

PETITIONER:
B.P. MAURYA

Vs.

RESPONDENT:
PRAKASH VIR SHASTRI & ORS.

DATE OF JUDGMENT:
14/08/1969

BENCH:
RAY, A.N.
BENCH:
RAY, A.N.
HEGDE, K.S.

CITATION:
1970 AIR 522 1970 SCR (1) 894
1969 SCC (2) 634

ACT:
Representation of the People Act, 1951, s. 123(3)(3A) & (4)-- Corrupt practice--Allegations against "personal character and conduct".

HEADNOTE:

The appellant challenged the election of the respondent on the ground that the respondent committed various corrupt practices including that of publication of false statements in relation to the personal character of the appellant. The High Court held the allegations not proved. Dismissing the appeal,

HELD: The provisions contained in sub-s. (4) of s. 123 are traveled when "any false allegation of fact pierces the politician and touches the person of the candidate". It is the personal character and conduct of the candidate which is to be protected from malicious or false attacks. The words "personal character and conduct" are to be equated with mental or moral nature and the word "conduct" connotes a person's actions and behavior. The statement in question has to be first a false statement bearing on the personal character and conduct of the candidate. and secondly, the statement complained of must be one which is reasonably calculated to prejudice the prospects of the election of the person. [903 H]

T.K. Gangi Reddy v.M.C. Anjaneya Reddy, [1965] 1 S.C.R. 175, reference to.

The electorate at the time of the election has to be kept in the forefront in judging whether a publication can be said to offend the provisions relating to corrupt practices. The Court is to ascertain whether the statement is reasonably calculated to prejudice the prospects of the candidate's election. In reading the documents it would be unrealistic to ignore that when appeals are made by candidate there is an element of partisan feeling and there is extravagance of expression in attacking one another and it would be unreasonable to ignore the question as to what the effect of the pamphlet would be on the mind of the ordinary voter who reads the pamphlet. [905 D]
Kultar Singh v. Mukhtiar Singh, [1964] 7 S..C.R. 790, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1573 of 1968.

Appeal under s. 116-A of the Representation of the People Act, 1951 from the judgment and order dated April 12, 1968 of the Allahabad High Court in Election Petition No. 19 of 1967.

The appellant appeared in person.

L.M. Singhvi, Veda Vyasa, Rishi Ram, Bishambhar Lal, H.K. Puri, U.P. Singh and K.K. Jain for respondent No. 1.

The Judgment of the Court was delivered by

Ray, J. This is an appeal against the judgment and order of the High Court at Allahabad dated 12 April, 1968 dismissing the election petition filed by the appellant.

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The appellant contested the General Election to the Lok Sabha from Hapur Parliamentary Constituency in the year 1967. There were seven rival candidates numbered respondents 1 to 7. The appellant contested the election on the ticket of the Republican Party. He was then a sitting member of Parliament. Among the rival candidates, Prakash Vir Shastri was an independent candidate. The election symbol of the appellant was elephant and the election symbol of Prakash Vir Shastri was lion. Prakash Vir Shastri secured 1,49,943 votes while the appellant secured 1,01,875 votes. The Swatantra candidate Sri Naseem secured 34,274 votes. The Congress candidate respondent Smt. Kamla Chaudhury secured 33,988 votes. The appellant challenged the election on grounds of corrupt practices as mentioned in sub-sections (2), (3) and (4) of the Representation of the People Act, 1951 (hereinafter referred to as the Act).

At the hearing of the appeal the appellant appeared in person after counsel on his behalf had obtained leave of this Court to withdraw and to allow the appellant to appear in person.

The various corrupt practices on which the appellant relied relate to occurrences at six places. The appellant did not press the other occurrences. The first occurrence relates to a meeting held at the Town Hall Maidan at Hapur on 7 February, 1967. The appellant alleged that at the Hapur meeting respondent Prakash Vir Shastri and his supporters delivered inflammatory speeches against the appellant and thereafter the said respondent Shastri's supporters entered the office of the Republican Party, to which the appellant belonged, assaulted the workers of the appellant, tore posters, abused the appellant and threatened his workers. In support of the allegations the appellant relied on Exhibit 28 the news report in the 'Hindustan' published on 8 February, 1967 and also on Exhibit 23 the news report in the newspaper named 'Vir Arjun' published on 8 February, 1967 and exhibit 22 being the editorial in the Vir Arjun published on 7 February, 1967. The newspaper report in the 'Hindustan' Exhibit 28 published on 8 February, 1967 contains the note of the correspondent from Hapur bearing the date 7 February, 1967 stating that a big meeting was held in support of respondent Shastri Lok Sabha candidate from Hapur-Ghaziabad Constituency. In the 'Vir Arjun' dated 8 February, 1967 Exhibit 23 it is stated that the supporters of the Republican Party were raising slogans that they were championing the cause of Harijans and Muslim youths from Aligarh University were brought for that purpose. It was also stated in the said newspaper that

Muslim students of Aligarh were raising the slogans "Harijan Muslim are brothers and where from Hindu community has come. Black face be of Brahmin, barbar and lala. Throw shoes on Bhat, Gujar and Rajput". The appellant in paragraph 11 L15SupCI/69 -13

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Of the petition further alleged that respondent Shastri was associated with the 'Vir Arjun' and K. Narendra, Editor of Vir Arjun who was a colleague of respondent Shastri wrote an editorial by way of an appeal to support the candidature of respondent Shastri in that newspaper on 7 February, 1967 Exhibit 22 and the said appeal was also an instance of corrupt practice. The further allegations in the petition were that at the meeting which was held at the Town Hail Maidan at Hapur on 7 February, 1967 respondent Shastri and the said K. Narendra, Editor of Vir Arjun delivered inflammatory speeches.

The appellant generally impeached the judgment of the High Court on two grounds. First, that there was no discussion of the entire evidence and, secondly, that there was rejection of the evidence on behalf of the appellant on consideration that the appellant's witnesses belonged to particular castes and sects.

The criticism on behalf of the appellant with regard to Hapur meeting was that respondent Shastri in answer to the petition did not state that there was a meeting on 6 February, 1967 and thereby the appellant was denied the opportunity of meeting that case. The appellant relied on the decision of this Court in Badat & Company v.E. I. Trading(1) and the observations appearing at page 547 of the report in support of the contention that under the provisions of the Code of Civil Procedure 'and, in particular, the provisions contained in Order VIII of the Code, respondent Shastri should have alleged in the pleadings that the meeting was held on 6 February, 1967 and in the absence of such allegations respondent Shastri should not have been allowed to make that case. The decision of this Court is of no aid to the appellant. In the case of Badat & Company(1) the question was whether there was a contract between the parties and it was alleged by the plaintiff with reference to two letters that the letters would indicate some of the terms of the transaction. The defendant in the written statement did not specifically deny the said two letters. This Court observed that a mere denial of the contract was not sufficient and the rules of the Code enjoined denial of the existence of the letters. In the present case, the question was whether a meeting was held at Hapur Town Hail Maidan on 7 February, 1967. The respondent denied such a meeting. The respondent was not called upon to state as to whether there was a meeting on 6 February, 1967.

The news item in the newspaper 'Hindustan' Exhibit 28 gave news from Hapur under the date 7 February, 1967 that a meeting was held at Hapur. Exhibit 23 was a news item in the newspaper 'Vir Arjun' under the date 7 February, 1967 that Shri Narendra, Editor of Vir Arjun spoke at an election meeting 'at Hapur. Neither

(1) [1964] 4 S.C.R. 19 :A.I.R. 1964 S.C. 539.

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the Vir Arjun news item dated 7 February, 1967 nor the news item appearing under the date 7 February, 1967 Hapur published in the Hindustan on 8 February, 1967 contains any intrinsic evidence that a meeting was held at Hapur on 7 February, 1967.

Further, of the witnesses on behalf of the appellant

P.W. 25 Bal Kishan spoke of the meeting at the Hapur Town Hall Maidan on 7 February, 1967 and he also stated that three pamphlets were distributed and two issues of newspapers were also distributed, namely, the Vir Arjun and Pratap. No such pamphlet was produced. The two witnesses on behalf of respondent Shastri, Bhagwati Prasad Jain D.W. 16 and Rameshwar Prasad Goel D.W. 18 said that a Congress election meeting was held at the Town Hall Maidan, Hapur and no election meeting was held in support of respondent Shastri at the Town Hall Maidan, Hapur on 7 February, 1967.

With regard to the meeting at the Town Hall Maidan at Hapur 'alleged by the appellant to have been held on 7 February, 1967, the oral evidence on behalf of the appellant is that the meeting was held and the oral evidence on behalf of the respondent is that the meeting was not held. In the case of conflicting oral testimony it is safer to place reliance on documentary evidence. First, the newspaper report on which the appellant relies contained intrinsic evidence which totally nullifies the appellant's case. Exhibit 28 being the 'Hindustan' dated 8 February, 1967 indicates the news about Hapur under the date 7 February, 1967 that a meeting was held "yesterday night" meaning thereby 6 February, 1967, in support of respondent Prakash Vir Shastri. Secondly, the newspaper 'Vir Arjun' published on 8 February, 1967 gave the news at Hapur under the date 7 February, 1967. The news referred to an election meeting at Hapur but did not mention that the meeting was held on 7 February or on 6 February., 1967. Thirdly, Exhibit A-12 which is an application by one Lakhi Ram seeking permission from the Municipal Board for holding a meeting on 7 February, 1967 in the Town Hall Maidan, Hapur throws light on this aspect. The permission given by the authorities which is marked Exhibit A-13 required the persons holding the meeting to pay certain charges towards the use of the electricity. Exhibit A-14 is a receipt for payment of Rs. 5. These three documents indicate that the meeting which was held on 7 February, 1967 was a meeting organised by the supporters of the Congress Party. Fourthly, Exhibit A-2 which is a General Diary of Thana Hapur bearing the date 7 February, 1967 shows that a constable was sent to the Town Hall Maidan to make arrangements in connection with the meeting which was to be 'addressed by one Kailash Prakash. The witnesses on behalf of the respondent Shastri mentioned the name of Kailash Prakash and Smt. Kamla Chaudhury as speakers on behalf of the Congress candidate. It is highly improbable that two meetings of

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the two rival candidates, namely of the Congress and of the respondent Prakash Vir Shastri would both be held on the same date and at the same place. Fifthly, the reports which were lodged by the supporters of the appellant with regard to the attack on the office of the Republican Party on 7 February, 1967 do not mention or refer at all to any meeting on behalf of respondent Prakash Vir Shastri on 7 February, 1967 at the Town Hall Maidan, Hapur. It would be natural if a meeting had been held on 7 February, 1967 that there would have been reference to the same.

The other allegations of the appellant were that respondent Shastri's supporters on 7 February, 1967 attacked the office of the Republican Party, to which the appellant belonged. There was the First Information Report dated 7 February, 1967 about the attack on the office of the Republican Party. This report is significantly silent about any meeting having been held on 7 February, 1967 at Hapur

Town Hall Maidan. Though there was the alleged complaint about the attack on the office of the Republican Party, it appears that there was no investigation. The attack on the party office was not proved by the appellant to have been made by respondent Shastri's workers and supporters. The High Court correctly came to the conclusion that no meeting was held at Hapur on 7 February, 1967 and there was no attack on the office of the Republican Party.

With regard to the 'attack on the office of the Republican Party to which the appellant belonged though the first information report gave the news about the attack, it is strange that there was no investigation. The report of the Joint Secretary of the Republican Party to the President of the Republican Party bearing the date 8 February, 1967 alleged that the supporters of Prakash Vir Shastri attacked the office of the Republican Party on 7 February, 1967, forcibly took necessary papers and a flag of the Party. Dal Chand Nimesh, Joint Secretary of the Republican Party, P.W. 71 in his evidence stated that none of the processions went to his office and further he hid himself in an adjoining room. He did not prove the truth of the statements contained in his report which was marked as Exhibit 11. The attack on the office of the Republican Party was not mentioned at all either in the Vir Arjun of 8 February, 1967 or in the Hindustan dated 8 February, 1967. It is obvious that if in fact any attack had been made on the office of the Republican Party, the supporters of the appellant would have taken steps for investigation and publication.

The second occurrence on which the appellant relied is alleged to have happened at a place called Nagola. The appellant's case was that on 18 February, 1967, Prakash Vir Shastri and his

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supporters who were mostly Tyagi by caste asked the Tyagis to stop the Jatav voters from going to the polling station to cast their votes. It was alleged that Thawariya made the announcement by beat of drums that the Muslim, Chamar, Bhangi and Jatav voters would not be allowed to go to the polling station to cast their votes. The other part of the appellant's case about the Nagola incident was that there was an assault on Shamshad Elahi, a worker of the appellant. The appellant relied on the oral testimony of P.W. 11, P.W. 12, P.W. 15, P.W. 16, P.W. 17, P.W. 19, P.W. 23, P.W. 65 and P.W. 80. The witnesses on behalf of the respondent were D.W. 4, D.W. 12, D.W. 13, D.W. 30 and D.W. 33. The oral evidence is in support of the rival contentions, namely, that the Jatav voters would not be allowed to vote and the denial of the same by the respondent. The appellant also lied on Exhibit N that the Jatav voters would not be allowed to cast their votes by the Tyagis.

In support of the case with regard to assault on Shamshad Elahi the appellant relied on the oral evidence of Shamshad Elahi P.W. 11 and the injury report Exhibit 30 and other documents, namely, Exhibits 31, 32 and 35. The 'appellant criticised the judgment by contending that there was no discussion of the oral evidence of P.W. 17, Satya Pal Malik. P.W. 11, Shamshad Elahi said that he went to Nagola at about 3.30 p.m. on 19 February, 1967, the date of the election and the voters told him about the proclamation by beat of drums on the previous night and the voters further said that they would be insulted and they should remain there. Shamshad Elahi further said that he met Sevak Ram and Surajbhan Tyagi and 10 or 12 other persons were with

them and they beat the witness with lathis and he received a number of injuries.

The other witnesses on whose testimony the appellant relied said that people wearing lion badges which was the election symbol of Prakash Vir Shastri asked the witnesses not to cast their votes and they also said that it was announced by beat of drums that no Chamar or Bhangi should cast a vote.

Nagola is a village within the circle of Badhnauli. R. K. Aggarwal, D.W. 33 who was the Presiding Officer at Badhnauli polling station gave evidence. He said that the votes of village Nagola were polled and no Harijan or Mohammedan voter was stopped from casting votes and that there was no complaint that Harijan and Mohammedan voters were being stopped from casting their votes. In cross-examination the witness said that no voters from Haidernagar or Nagola were brought to the polling station under police protection.

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P.W. 80, Sukhbir Singh who was posted as Station Officer Thana Kharkoda said that he received information from Shamshad Elahi that voters at Badhnauli were being stopped from casting their votes. Sukhbir Singh went to Badhnauli. He also went to Nagola. He said that 30 or 40 Harijan voters went to Badhnauli to cast their votes. He said that there was no voter who was taken by him to a polling station in a truck. Sukhbir Singh proved Exhibit 35 which was a contemporaneous report to the effect that no one was stopped from voting at Nagola.

Satya Pal Malik on whose testimony the appellant relied said that Prakash Vir Shastri came to Badhnauli polling station on 19 February, 1967 and there were 40 to 50 persons around him with lion badges on. His further evidence was that Prakash Vir Shastri asked the Pradhan to beat the voters to make them run away. Prakash Vir Shastri however denied having asked Sheoraj Singh Pradhan to drive away the voters.

Thanwaria, P.W. 23 on whose evidence the appellant relied said that he beat the drum in Nagola village on 'a day before the polling. He said that there were two parties of the Tyagis. One was of Sheoraj Singh and the other was of Pyare Lal. The Jatavs, according to his testimony, were in Pyare Lal's party and the Bhangis were in Sheoraj's party. The appellant said that Thanwaria was disbelieved only because he belonged to the Chamar caste. That is misreading the judgment. The High Court said that the evidence of Thanwaria did not inspire confidence. That criticism of the evidence of Thanwaria is justified because he came to support the case of the appellant and he belonged to the appellant's camp.

Pyare Lal, D.W. 12 said that no Harijan was stopped from casting his vote at Badhnauli polling station and no worker of Prakash Vir Shastri threatened any Harijan voter at the polling station. The appellant criticised the evidence of Pyare Lal that he did not know as to what was happening in the village. Satya Pal Malik, P.W. 17 mentioned the name of Pyare Lal as the leader of one of the parties and Sheoraj Singh as Pradhan of the village Nagola.

The oral evidence on behalf of the appellant is not acceptable for two reasons. First, if there had been any incident of a voter being prevented from voting 'a complaint would have been made to the polling officer of the polling station. Secondly, Vireshwar Tyagi and Mahendra Singh Verma who were the supporters of the appellant and who are alleged to have said that voters at Nagola were prevented from

voting did not lodge any report about the alleged corrupt practice particularly when it was said to be committed by Prakash Vir Shastri himself.

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The assault on Shamshad Elahi which was also said to be an incident of corrupt practice is unacceptable for these reasons. First the injury report Exhibit 30 has to be considered along with the statement of Shamshad Elahi being Annexure M and the report of the appellant being Exhibit 32 and the complaint of Shamshad Elahi being Annexure N being Exhibit 30. The appellant., in the report dated 17 February, 1967 Exhibit 32 spoke of voters not being allowed to exercise their votes. Shamshad Elahi in his complaint said that 10 or 12 persons beat him with lathis. All this happened on 19 February, 1967. The doctor's report was about the injuries. First it is peculiar that there was no complaint about the injuries after the injury report. Secondly, there is no evidence that the assault was by the workers of Prakash Vir Shastri. Shamshad Elahi in his evidence mentioned the names of Sevak Singh and Surajbhan Tyagi. These names were not mentioned in the complaint being Exhibit 30. In cross-examination Shamshad Elahi was asked 'as to how he had obtained the names and his answer was that he met the grass cutter who gave the names. It is curious that the grass cutter who gave the names was not examined.

The third incident on which the appellant relied took place at Chhajjupur. The allegations are that on 2 February, 1967 an election meeting was organised in support of the candidature of the appellant 'and the supporters' of respondent Prakash Vir Shastri created disturbance with the result that the meeting could not be continued and the supporters of respondent Prakash Vir Shastri are alleged to have chased the appellant. The High Court rightly commented on the absence of any report having been made by the appellant to the Election Commissioner or the police about the alleged occurrence. It is Obvious that if the appellant had been chased he would have made report to the Election Commission or to the police. The appellant relied on the news item in the Patriot dated 5 February, 1967. The news item was referred to by Mahesh Chandra Agarwal, P.W. 14 who, however, was not present at the meeting at Chhajjupur. He referred to a conversation with the Superintendent of Police. The Senior Superintendent of Police was not examined. No police report was produced. The truth of the newspaper report was not corroborated nor was the statement in the ,news item proved. On the contrary, Mahesh Chandra Agarwal nullified the news item by admitting that he was not present at the meeting.

P.W. 18 Tejpal Singh spoke of the incident of 2 February, 1967 and mentioned about the shouting of slogans and throwing of brick-bats. P.W. 10, Som Prakash spoke of charge sheet under sections 147, and 342 of the Indian Penal Code against certain persons. He spoke of the report of 3 February, 1967 and a report of 9 February, 1967. The report dated 3 February, 1967

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relates to the occurrence on 2 February, 1967 at Chhajjupur. The report of 9 February, 1967 also relates to the alleged incident of 2 February, 1967 at Chhajjupur. The witness Sofa Prakash P.W. 10 admitted that no investigation was made. It is significant that the name of the appellant is not mentioned in either of complain,rs or reports. The allegations in the report are that some disturbances was created and names of various persons are mentioned as having

tried to run towards. the jeep which carried the leaders of the Republican Party. One of the witnesses Devi Dayal Sen, P.W. 63 said that when the appellant rose to speak some people pelted stones at him.

The alleged incident at Chhajjupur is unacceptable because, first, there was no complaint by the appellant to the Election Commissioner, secondly, there was no police case and no investigation, thirdly, the reports did not mention the name of the appellant as having been assaulted or chased and fourthly, the news item in the Patriot was not proved as to the truth of the contents therein.

The ,fourth occurrence on which the appellant relied was at a place called Opehra. The appellant alleged that some persons were stopped from casting their votes. The appellant relied of the oral evidence of P.Ws. 58, 59 and 60. P.W. 60 is Manzoor Ahmad, M.L.A. The other two witnesses were Durga Das and Ram Prasad. The appellant criticised the judgment that there was no mention of the name of Manzoor Ahmad. The diaries being Exhibits A-23, A-32 and A-29 were produced to show that the election at Opehra polling station passed off peacefully and therefore no one stopped any voter from casting vote. Manroof Ahmad his oral evidence said that he saw people armed with lathis and ballams. He said that he made a complaint to the Presiding Officer and admitted in cross-examination that there was no written complaint. Manzoor Ahmad did not prove that any person was stopped from voting.

The fifth and the sixth occurrences on which the appellant relied took place at Datiyana and Bankhanda. It is alleged by the appellant that at Datiyana the agents and the supporters of respondent Prakash Vir Shastri threatened the Scheduled Caste and Harijan voters and prevented them from going to the polling station. The allegations about the occurrence at Bankhanda are to similar effect. The appellant relied on Exhibit 18 which was a memorandum addressed by several voters who stated that they remained within the house and could not vote because the village Tyagi Kailash Chand threatened to kill them if they would vote. P.W. 65, Vireshwar Tyagi spoke of the incidents at Nagola, Bankhanda and Hapur and his wife Smt. Prakash Vireshwar Tyagi spoke of the alleged ;incident at Datiyana. The respondents

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witnesses denied that any person was prevented from casting vote at Datiyana.

The 'allegations with regard to the Bankhanda were referred to by Vireshwar Tyagi and other witnesses. The diary which produced with regard to the polling station disproved any such incident. The diaries are Exhibits A-19 and A-21. D.W. 20, Chandoo Singh stated that he was at the polling station at Bankhanda and no one was stopped from exercising the right of franchise. D.Ws. 21 and 22 also spoke of polling at Bankhanda having been peaceful. The appellant referred to. religious songs which were said to be praise of respondent Prakash Vir Shastri. Mere praise-worthy songs will not be an instance, of corrupt practice.

All the allegations about the voters having been stopped from casting their franchise followed the same pattern of oral evidence. The absence of any report either to the Election Commission or to the Police authorities is an important and noticeable feature and therefore the oral evidence is not acceptable.

The other allegations relied on by the appellant are that respondent Prakash Vir Shastri is guilty of corrupt practice under sub-sections(3), (3A) and (4) of section 123

of the said Act. The appellant contended that respondent Prakash Vir Shastri made communal propaganda against the appellant and also published false statements in relation to the personal character of the appellant. In aid of the contentions the appellant relied on annexures KK and MM. The appellant relied on the upper portion of annexure KK in support of the contention that the slogans amounted to communal propaganda. The lower portion of annexure KK was contended by the appellant to be allegations against the personal character of the appellant. Annexure MM was said by the appellant to contain slogans amounting to communal propaganda against the appellant. It was said by the appellant that respondent Prakash Vir Shastri promoted feelings of enmity or hatred against the appellant and further raised communal propaganda. The appellant also relied on Exhibit 22 being the editorial in Vir Arjun dated 7 February, 1967 in support of the contention that the editorial constituted communal propaganda against the appellant.

In *Guruji Shrihar Baliram Jivatode v. Vithalrao and Others*,⁽¹⁾ this Court dealt with the scope and content of subsection (4) of section 123 of the Act. The Act is intended to protect freedom of speech on the one hand and to restrain malicious propaganda on the other. The provisions contained in subsection (4) of section 123 were said by this Court to be contra-

(1) [1939] 2 S.C.R. 766
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vened when "any false allegation of fact pierces the politician and touches the person of the candidate". It is the personal character and conduct of the candidate which is to be protected from malicious or false attacks. The statement in question has to be first a false statement bearing on the personal character and conduct of the candidate and secondly, the statement complained of must be one which is reasonably calculated to prejudice the prospects of the election of the person.

Under the provisions contained in sub-section (3A) of the said Act the promotion of, or attempt to promote, feelings of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community, or language, is the mischief which is sought to be avoided by making the same a corrupt practice. The sub-section further says that such promotion or attempt to promote enmity or hatred is for the furtherance of the election of the candidate or for prejudicially affecting the election of any candidate.

The words "personal character or conduct" were explained by this Court in *T.K. Gangi Reddy v. M.C. Anjaneya Reddy and others*⁽¹⁾ "to be equated with his mental or moral nature. Conduct connotes at person's actions or behaviour". Annexure KK was not proved and therefore it cannot be said to constitute any communal propaganda. Assuming it were proved there is no appeal to vote for a person on the ground of religion nor is there any appeal not to vote for a person on the ground of his religion. Further, the provisions contained in sub-section (4) of section 123 require the publication with the consent of the candidate or his election agent. In the present case, annexure KK has not been established to be published with the consent of the respondent Prakash Vir Shastri or his election agent. It, therefore, follows that annexure KK offends neither the provisions contained in sub-section (3A) nor in sub-section (4) of section 123 of the Act.

Annexure MM was said by the appellant to be a communal

propaganda. Annexure MM was not proved. Even if it were proved the slogans do not offend the provisions of either subsection (3A) or sub-section (4) of section 123 of the Act.

The publication in the newspaper 'Vir Arjun' Exhibit 22 is to the effect that differences between Hindus and Harijans were being spread by the supporters of the Republican candidate meaning thereby the appellant and if students from Muslim University were brought in by them then students from Ghaziabad would be brought into the field. The newspaper certainty

(1) [1965] 1 S.C.R. 175

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Was inclined in favour of respondent Prakash Vir Shastri but the newspaper publication said that Prakash Vir Shastri would not unlike the Congress candidate preach communal hatred. The statements in Exhibit 22 do not make any reflection on the moral or mental nature of the appellant and they do not touch the personal character of the appellant, nor do they promote enmity or hatred on grounds of religion.

The appellant failed to prove that respondent Prakash Vir Shastri committed any corrupt practice in relation to the personal character and conduct of the appellant. The newspaper publication Exhibit 22 was an appeal on behalf of respondent Prakash Vir Shastri. As long as the publication is not tainted by corrupt practice, such an appeal will not be an infraction of the provisions as to corrupt practices as contemplated in the Representation of the People Act. Suggestions that attempts are made to accentuate the differences between the Hindus and Harijans in the article cannot be extracted in isolation from the entire context. The electorate at the time of the election has to be kept in the forefront in judging whether the article can be said to offend the provisions relating to corrupt practices. The Court is to ascertain whether the statement is reasonably calculated to prejudice the prospects of the candidate's election. This Court observed in Kultar Singh v. Mukhtiar Singh(1) that in reading the documents it would be unrealistic to ignore that when appeals are made by candidate there is an element of 'partisan feeling and there is 'extravagance of expression attacking one another and "it would be unreasonable to ignore the question as to what the effect of the pamphlet would be on the mind of the ordinary voter who reads the pamphlet". In the light of these principles, we are of opinion that there is no infraction of the provisions contained in sub-sections (3A) and (4) of section 123 of the Act.

For the reasons mentioned above, this appeal fails and is dismissed with costs.

Y.P.

Appeal dismissed

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