ticket in favour of Tirpude his supporters did say to him that he had foolishly surrendered the ticket which he had got and had given it to a Mahar and thereby he had spited the Teli community (Telvanche Nak Kaple). These persons started saying this to him after it was known in the town that in his place the ticket was given to Tirpude i.e. from February 8, 1972. This gives the lie direct to his assertion that the allegations against him for surrendering the ticket were being made between February 19 & 20, 1972, when in fact they were made even from February 8, 1972 i.e. from the date Tirpude filed his nomination. The fact that he admits that he surrendered the ticket in favour of Tirpude, gives the impression that it must have gained currency in the constituency that it was done on receiving some consideration. If such was the case, then Dhote and Shende if he can be said to have consented may have believed the statement to be true or at any rate may not have believed it to be false, particularly having regard to his past reputation. The extra-ordinary circumstances in which this was done at the nick of time might have inclined them to that belief. As Dhote was not examined, we do not have his version in that regard. In any view of the matter, we hold that the appellants have not established the corrupt practice under this head by any credible evidence. Lastly, the quantum of costs awarded by the High Court has been challenged on the ground that the costs were not the costs incurred by the first respondent. We have dealt with this aspect in Laxminarayan's case, to which we have referred earlier, where we have held that the word "incurred" occurs both in ss. 96 and 119 of the Act and means what is "actually spent". In that case, as in this case, the petition was dismissed by the High Court under clause (a) of section 98. Accordingly, it was incumbent on the High Court to award costs to the first respondent which costs he is entitled to if he could show that he has incurred them. Admittedly, there is no proof of payment of any fee to counsel by the first respondent. As such he will not be entitled to the amount of Rs. 400/- per diem awarded by the High Court. He will, however, be entitled to any other costs which are shown to have been incurred by him. The learned Advocate for the first respondent submits that his client should be given an opportunity to produce receipts of payment of fees because at the

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time when the case was decided the costs were being awarded

according to the Rules of the High Court. In our view, these Rules did not preclude his client from filing any fee certificate, if he had paid the amount and obtained it. We cannot, therefore, allow him to do so now.

in the result, the appeal is dismissed, except with respect to counsel's fee awarded to the first respondent in which respect the appeal is partly allowed. The first respondent will be entitled to such costs as have been incurred by him in this Court as well as in the High Court.

S.C

Appeal dismissed.

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JUDIS