

PETITIONER:
R.M. SESHADRI

Vs.

RESPONDENT:
G. VASANTHA PAI

DATE OF JUDGMENT:
29/11/1968

BENCH:
HIDAYATULLAH, M. (CJ)
BENCH:
HIDAYATULLAH, M. (CJ)
MITTER, G.K.

CITATION:
1969 AIR 692 1969 SCR (2)1019
1969 SCC (1) 27
CITATOR INFO :
E 1969 SC1034 (14,15)
R 1970 SC 61 (5)
R 1974 SC 66 (77)
R 1975 SC 290 (47)
RF 1977 SC1724 (55)
R 1979 SC 234 (40)

ACT:
Representation of the People Act, 1951 s. 123(5)-Employment of cars for conveyance of voters-If adequately pleaded and proved.
Election law-Trial Judge calling witnesses and examining documents suo motu-If empowered to do so.
Code of Civil Procedure O. XVI r. 14-Applicability and scope of.

HEADNOTE:

The appellant was elected to the Madras Legislative Council from the Madras District Graduates Constituency. His election was challenged by the Respondent, his nearest rival candidate by an election petition alleging, mainly, that a large number of cars had been employed for the conveyance of voters to the polling booths in violation of s. 123(5) of the Representation of the People Act, 1951. The High Court held that the corrupt practice was established and set aside the appellant's election. It also declared the respondent elected in his place. The original order passed by the High Court did not name the appellant as guilty of corrupt practice but the Court, by a subsequent order reviewing its previous order, gave a declaration to that effect.

In the appeal to this Court, it was contended by the appellant that the plea in the petition regarding violation of s. 123(5) was vague and not sufficiently defined so as to give him notice of the charge he had to meet, and furthermore, that the learned Judge who tried the case improved both the pleading on the subject and the evidence led by the election petitioner by calling certain witnesses and looking into documents which he had no power to do. It was therefore contended that all the evidence which the learned Judge collected suo motu should not be looked at and if the case of the petitioner was confined to the bare

plea raised, the petition would deserve to be dismissed because it was not clear in the plea and was lacking in proof.

HELD: dismissing the appeal: On the facts, the High Court had rightly found that many cars were employed for the conveyance of voters in the constituency. The circumstantial chain of evidence was sufficient to show the connection between the appellant and the use of the cars for the conveyance of voters. The corrupt practice under s. 123(5) was therefore brought home. [1031 F; 1032 A--B]

(i) The plea in the petition in essence was that cars were used for the purpose of conveying voters contrary to the prohibition contained in the Election Law. The names of the booths and the divisions in which the booths were situated together with the particulars of the cars and the persons primarily concerned with cars at the polling booths had been mentioned. The connection of the appellant with the use of the cars had been specifically pleaded. Sufficient particulars of the allegation had therefore been given and the rest were matters of evidence which did not require to be pleaded.

(ii) The power of a Civil Court to summon court witnesses is contained in O. XVI r. 14 of the Co& of Civil Procedure. The Representation of People Act enjoins that all the powers under the Code can be exercised and all the procedure as far as may be, applicable to the trial

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of civil suits may be followed in the trial of election petitions. The court trying an election petition therefore has the power to summon a Court witness if it thinks that the ends of justice require or that the case before it needs that kind of evidence. The policy of election law seem to be that for the establishment of purity of elections, investigation into to be that for the nasal factices including corrupt practices at elections all allegations of malpractices include corrupt practices at elections should be thoroughly made. In the present case a large number of cars were obviously used presumably for the purpose of carrying voters to the booths. In the face of this voluminous evidence it was open to the judge, if evidence was available to establish who had procured or hired judge, summon witnesses who could depose to the same. Such a vehicles, to exercised by the learned judge . [1028 B--F]

(iii) In the present case it was not possible to reach the conclusion the voters were brought to the polling booths in violation of that 23(5), the result de the election had been materially affected. In a single transferable vote, it is very difficult to say how the voting would have gone, because if all the votes which the appellant had got, had gone to one of the other candidates who were eliminated at the earlier counts, those candidates could have won. The declaration of the respondent's election would be merely a guess or surmise as to the nature of the voting which would have taken place if the corrupt practice had not been perpetrated and the High Court's direction declaring him elected must therefore be set aside. [1032 B--D]

(iv) The appellant was properly named as guilty of corrupt practice although the order was incorporated by the learned Judge through a review. It was his duty to have named persons who had been guilty of corrupt practice and he made this up later. There is no need 'for any specific power for review since the power to name any person guilty of corrupt Practice is already contained in the Act.

Whether it comes in the original judgment or by a supplementary or complementary order, is not much to the purpose that order was correctly made. [1032 E]

JUDGMENT:

CIVIL, APPELLATE JURISDICTION: Civil Appeal No. 1519 of 1968.

Appeal under s. 116A of the Representation of the People Act, 1951 from the judgment and order dated May 28, 1968 of the Madras High Court in Election Petition 11 of 1967.

R.M. Seshadri and R. Gopalakrishnan, for the appellant.

S. V. Gupte, A. C. Muthanna, S.S. JavaIi, Anjali K. Verma and O.C. Mathur, for respondent No. 1.

G. Ramanujam and A. V. Rangam, for intervener.

The Judgment of the Court was delivered by

Hidayatullah. C.J., This appeal is directed against the judgment of the High Court of Madras, 28th May 1968, by which the election of the appellant Seshadri has been set aside. The election in question was to the Madras Legislative Council from the Madras District Graduates Constituency. That constituency consisted of 19,498 votes and the total votes polled were 12,153. Since the voting was by a single transferable vote, three

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out of the five candidates were eliminated at different counts with the result that their votes were transferred to the second person named by the elector on the ballot. At the final count the appellant Seshadri received 5643 votes and G. Vasantha Pai (his nearest rival) who is the first respondent in 'the appeal received 5388 votes. Seshadri was, therefore, elected by a majority of 255 votes.

The election petition was filed by G. Vasantha Pai to question the election of Seshadri on many grounds. Only one ground prevailed, namely, that he had employed cars which had been hired or procured for the conveyance of the voters to the polling booths which numbered 73 in this constituency. The other charges were numerous but they need not be mentioned here because in our opinion this charge has been substantiated. It may be mentioned that Seshadri filed a petition of recrimination but it was dismissed because he failed to furnish security required under the Act. Later he corrected this mistake but the petition was not accepted because it was held to be delayed.

The learned Judge who' heard the case held that instead of Seshadri, Vasantha Pai deserved to be declared elected under the law. In this appeal, therefore, Seshadri contends that the decision in his respect was erroneous and in the alternative that in any event Vasantha Pal could not be declared as the successful candidate. We shall deal with these two points separately. It may further be mentioned that in the original order passed by the learned Judge he had not named Seshadri as guilty of corrupt practice. By a subsequent order he reviewed his previous order and gave a declaration. This point also will require to be considered in this judgment.

The allegation in the election petition was that a large number of motor cars were hired or procured from various sources for the conveyance of the voters to the polling booths. These were sometimes occupied by persons wearing badges which bore the name of Seshadri and sometimes were received at the polling booths by persons who wore the same badges. From this, it is inferred that the motor cars were

used for the conveyance of voters by Seshadri as one of the contesting candidates. Such conduct, if it is established, amounts to a corrupt practice under s. 123(5) of the Representation of People Act. The short question, therefore, on the first point is whether Seshadri was guilty of this corrupt practice.

The appeal has been fought by Seshadri on the grounds that the plea which was included on this head in the election petition was vague and not sufficiently definite so as to give him notice of the charge he had to meet, that a charge of corrupt practice is of the nature of a criminal charge and must therefore be

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proved by the election petitioner himself beyond all reasonable doubt, that there exists some room for doubt and therefore he should have the benefit of it and that the learned Judge who tried the case improved both the pleading on the subject and the evidence led by the election petitioner by calling certain witnesses and looking into documents which he had procured on his own behalf. It is therefore contended that all the evidence which the learned Judge collected suo motu should not be locked at and the case of the petitioner should be confined to the bare plea which was raised in this case. If this is so, says Seshadri, the election petition deserves to be dismissed because the case as found was not clear in the plea and was certainly lacking in the proof as required by law.

Since the matter is one fought primarily with regard to pleadings in the case, we shall begin by setting out the pleas which have been advanced by the election petitioner. The plea consists of several parts. The election petitioner states that the Swatantra Party and its agents conveyed the voters to and from the polling booths in certain cars hired or procured from M/s Kumarswamy Automobiles and T.S. Narayanan, Authorised Tourist Taxi Operators. The petitioner goes on to say that the detailed analysis of the use of the cars and particulars of the user are given in a schedule attached to his petition. That schedule names a large number of cars which were used and at many polling booths in different divisions for the purpose of carrying the voters to the polling booths. Some of these cars came admittedly from the garage of Messrs. Kumarswamy Automobiles and some others from the other motor garage named by us or were loaned for the day by certain private owners including companies. The essence of this plea is that cars were procured or hired for the conveyance of the voters. There is, however, no mention in the plea as to who had hired the vehicles or caused them to be procured and it is this fact which has been made much of by Seshadri in the appeal before us. His contention is that without the particulars being sufficiently full and precise, it was not possible for him to controvert the case set up against him, particularly as the case of the election petitioner was supplemented by the learned Judge by calling at a later stage court witnesses who deposed to the connection between the cars and Seshadri. We have, therefore, to determine first whether the plea which was raised was sufficient for the purpose of investigation before we go to see whether the plea has received adequate support through evidence.

Seshadri personally argued his appeal on two separate occasions. On the first occasion he confined himself entirely to the pleas he expounded it and urged in support that the plea in the election petition did not allege anything nor did the evidence in

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support establish anything further. But before the case concluded, Seshadri made a request to us that as he had misunderstood his own position with regard to the appeal, regard being had to certain observations of the Court, he had not argued the case fully on the first occasion and he should be allowed an opportunity to supplement his arguments by urging the points de novo. Since Seshadri was conducting his case in person and appeared to be under some emotional stress, we felt that the ends of justice would be satisfied if we accorded him a second opportunity and this is how the case was set down again for hearing. On the second occasion Seshadri supplemented his arguments with numerous citations from the law reports in support of two propositions, namely, that the particulars should be complete before the evidence could be looked into and secondly that amendment of the pleadings through evidence is not permissible.

It may be mentioned here that the evidence in the case discloses that not one, two or three cars were used but as many as 63 cars were employed. This evidence has been weighed by the learned Judge. He has gone critically into every aspect of it and come to the conclusion that many cars in fact were used. The learned counsel for Vasantha Pai placed in our hands a tabulated statement of the evidence bearing upon the use of the cars and having looked into the judgment of the learned Judge as also the evidence with the aid of the tabulated statement, we are satisfied and it is sufficient to say for us that we entirely agree with the conclusion of the learned Judge that many cars were, in fact, used for conveyance of voters in this constituency. The alternative suggestion that on some of the days an election from the Teachers' Constituency was going on and that since the polling booths were sometimes located for the two constituencies in the same building, it is possible that the cars were used for that election and not this, does not merit any consideration. The suggestion is extremely vague and the evidence even more tenuous. It is said that one Varadachari was responsible for the hiring of the cars and that in our opinion does not stand either substantiated or any scrutiny. We are therefore satisfied with the finding of the learned Judge in the High Court that cars that were employed for conveyance of voters and that they were in fact used in this constituency and none other. The question then remains as to who was responsible for this?

Now the plea on this subject, as we have said, is contained in several parts of the election petition. One part we have summarised above. The second part was that the Swatantra Party was supporting Seshadri and that the workers of the Swatantra Party were working strenuously for his success. From this it has been reasoned in the High Court that the Swatantra Party was an agent of Seshadri. Its actions therefore would be his actions L6Sup. C.I/69--14 1024

if he was a Consenting party. In this connection it is also stated that Seshadri was being supported by some persons connected with him who helped him by procuring these vehicles for the conveyance of the voters. In the schedule which is filed with the plaint a large number of cars is mentioned and the schedule shows in one of its columns to which polling booths were the voters carried. It is too detailed to be reproduced here. Suffice it to say that it contains names of six divisions and 17 polling booths. It also mentions over two dozen cars which were so used. In the body of the election petition, the petitioner further

stated as follows:

"Besides Tourist Taxis, the petitioner understands the Private Commercial Firms and Cinema Producers placed at the disposal of the first respondent their cars for conveying voters. The persons who were conveying the voters were members of the Swatantra Party, who were acting as the Agents of the first respondent under the guidance in particular of Mr. H.V. Hande. The Agents of the first respondent wore a distinctive badge with R.M. Seshadri printed in bold letters attached to a blue ribbon and pinned to their shirts. They were either escorting the voters or receiving them at the polling stations specified above. In Booth Nos. 60 to 65, prominent among the persons so escorting was Violin Mahadevan who had a badge pinned to his shirt and who the petitioner understands is a member of the Swatantra Party. In Saidapet South, the petitioner states, the car MSS 3336 conveying the voters was in charge of an Advocate's Clerk by name T.K. Vinayagam of No. 16, Karani Garden II Street, Saidapet, Madras-15. The said Vinayagam was wearing a badge of Mr. Seshadri. At Raja Annamalaipuram the petitioner learns that a green-coloured Station Wagon MSP 5398 was in charge of Mr. Venkataraman, member of the Swatantra Party and residing at 30, IV Main Road, Raja Annamalaipuram, Madras-28. The petitioner states that in almost every polling booth, Tourist Taxis and cars engaged by the first respondent were being used by the Swatantra Party Agents for conveying voters."

Seshadri contends that in this plea only four names are mentioned, namely, H.V. Hande, Violin Mahadevan, T.K. Vinayagam and Venkataraman. He starts therefore by analysing whether the connection between these persons and him had been successfully established and further whether they were responsible for

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conveying voters to the polling booths in the cars. He examines critically the evidence of these witnesses before us and also the other evidence bearing upon the subject and contends that the evidence taken as a whole does not establish their connection with him or with the voters or with the cars. We shall, therefore, begin by considering what was said about these persons by Seshadri.

In regard to Hande, Seshadri's contention is that no other person had spoken about Hande excepting the petitioner (P.W. 33) and he spoke about him only in one place. He therefore states that the evidence on this part is extremely insufficient because it depends upon the interested word of the petitioner himself. He refers us to his deposition contained in pages 419 to 531 of the Paper Book, but he draws our attention in particular to certain passages where only one car was mentioned by him in connection with Hande. That car was MSR 7065. The evidence of the election petitioner was that as he was emerging from Doraiswamy Road he found that this car was going past him with a gentleman with a blue upper cloth. The gentleman looked at him and he found that it was Hande. According to Seshadri this evidence was not sufficient to

show that Hande was conveying voters to the polling booth. On this part of the case Seshadri is right because the evidence of the complicity of Hande with the hiring or procuring of the cars was not established nor his complicity with regard to the carriage of voters to the polling booths. With regard to Vinayagam, Seshadri's argument is that the fact is deposed to by the election petitioner himself who said that he had seen a car with a lady and a gentleman arriving at the polling booth and that a lawyer's clerk opened the door and received them. This car bore the number MSS 3336. Support for this evidence is sought by the election petitioner through the evidence of Laxshaman Hegde (P.W. 15) who said that he had seen an Ambassador car carrying two voters just halting at the polling booth. Two voters whom he knew from before came down from the car. A 'short gentleman' directed them to the polling booth. Vasantha Pai then asked the witness if the person was known to the witness. As he did not know the name of the gentleman he could not tell him but Vasantha Pai noted the number of the car. This person who received the voters at the polling booth was later identified by the witness as Vinayakam. The way in which he obtained this information has been given by him in his deposition. He appears to have obtained it from the person concerned. Whatever it may be, there is nothing incriminating in a worker of the party receiving a voter at the polling booth. Polling agents cannot canvass within 100 meters but there is nothing to show in the law that they cannot open the door of a car in which a voter has arrived. The gravamen of the charge, as Seshadri correctly points out was that Vinaya-

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kam was wearing a badge such as we have described and that of course is a different matter and we are not concerned with it here. On the whole, therefore, this evidence does not show that the cars were hired by Seshadri. It only furnishes some link in the circumstantial chain to which we shall later refer and that in our opinion is the only use to which this evidence can be put.

The next person connected with the use of the car is Venkatraman. Three persons deposed to his connection. Of these one is the election petitioner himself; the others are P.Ws. 23 and 27. Seshadri argues that we should not believe these witnesses; one because he is himself a party and the other two because they were connected intimately with the prospects of Vasantha Pal. K.V. Padmanabha Rao (P.W. 23) is said to be the junior of Vasantha Pal and was canvassing for him. He was standing near the vehicle with a list, presumably of the voters, and at that time several vehicles arrived there. He stated that he connected Venkataraman with Seshadri because he was moving about in the company of one Sivasankaran (Junior of Seshadri) in the IInd Main Road. He had also seen him with Sivasankaran going with lists in his hand from house to house. Later he found out from some of his friends what was the purpose of this visit and was told that they were asking the voters whether they needed any conveyance for the next day's polling, as they had command over a large number of vehicles. The latter part of the evidence is hearsay and Seshadri is perfectly right in claiming that it should not be accepted. The fact remains that the witness did see Venkataraman moving with the clerk of Seshadri and therefore there is room for thinking that they were connected together. T.L. Ram Mohan (P.W. 27), it is said, was assisting Vasantha Pai. He wrote a letter Ext. P-109 and his evidence is also described as hearsay. We need not

therefore go by his evidence to reach the conclusion that the cars were hired by Seshadri or some one on his behalf. We can only use this evidence if there were some other evidence to which it can be read as corroborative, because by itself it does not furnish proof of the hiring of vehicles by Seshadri. It only shows that the vehicles were in fact used and that the vehicles were bringing voters to the polling booth.

The connection of Violin Mahadevan was deposed to by four witnesses. V. Murali (P.W. 5) who works in the chamber of two lawyers Rao and Reddy admitted that he was working for Vasantha Pai. He also said that he saw Violin Mahadevan wearing the badge and standing near the polling booth. He stated this to Vasantha Pai and communicated to him his own observation. He admitted that he did not know Violin Mahadevan from before but somebody had told him about him. He could not name the voters who had been brought. He saw that Violin Mahadevan was wearing the same badge which we have

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described and the voters were accosted by persons wearing the same badge and were received at the polling booth. S. Ramamurthy (P.W. 10) saw Venkataraman. He admitted that he had not seen anybody brought by Venkataraman and he also did not know the names of the voters who were brought. But the evidence of S. Ramamurthy (P.W. 10) is sufficient to show that the voters did in fact come by cars to the polling booth. Therefore to that extent, his evidence is material in determining whether the alleged corrupt practice was committed or not. A. Sankaran (P.W. 20) also saw Violin Mahadevan receiving voters at the polling booths. Seshadri contends that as the plea was limited to the naming of these four persons, it is clear that the plea as made was insufficient to bring home the charge which is now brought to his door, namely, that he had hired or procured these vehicles. As has been said above, the hiring and procuring of the vehicles is a totally different matter. These witnesses only speak to what they saw at the polling booths and their evidence is believable that voters were brought to the polling booth. The question is by whom?

The case then goes on to another point and that is: Where did the cars come from? Neither side had examined either Kumarswamy or the owner of the other garage or any other person. The learned Judge then felt that he should examine some court witnesses and he summoned three, namely, Kumarswamy (C.W. 2), Krishnaswamy (C.W. 3) and one Ganesan (C.W. 1). He also called for a report from the police as to whom the cars belonged and he perused the evidence of these three witnesses as also the report sent by the police and came to the conclusion that the hiring or procuring was by Seshadri himself. A great deal of argument is therefore directed by Seshadri to exclude the evidence of these witnesses and the reference to the police to find out to whom the cars belonged. In this connection Seshadri cites a number of ruling which he says show quite clearly that a plea cannot be allowed to be magnified particularly by evidence not brought by the parties, but at the instance of the Court. This requires an examination closely.

The first contention of Seshadri is that the Court trying the election petition is limited by the law which is contained in the Representation of the People Act and the Rules made thereunder. This law, according to him, confers no power upon the Presiding Judge to enter the arena to summon witnesses on his own behalf. The learned Judge who summoned witnesses passed a very short order while doing so.

He did not refer to any law on the subject but extracted a passage from the trial of Warren Hastings in which it was stated that a Judge 'is not to be a dummy but is to take an active interest in the case. Seshadri contends therefore that the action of the Judge in summoning the court

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witnesses was entirely erroneous and that this evidence should be excluded.

The Vower of a Civil Court to summon court witnesses is contained in O. XVI r. 14 of the Code of Civil Procedure. Now the Representation of People Act enjoins that all the powers under the Code can be exercised and all the procedure as far as may be applicable to the trial of civil suits may be followed in the trial of election petitions. It would appear therefore that in the absence of any prohibition contained in the law, the Court has the power to summon a court witness if it thinks that the ends of justice require or that the case before it needs that kind of evidence. It must be remembered that an election petition is not an action at law or a suit in equity. It is a special proceeding. The law even requires that an election petitioner should not be allowed to withdraw an election petition which he has once made and that the election petition may be continued by another person, so long as another person is available. The policy of election law seems to be that for the establishment of purity of elections, investigation into all allegations of real practices including corrupt practices at elections should be thoroughly made. Here was a case where a large number of cars were used presumably for the purpose of carrying voters to the booths. The question is: in the face of this voluminous evidence was it not open to the judge if evidence was available to establish who had procured or hired vehicles, to summon witnesses who could depose to the same? In our opinion, such a power was properly exercised by the learned judge. Although we would say that the trial should be at arms length and the Court should not really enter into the dispute as a third party, but it is not to be understood that the Court never has the power to summon a witness or to call for a document which would throw light upon the matter, particularly of corrupt practice which is alleged and is being sought to be proved. If the Court was satisfied that a corrupt practice had in fact been perpetrated, may be by one side or the other, it was absolutely necessary to find out who was the author of that corrupt practice. Section 98 of the Act itself allows the Court to name a person who is guilty of corrupt practice after giving him notice and this would be more so in the case of a candidate whose name appears to be connected with the corrupt practice, the proof whereof is not before the Court but can be so brought. In such a case we think that the court would be acting within its jurisdiction in using O. XVI r. 14 to summon witnesses who can throw light upon the matter..

Having disposed of this preliminary objection, we are now in a position to consider the evidence which was brought; but before doing so, we must show its relevance to the pleas which had been raised in the case, because much discussion was made

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of the law of pleadings in the case. We have pointed out above that the plea in essence was that cars were used for the purpose of conveying voters contrary to the prohibition contained in the Election Law. The names of the booths and the divisions in which the booths were situated together

with the particulars of the cars and the persons primarily concerned with cars at the polling booths have been mentioned. It is true that the drivers of the cars or the voters themselves have not been examined. But it has been sufficiently pleaded and proved that the cars were in fact used. The connection of Seshadri with the use of the cars has been specifically pleaded. In our opinion, the rest were matters of evidence which did not require to be pleaded and that plea could always be supported by evidence to show the source from where the cars were obtained, who hired or procured them and who used them for the conveyance of voters. This is exactly what has happened in this case. The learned Judge after reaching the conclusion that a large number of cars were used for conveying voters to the polling booths, felt impelled further to consider who was responsible for hiring them. The names of the two garages were already given and there was the allegation that certain companies and cinema producers were also helping Seshadri by the loan of cars. Since the name of Kumarswamy's garage was mentioned, it was but natural for the Judge to have summoned the proprietor of the garage. The proprietor of the garage came and gave the story about the use of the cars by some other candidate but not Seshadri. He however brought on record documents to show that the cars were hired on payment from his garage by one Krishnaswamy. The next step was therefore to summon Krishnaswamy and he was therefore summoned and questioned. Krishnaswamy admitted that he had hired these cars and paid bills amounting to a few thousand rupees.

It is obvious that these cars were not employed for any other purpose that day except for election work. It is ridiculous to imagine that they were ordered for a picnic or for a marriage which did not take place. Therefore the inference was that Krishnaswamy had hired these cars to convey voters to the polling booths. The question therefore boils down to this, for whom was Krishnaswamy working? Here we have the evidence of various types against Krishnaswamy. Kumarswamy and Krishnaswamy have been amply proved in the case to be connected with Seshadri. Kumarswamy was shown Ex. C-2A. He stated that it was an order form filled by R. Krishnaswamy. He also admitted that he had received payments and that the trip sheets of the cars were maintained for that date. Those trip sheets are C-7 to C-36. Now with regard to these trip sheets, it may be stated that in some of them there was mention that the cars were used for election work, but subsequently it was

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found that someone had rubbed out that entry. We are not here to find out who was guilty of attempting to create evidence by rubbing this out. The fact remains that some of the trip sheets still read clearly that the cars had been used for election work. Ex. C-6 was the bill which was issued for these cars, and it was issued to Krishnaswamy. Therefore the cars were engaged at least from Kumarswamy garage for conveying voters and they were hired by Krishnaswamy and he paid for them.

Now Krishnaswamy is connected intimately with Seshadri. He was employed by two companies in which Seshadri was a Director. A party was arranged in honour of Seshadri to celebrate his victory. The arrangement for this was made by Krishnaswamy although the expenses for the party were paid by Seshadri by cheque. Seshadri contends that his entire accounts were examined but it was not proved from those accounts that he had paid any money towards the hire of the

cars. It is not possible for anyone to say how Seshadri, if he was willing to pay for the cars, would have procured the money. It would have been the worst thing for him to have paid the amount by cheque so that it could enter into the accounts. Obviously such payments would be made in a way that they could not be traced back to the person actually paying the amount. The connection, however, of Krishnaswamy with the hiring of the cars and with the celebration of the victory of Seshadri furnishes a very important link in the chain of reasoning.

It is quite clear to us that the Swatantra Party was in favour of Seshadri. Seshadri relies upon finding which has been given by the Court in which it is stated that the Judge found that the first respondent, the Swatantra party and the persons mentioned therein acted as agents of the first respondent and committed corrupt practices under s. 123(5) with which we are now dealing. The argument was that this finding is somewhat obscure because it shows that the first respondent was the agent of the first respondent himself. It seems to us that the learned Judge in recording this finding gave it unthinkingly taking the words from the plea in the petition. It is quite clear that the learned Judge reaches the conclusion that the Swatantra party was working actively in support of Seshadri. It is of course not proved, that he was the adopted candidate of the party nor is it proved that he had appointed any particular person as his agent, but it is quite clear that the Swatantra party was actively supporting him. Thus there is the presence of the workers of the Swatantra party like Hande, Vinavakam, Violin Mahadevan and Venkatraman on the scene at the polling booths. It may also be mentioned that in one of the trip sheets, one Kalyanasundaram had signed in token of the cars having been used. This Kalyanasundaram was the polling agent of Seshadri. The circumstantial

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evidence is now complete. There is the hiring of the cars from the Kumaraswamy Garage by Krishnaswamy, the payment of money by Krishnaswamy to the garage, Krishnaswamy's attachment to Seshadri because of his past connection and the further proof that he arranged the party on his behalf after his victory and the trip sheet was signed by Kalyanasundaram the polling agent of Seshadri. The amount paid was so large that only a candidate would incur that expense, and no supporter. If there was any doubt as to who hired or procured these cars, it is resolved by the concatenation of circumstances which clearly demonstrate that it could have been only Seshadri and no one else who had hired these vehicles. We can infer this circumstantially even though direct evidence be not available. In addition, there is the patent fact that Seshadri did not himself go into the witness box and clear these facts standing out against him although opportunity was offered. It is true that Seshadri complained before us that the plea was vague, that it had been magnified by the evidence brought in this manner and the Court allowed the election petitioner to take advantage of the evidence so brought, but we have already held that the evidence was legitimately brought and that it could be led in the case. As to the plea, we have already shown that it was sufficiently cogent to establish the connection between Seshadri and the hiring and procuring of the cars. The missing links were supplied by that evidence by showing the connection of the only person who had hired the cars and paid several thousand rupees for their hire. If that person is intimately connected with Seshadri, the conclusion is

inescapable that it was Seshadri for whose benefit the cars were hired or procured.

In our opinion, the circumstantial chain of evidence is sufficient to show the connection between him and the use of the cars for the conveyance of voters.

As to the rulings which were cited before us, it is sufficient to say that each case is decided on its own facts, and circumstances. It is true that better particulars can only be given by the party, but that is only where better particulars are required. It was not necessary for Vasanta Pai to have pleaded his evidence in this behalf. He made a very full plea by giving the numbers of the cars, by naming the polling booths at which voters were brought and by stating quite-categorically that it was Seshadri who had procured these cars for the conveyance of voters. Rest was matter of evidence and the facts had to be established by evidence. It may be that without the evidence of Kumaraswamy and Krishnaswamy the case might have taken a different turn but we have already pointed out that the learned Judge very correctly brought these two persons intimately connected with the cars into the Case before him, and to give their version. Their version is partly

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true and partly false and the false evidence was to exclude Seshadri from the charge. In our opinion, this also demonstrates the connection between these persons and Seshadri which had been established in other ways through their own mouths. We accordingly hold that this corrupt practice was brought home.

It remains to consider the argument of Mr. Gupte whether Vasanta Pai could be declared elected. This will depend on our reaching the conclusion that but for the fact that voters were brought through this corrupt practice to the polling booths, the result of the election had been materially affected. In a 'single transferable vote, it is very difficult to say how the voting would have gone, because if all the votes which Seshadri had got, had gone to one of the other candidate who got eliminated at the earlier counts, those candidates would have won. We cannot order a recount because those voters were not free from complicity. It would be speculating to decide how many of the voters were brought to the polling booths in the cars. We think that we are not in a position to declare Vasanta Pai as elected, because that would be merely a guess or surmise as to the nature of the voting which would have taken place if this corrupt practice had not been perpetrated.

In the result therefore, we set aside the direction that Vasanta Pai is elected to the constituency. There will inevitably have to be a fresh election in this constituency.

In so far as Seshadri is concerned, we think that he was properly named as guilty of corrupt practice although that order was incorporated by the learned Judge through a review. It was his duty to have named persons who had been guilty of corrupt practice and he made this up later. There is no need for any specific power for review since the power to name any person guilty of corrupt practice is already contained in the Act. Whether it comes in the original judgment or by a supplementary or complementary order, is not much to the purpose; that order was correctly made.

In the result, the appeal fails and it will be dismissed with costs.

R.K.P.S.

Appeal dismissed.

STATE OF BIHAR

December 2, 1968

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JUDIS