

Pratap Singh vs Hardwari Lal on 4 March, 1970

Equivalent citations: AIR1970SC1500, (1971)3SCC69, AIR 1970 SUPREME COURT 1500

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Bench: C.A. Vaidialingam, S.M. Sikri, V. Bhargava

JUDGMENT

C.A. Vaidialingam, J.

1. The appellant, Pratap Singh was declared elected to the Haryana State Assembly from Bahadurgarh constituency in the first midterm elections which took place on May 14, 1968. There were three contestants from this constituency, the appellant Pratap Singh being the Congress Party candidate, the respondent Hardwari Lal being the Swatantra Party candidate and the independent candidate Ram Narain, being the third candidate. The appellant obtained 23,714 votes and the respondent obtained 19, 279 votes and the appellant was declared duly elected to the Assembly. It is not necessary to refer to the third candidate Ram Narain as he is not before us in these proceedings.

2. On an election petition filed by the respondent herein for setting aside the election of the appellant, the High Court of Punjab and Haryana set aside the appellant's election by its judgment dated January 21, 1969 and this appeal, under Section 116A of the Representation of the People Act, 1951 (hereinafter referred to as the Act), is directed against the said decision.

3. In the election petition before the High Court, the respondent had challenged the election of the appellant on various grounds. As the election of the appellant has been set aside by the High Court only on the findings recorded under Issue No. 3, it is not really necessary to elaborately advert to the other grounds alleged by the respondent in his election petition. It is enough to state that the respondent alleged that the change of date of poll from May 12, 1968 to May 14, 1968 was done with a view to give undue advantage to the Congress candidate (the appellant herein) and that it materially affected the result of the election and that the Police and Executive Officers of the District acted in a partial manner and helped the Congress candidate against the respondent and thus jeopardized his chances of winning the election and that huge amounts were spent by the appellant during the election days and such expenditure far exceeded the maximum limits laid down in Section 77 of the Act, The High Court found that these allegations had not been substantiated and, as such, recorded findings against the respondent.

4. A further allegation was made by the respondent that a somewhat systematic campaign was undertaken throughout the constituency by means of posters and handbills and by distribution of

copies of two papers viz., Vidrohi and Kalakar containing false allegations against the respondent's personal character and that those posters and handbills were printed and published by the appellant and with his consent. In support of this allegation, the respondent relied upon the posters Exhibits X-1 to X-5 and the handbill Exhibit X-6 and three issues of Vidrohi dated April 22, 1968, May 6, 1968 and May 13, 1968 and one issue of Kalakar dated May 3, 1968. According to the respondent the posters and handbills had been published and distributed by the appellant or at his instance and with his consent and that they contained false statements as to his personal character and conduct, thus constituting a 'corrupt practice' under Section 123(4) of the Act. The allegations set out above were stoutly controverted by the appellant and he denied that any posters, handbills or issues of papers referred to by the respondent were either printed or published by him nor had they been printed or published at his instance or with his consent or knowledge. The allegations referred to above formed the subject matter of issue No. 3 which was as follows:

3 (a) Were the posters X-1 to X-5 and the hand-bill X-6, or any one or more of them, published or distributed by the respondent or at his instance or with his consent, as mentioned in para 5?

(b) Were the three issues of 'Vidrohi', dated 22nd April 1968, 6th of May, 1968 and 13th of May 1968 and one issue of 'Kalakar' dated 3rd of May, 1968, published with the consent, knowledge and at the instance of the respondent?

(c) If so, does any one or more of the above posters or issues of papers contain defamatory matters relating to the personal character or conduct of the petitioner?

(d) If so, were such statements believed by the respondent to be true or not believed by him to be false?

The parties led fairly voluminous oral and documentary evidence. The High Court, after a consideration of the entire evidence, has held that the posters X-1 to X-5 and the handbill X-6 were published and distributed by the appellant at his instance and with his consent. It also found that the three issues of Vidrohi and one issue of Kalakar were published at the instance and consent of the appellant and that all these contained false statements relating to the personal character and conduct of the petitioner. The High Court further found that these posters and handbills and the newspapers were widely circulated in the entire constituency before the date of the poll and at the instance and with the knowledge of the appellant. But it however held that the poster X-2, though it contained certain allegations against the respondent, could not be said to be objectionable in the sense that the same contained allegations which may not have been believed to be false. Therefore, in view of this finding regarding Exhibit X-2, it has become unnecessary to refer to the contents of that document.

5. So far as the other documents were concerned, the High Court held that the evidence clearly led only to one irresistible conclusion that the writings contained in those documents were published either by the appellant or at least with his consent and that they contained false allegations regarding the personal conduct and character of the respondent and were of a type which were likely

to further the prospect of the appellant and to prejudice the prospect of the respondent. On these findings, the High Court found issue No. 3 in favour of the respondent and held the appellant guilty of 'corrupt practice' under Section 123(4) of the Act. In view of this finding on issue No. 3, the High Court set aside the election of the appellant with a direction for payment of costs to the respondent.

6. On behalf of the appellant, Mr. Gupte, learned Counsel, attacked the findings recorded by the High Court for setting aside the election of the appellant. According to the learned Counsel the evidence on record does not establish that the posters, pamphlets and the publication in the newspapers were printed and published either by the appellant or with his consent, nor is there any evidence to establish that they were circulated in the constituency by the appellant or at his instance or with his consent. The counsel further pointed out that most of the witnesses whose evidence had been accepted by the High Court were all associated with the appellant during his election campaign and the fact that they had appeared in Court to give evidence against the appellant would clearly show that they had been won over by the respondent and were giving false testimony. In any event, the counsel urged that even if the printing and publication of these Exhibits were held to have been made either by the appellant or at his instance, the statements contained therein and which have been held to be false did not relate to the personal character or conduct of the respondent so as to attract Section 123(4). The statements were purely in the nature of political propaganda which is inevitable in elections. Finally, Mr. Gupte urged that the High Court should have accepted the evidence adduced on behalf of the appellant and dismissed the election petition.

7. Mr. Hardev Singh, learned Counsel for the respondent, on the other hand, fully supported the findings recorded against the appellant under issue No. 3. In fact, according to the learned Counsel, the High Court should have also found the other issues in favour of his client. The statements contained false allegations relating to the personal conduct and character of the respondent and they have been made deliberately by the appellant or with his consent. The wide circulation given to these documents by the appellant or at his instance were all calculated to bring down the respondent in the estimation of the electorate. The findings recorded by the High Court are all supported by the evidence on record. The counsel further pointed out that the High Court itself had taken due note of the fact that some of the witnesses who had given evidence on the side of the respondent were associated with the appellant during the election and it had accepted their evidence because it found corroboration for their evidence from other independent witnesses. The setting aside of the election of the appellant was fully justified.

8. The questions that arise for consideration in this appeal are: (1) whether the posters, handbills and the publications complained of by the respondent, contained matters relating to the personal character or conduct of the respondent; (2) whether the documents under consideration had been printed, published and distributed with the consent, knowledge and at the instance of the appellant; and (3) whether the statements contained in those documents were false or not, believed by the appellant to be true.

9. It is needless to state that in order to constitute a 'corrupt practice under Section 123(4) of the Act, the documents must be held to contain false statements as to the personal character or conduct of the respondent. According to Mr. Gupte, learned Counsel for the appellant, none of the

statements contained in the documents in question can be considered to have been made in relation to the personal character or conduct of the respondent, but, on the other hand, they referred to the political position or reputation or action of the respondent and therefore Section 123(4) is not attracted. There may be, the counsel pointed out, a slight exaggeration regarding the political reputation of the respondent, but the High Court was not justified in holding that the statements contained in those documents referred to the personal character or conduct of the respondent. We have already pointed out that the High Court has taken the view that excepting the poster, Exhibit X-2, all the other documents contained derogatory allegations regarding the character and conduct of the respondent for which there was no basis for the appellant believing them to be true. This finding is strenuously attacked by Mr. Gupte. Therefore it becomes necessary for us to refer briefly to the documents themselves.

10. Poster X-1 refers to the fact that in the general elections, 1967, the respondent received in the form of garlands of currency notes, a large amount which he had promised to utilize for payment of fees to poor students and that the said amount had been misused. It is further stated that fees were being collected from the children of Haryana and in stead of increasing the salaries of teachers, the respondent was enjoying himself in the Mount View Hotel at Chandigarh. It winds up by the statement that the respondent started a weekly, 'Sentinel', and received money from people in the shape of subscription but the paper itself came to a stop after four or six months and that the respondent should explain the reasons for stopping the publication.

11. Exhibit X-3 is again a poster with the headings 'Sant ji or Stunt ji'. This poster contains a general allegation that during the by-election the respondent who wore saffron gold clothes resigned his membership of the Legislative Assembly, but nevertheless continued to be a Minister and the so-called resignation was merely a stunt to collect money. The document concludes by saying that in the current mid-term election the voters of Bahadurgarh are bound to avenge the stunt enacted by the respondent in May 1967.

12. Exhibit X-4 is a poster and makes certain general allegations about the respondent leaving the Congress and joining the Swatantra Party which is a party of rich Rajahs and Maharajahs and one cannot be sure as to how long he would stick to that party. It is further finally stated that the respondent has forfeited the faith of the voters.

13. The High Court has considered the explanation given by the respondent in respect of the statements contained in these three posters and it has held that the statements contained in these posters make 'insinuations that the respondent is not an honest and straight man and therefore the statements contained therein must be held to relate to the personal character or conduct of the respondent. Though Mr. Hardev Singh urged that the view taken by the High Court regarding these three documents is correct, after going through the various statements contained therein, we are not satisfied that they relate to the personal character or conduct of the respondent. On the other hand, those statements relate more to the political status or reputation of the respondent as a politician. Though these statements may err on the side of exaggeration, in our opinion they cannot be brought under Section 123(4) as relating to the personal character and conduct of the respondent.

14. But the position regarding the Poster Exhibit X-5 and the handbill Exhibit X-6 is entirely different and, as we are satisfied that the statements contained therein relate to the personal character or conduct of the respondent, it is not necessary for us to refer in great detail to the three publications in Vidrohi dated April 22, 1968, May 6, 1968 and May 13, 1968 and to the publication in Kalakar, Exhibit PW 9/1, dated May 3, 1968. These publications are more or less on the same pattern as the statements contained in the handbill Exhibit X-6.

15. Exhibit X-5 is a poster published in the form of a Supplement to the Vidrohi Weekly. The writing therein is in Hindi and on the right half of it there is a cartoon showing; the respondent in front of an almirah full of currency notes, faced by a large number of Swatantra candidates during the Haryana mid-term elections. The cartoon depicts the Swatantra candidates demanding from the respondent their share of financial assistance and Rajaji, the founder of the Swatantra Party, is shown as standing on one side in great wonder and bewilderment at the misconduct of the respondent in appropriating to himself the funds provided by the Swatantra Party. This issue of the Vidrohi containing the cartoon does not contain any date. There is a true translation in English of what was printed in Hindi on the left-hand side of the cartoon, which purports to be an appeal made by the respondent to the Swatantra candidates and is as follows: Brothers I have no shop Give us our share of lacs of rupees secured I have no quota, no permit and no brick-kiln from the Swatantra Party for the election licence I have no property from which I can get any * * * Lacs of rupees misappropriated by Hard- * * * wari Lal * * * I am neither in any service nor am I practising as a lawyer. I have no source from which I can meet my monthly expenses of Rs. 5,000/- I roped in Swatantra Party with great difficulty I have purchased a car. In the next 4 years Swatantra Party Rajaji I shall have to depend on this money. You are all young people. You can earn your livelihood anywhere else. I foresee defeat even in this election Vishal Haryana Press, Daily Vidrohi, Delhi. Delhi It will be seen from the statements contained therein that there is a very serious allegation that lacs of rupees [of the Swatantra Party entrusted with 'the respondent, have been misappropriated by him and not given to the other candidates. We cannot but hold that the statements in Exhibit X-5, taken along with the cartoon, cast serious reflection upon the personal character and conduct of the respondent. As to whether those statements are true or not, will be considered by us under point No. 5.

16. Exhibit X-6 is a handbill dated May 11, 1968. The caption to this handbill is 'Do not vote for the corrupt' and it purports to have been issued from Bahadurgarh on May 11, 1968 in the form of a letter, addressed to the voters of Bahadurgarh and it purports to have been issued by 'indicators of correct path to the voters'. The pamphlet itself is as follows:

Bahadurgarh, 11-5-1968 Dear Voter, We have seen this morning a letter, addressed by the so-called Sant Hardwari Lal to the voters of the Bahadurgarh Constituency. You should not allow yourself to be deceived. You have been deceived thrice already. This man has been winning elections through false self praise. How worthy he is of praise, has already been made clear by the posters, which you must have read during the last 15-20 days. But Shri Hardwari Lal has not yet stopped praising himself. And he has made a last attempt to deceive the public. We are guardians of the public and we shall certainly frustrate this last attempt of Shri Hardwari Lal. It would have been

better for Shri Hardwari Lal if he had kept quiet. If he had done that, his past record would have remained hidden. But when a jackal is fated to die, he makes for the village abadi. We give below, details of Shri Hardwari Lal's misdeeds.

In 1951, Shri Hardwari Lal was dismissed from Government service because he was taking bribes. He then managed to secure the Principalship of a College. He had to quit the College also fairly soon. He then deceived Kairon into appointing him a Member of the Service Commission. In the Commission he accepted bribes on account of which he was turned out, before the expiry of his tenure. For the last 6 years now, he has been moving here and there in the political field. He found no chance of making any material gains in the Congress, and he, therefore, joined the Swatantra Party. This Party possesses billions of rupees and it was substantially to support its candidates in the current elections. But 'Stunt' Hardwari Lal has misappropriated his comrades' or colleagues' share of the money. Will the public of Bahadurgarh allow itself to be deceived even With all this in its knowledge?

In his letter, Shri Hardwari Lal, has boasted that he does not like to throw mud at his rival Shri Pratap Singh. Shri Hardwari Lal has had six weeks. If he had anything against Shri Pratap Singh in his possession he would have acquainted the public with it. With nothing in his possession, in this connection, he feels helpless and says that he does not want to say anything against Shri Pratap Singh. Even now he has two or three days during which he can say anything he likes. This is our open challenge.

Your True Guides, Voters of Bahadurgarh New Bharat Press, Original Road, Karol Bagh, New Delhi.

A reading of the document, In our opinion, clearly establishes that most of the allegations relate to the personal character and conduct of the respondent. It alleges that the respondent was removed from Government service because he accepted bribes and that after becoming a Member of the Public Service Commission he was removed from that position before the expiry of his term for the same reason and that even after joining the Swatantra party he had misappropriated the entire money of his comrades or colleagues and the public of Bahadurgarh are asked whether they would allow themselves to be deceived even after having been made aware of the said misdeeds of the respondent. Regarding this document, again, we are satisfied that the statements relate to the personal conduct and character of the respondent. We cannot accept the contention of Mr. Gupte that Exhibits X-5 and X-6 are only in the nature of a political propaganda decrying the activities of the respondent which is common in elections - and asking the electors not to vote for such a candidate. On the other hand, we have already pointed out that the allegations in X-6 are that the respondent was dismissed from Government service for having taken bribes and that he was also sent out of the Public Service Commission before the expiry of his term of office because he accepted bribes and that he has misappropriated the funds of the Swatantra Party. These allegations relate to the personal character and conduct of the

respondent. Here, again, the truth or otherwise of these statements will be considered by us under point No. 3.

17. We have already pointed out that the statements contained in the three issues of the Vidrohi and one issue of Kalakar contained almost similar allegations with slight modification. Though they contained statements similar to those in Exhibits X-1 to X-4 which have been held not to relate to the personal character and conduct of the respondent, never the less they do contain further allegations regarding misappropriation of party funds and receiving bribes while the respondent was a Government servant. Those averments are similar to those contained in Exhibits X-5 and X-6 which, we have already held, will come under Section 123(4) as relating to the personal character and conduct of the respondent.

18. Before we consider the question of publication and distribution, we shall deal with the question under point No. 3, as to whether the statements contained in these documents were believed by the respondent to be false or not believed by him to be true. The High Court has stated that it was not disputed that the allegations in the posters, handbills and the newspapers generally related to the personal character and conduct of the petitioner and that there was further no dispute that those allegations were likely to affect adversely the chances of success of the respondent. The High Court further states that though in issue No. 3 the question as to whether these allegations were false or not believed to be true by the appellant was there, yet with regard to the majority of them no suggestion was made to the witnesses during the course of the evidence that the statements were false and that even the appellant while giving evidence had not made any suggestion that the allegations in these objectionable writings were believed by him to be true. Notwithstanding these statements contained in the judgment of the High Court, we have already referred to the matters contained in Exhibits X-5 and X-6 and hold that the statements therein relate to the personal character and conduct of the respondent.

19. The High Court has also elaborately gone into the question as to whether the allegations were false or not believed by the respondent to be true. In considering the statements contained in the handbill Exhibit X-6, the High Court has very elaborately considered the service record of the respondent and also the circumstances under which the respondent left Government service. The High Court has found that the allegations contained in Exhibit X-6 are totally false and could not have been believed by the respondent to be true. Similarly, with regard to the allegations contained in Exhibit, X-5, the High Court has referred to the evidence of Dandekar, P. W. 3, the General Secretary of the Swatantra Party. P. W. 3 has given evidence to the effect that he was in charge of the Central Office of the Swatantra Party in the mid-term poll in Haryana and that all Swatantra candidates were given monetary assistance directly by him and every candidate was given the same measure of help and support and that the respondent was not entrusted with any huge amount as alleged, nor had he misappropriated any of the Party's funds. No attempt was made in cross-examination of this witness by the appellant to suggest the basis on which such a serious allegation of misappropriation could have been made against the respondent; nor were any circumstances elicited from P. W. 3 which may have enabled the respondent to believe those allegations to be true, or, at any rate, not to be false. Mr. Gupte, learned Counsel for the appellant, was not able to satisfy us that the findings recorded on this aspect by the High Court were

erroneous. We agree with the findings of the High Court and hold that the statements in Exhibits X-5 and X-6 were totally false and the respondent could not have believed them to be true.

20. The same considerations apply to the three issues of Vidrohi and the one issue of Kalakar, which contained statements similar to those in Exhibits X-5 and X-6. That takes us on to point No. 2 which relates to the question as to whether the relevant documents had been printed, published and circulated by the appellant, or at his instance, or with his consent.

21. It must be stated at the outset that the witnesses who speak to the printing, publication and distribution of the documents under consideration give evidence regarding Exhibits X-1 to X-4. Though Exhibits X-1 to X-4 have been held by us as not relating to the personal character and conduct of the respondent, nevertheless the evidence regarding those documents will be adverted to only to consider whether the evidence connecting the appellant with the printing, publication and distribution of the other documents has been rightly accepted by the High Court.

22. Exhibits X-1 to X-4, the four posters bear the press line indicating that they were printed at the New Bharat Press, New Delhi and Sood Litho Press, Delhi. These four posters are said to have been printed and published before May 1, 1968 X-1 and X-2 on April 22 1968 and X-3 and X-4 on April 27, 1968. The handbill Exhibit X-6 is in Hindi and bears the press line of the New Bharat Press printed in red ink and also purports to be printed and published on behalf of the voters of Bahadurgarh constituency. Exhibit X-6 is stated to have been printed on May 11, 1968, that is, just two days before the date of poll. We have already held that Exhibit X-6 contains very serious allegations showing the respondent as a man of very low character.

23. P. W. 14, Dewan Sohan Lal, is the Proprietor of the New Bharat Press New Delhi and P. W. 12 is the Keeper of Sood Litho Press, Daryaganj, Delhi, of which he has stated that his wife is the Proprietrix. P. W. 14 has given evidence to the fact that his press did some printing work for the appellant during the mid term election held in May 1968. According to him, he printed about 10,000 copies of the life-sketch of the appellant which is Exhibit P. W. 14/1, for which the block and paper were supplied by the appellant himself. The order for printing the life-sketch is stated to have been given on April 15, 1968 and the copies were supplied on April 20, 1968. Though the appellant Pratap Singh did not come on the date when the order for printing the life-sketch was given, P. W. 14 says that on April 20, 1968 the appellant, accompanied by Surajmal and Pritam Singh came and took delivery of the copies. At this stage, it may be mentioned that the appellant himself has admitted that Pritam Singh was a worker on his behalf during his election campaign and he has also admitted though reluctantly, that Surajmal was also his counting agent.

24. P. W. 14 further states that on the day when the appellant and the two others came to take delivery of the life-sketch P. W. 14/1, they brought the manuscript for two posters for Exhibits X-1 and X-2 and an order was placed for printing a thousand copies of each, for which, again, paper was supplied by the appellant. As his press had no arrangement for litho printing, he made arrangements with Sood Litho Press for having them printed. He has further stated that the manuscript for Exhibit X-1 was prepared in his presence by Surajmal who had accompanied the appellant. After two or three days, Surajmal accompanied by Jagdish Chander Grover (P. W. 24)

came and gave instructions for printing 2,000 copies each of Exhibits X-3 and X-4. P. W. 24 was introduced to the witness by Surajmal as a very influential person. These posters were also got printed through Sood Litho Press. The witness has given in detail, with reference to the books of account, the dates when the orders were placed for printing these posters as well as the charges received by him for printing the same and the amount paid to Sood litho Press. The various entries in the books of account as well as the vouchers referred to by Mm and considered by the High Court, clearly support the oral evidence of P. W. 14 regarding these posters.

25. Coming to Exhibit X-6, P. W. 14 speaks to having printed 10,000 copies on May 11, 1968. According to him, the appellant Pratap Singh and Suraj Mal both visited his Press with the manuscript and the original manuscript was P. W. 3/2B. As the manuscript was in Hindi and as the witness could read Hindi only in print and as he saw the heading 'Rishwatkhor ko rai mat do' he asked Surajmal to write it out in his presence and, accordingly, Surajmal wrote out the same as P. W. 3/2-C. He further deposes that the handbills were printed at his press and he charged Its. 50 as printing charges, the payment having been made on the same day, viz., May 11, 1968. As the entire quantity of 10,000 could not be printed on the same day, the witness delivered on May 11, 1968 it self the quantity that was printed and the rest of the copies were delivered the next day. He has referred to his books of account regarding the printing charges received for the same. According to him the paper for printing hand bills was supplied by the appellant himself. He also speaks to having received a letter, dated June 12, 1968 from the respondent regarding this pamphlet and his having replied to the same.

26. In cross-examination, this witness has stated that he has no litho machine and as Exhibits X-1 to X-4 could not be printed in his press he made arrangements with Sood Litho Press for printing the same. He states that when Pratap Singh came to his press he was introduced as the candidate standing for election against the respondent. He has also stated that as he did not know the appellant personally and as they wanted the election posters to be printed, he felt reluctant to do the same, in the first instance. Therefore, when the appellant came with Surajmal to take delivery of the life-sketch, Exhibit P. W. 14/1, he brought, a letter of introduction from Sashi, P. W. 10, Editor and Publisher of Vidrohi, Delhi. That letter, Exhibit P. W. 14/7 was dated April 16, 1968 and was given to the witness by Surajmal when he and the appellant came to take delivery of Exhibit P. W. 14/1. He has further stated that he knew P. W. 10 from 1964 as both of them were occupying, for some time, portion of the same building bearing Door No. 2104, Original Road. As the letter was written on the letter-head and as he was familiar with the handwriting of P. W. 10, he accepted his recommendation and did the necessary further printing as required by the appellant. Though suggestions were put to this witness that the appellant never visited the witness and the life-sketch P. W. 14/1 as well as the other posters, including Exhibit X-6 were never got printed at the instance of the appellant, the witness has denied those suggestions and has positively stated that the appellant did visit him on the occasions mentioned by him. The witness has also referred in great detail to his cash book and other account books, P. W. 14/4, 4-A and 4-B and P. W. 14/5, regarding the printing as well as the charges received for the life-sketch P. W. 14/1 and Exhibits X-1 to X-4 and X-6.

27. Similarly, P. W. 12, the keeper of Sood Litho Press, K.A. Agarwal, has given evidence regarding the printing at the instance of P. W. 14 the posters Exhibits X-1 to X-4. He has also produced his registers, Exhibits P. W. 12/1 and 2, as well as the counterfoil of Ms receipt book, P. W. 12/3-A to prove the receipt of, charges in respect of the said printing. In fact the counterfoil of the receipt contains the initials of P. W. 14 in token of having taken delivery of the copies. Though the appellant very vehemently denied having had anything to do with the printing through P. W. 14 of his life sketch P. W. 14/1 as well as Exhibits X-1 to X-4 and X-6, we are not impressed with his evidence. The books of account regularly kept in the course of business and produced by P. W. 14 and P. W. 12 clearly establish that P. W. 14/1 and Exhibits X-1 to X-4 and X-6 were printed at the instance of the appellant and the necessary materials were also supplied by him. The life-sketch of the appellant, P. W. 14/1 contains very detailed particulars regarding his career -and it is idle to suggest that the particulars contained therein have not been furnished by him and he has given very prevaricating answers regarding P. W. 14/1.

28. The appellant has not made any suggestion to P. W. 10 that he did not give a letter of introduction, Exhibit P. W. 14/7 to Sohanlal. The documentary evidence in the nature of account books, receipt books, cash-books and the letter of introduction produced by P. W. 14 and P. W. 12, clearly support the evidence of P. W. 14 that the appellant visited his press and gave instructions for printing the life-sketch P. W. 14/1 and also Exhibits X-1 to X-4 and X-6. Therefore the connection with the printing of exhibit X-6 and the appellant's responsibility for the statements contained therein, are well established.

29. In this connection, It may also be noted that P. W. 34, who was the polling agent of the appellant, has spoken to distributing the handbills P. W. 14/1- containing the biography of the appellant. In fact he has also spoken to distributing the handbill exhibit X-6. He is a Congressman and he belongs to the party of the appellant. The evidence of P. W. 34 also further establishes that the distribution of the life-sketch of the appellant P. W. 14/1 and of the handbill Exhibit X-6 must have been at the instance and with the consent of the appellant.

30. Coming to the printing of the three issues, dated April 22, 1968, May 6, 1968 and May 13, 1968 of the Vidrohi and the defamatory poster, Exhibit X-5, the evidence in that regard is furnished by R.K. Shashi, P. W. 10, editor of Vidrohi Weekly. He has deposed to the effect that he knows the appellant and that he was sent for by Pratap Singh about 20 or 25 days before the date of poll. He met the appellant, his elder brother Priya Vrat, Surajmal and certain others who were with the appellant in his election office. The appellant gave material to be published in the Vidrohi relating to the respondent Hardwari Lal. They were published on April 22, 1968, May 6, 1968 and May 13, 1968. The witness is positive that the various statements and news items contained in these articles published in the three issues, were made on the basis of information and material supplied by the appellant. He further says that he collected some other material from the friends of the appellant.

31. Regarding Exhibit X-5, he admits having published the poster with the cartoon and the statements contained therein regarding the respondent According to P. W. 10, those statements were made on the basis of the material supplied by the appellant which had also been published by him in the three editions of the weekly already adverted to. In fact in his cross-examination, he also

refers to having received a notice from the respondent, P. W. 42/1 regarding Exhibit. X-5 and to Ms sending a reply, P. W. 10/4 in July 68. In this reply, P. W. 10 had stated that as the respondent did not require" his assistance, he had met the Congress candidate Pratap Singh who gave materials for being published against the respondent and that on the basis of those materials published by the appellant, he had written articles in Vidrohi in the three issues. Even the cartoon, Exhibit X-5, along with the statements contained therein, was published on particulars given by the appellant and that he had also supplied 2000 copies of Exhibit X-5 for which he received the charges. He has also referred to a further reply, Exhibit P. W. 10/6, sent to the respondent wherein he has stated that he charged Rs. 2,100 for supplying posters etc., to the appellant. In his evidence also P. W. 10 has stated that the appellant purchased 2000 copies of each of the issues of Vidrohi as well as the poster Exhibit X-5 and received in all a sum of Rs. 2,100. He has also spoken to the fact that commercial advertisements relating to the appellant's factory which manufactures engines and pumping sets, continued to be published in his weekly.

32. In his cross-examination he has stated that he had frequent talks with the appellant and Surajmal and it was the latter who suggested that a poster with a cartoon Ex. X-5 should be published. Accordingly he arranged to have a cartoon drawn by an artist at Delhi and the poster, along with the cartoon, Exhibit X-5 was published on May 1, 1968. He has also stated that he sent, as required under the Press Registration Act, necessary copies of his publications to the Government within a week of their publication. The appellant disowned all contact with either Shashi, P. W. 10, or his Weekly, Vidrohi. In fact his claim was that he never gave any instructions to P. W. 10, either to publish the articles in the three issues referred to by him, or to print the cartoon and the matters contained in Exhibit X-5. The appellant even went to the extent of deposing that he had never given any advertisement for publication in the Vidrohi.

33. The appellant, when he gave evidence as R. W. 22, has been severely cross-examined when he disowned all contact with the Vidrohi. He admitted that he was a partner of one dozen firms and the names of the firms were also given by him. In particular he admitted that he is a partner of M/s. Hindusthan Automobile Industries. He also admitted that this firm is owned by him and his brother Priya Vrat in equal shares. Though the appellant was prepared to go to the extent of saying that he has never heard of Vidrohi before, he was squarely faced with an advertisement in the Vidrohi, Exhibits R. W. 22/3 to 6. He admitted that these exhibits related to the advertisement regarding his firm M/s. Hindusthan Automobile Industries and he gave a very evasive reply by saying that the advertisements may have been given by the Manager of the firm. In fact a suggestion was made to the witness that they were giving more advertisements to Vidrohi after the articles against the respondent and in favour of the appellant were published during the election, and he frankly admitted that he cannot either contradict or affirm this suggestion.

34. The answers given by the appellant clearly show that he was making a desperate attempt to disown all knowledge of the Vidrohi because if once his intimacy with the Vidrohi is established, the natural conclusion would be that he is responsible for the statements contained in the three issues of the Vidrohi and Exhibit X-5. The same is the case with the publication in the Urdu Weekly Kalakar, dated May 3, 1968, Exhibit 9/1. Here again P. W. 11, the printer and publisher of this Weekly has deposed to his meeting the appellant and the latter giving him certain materials to be published in

Kalakar against the respondent. He has also spoken to the fact that he accordingly published Exhibit P-9/1 on May 3, 1968 and at the request of the appellant supplied him 2000 copies for which he received a sum of Rs. 200.

35. The appellant no doubt disclaimed any connection with the publication Exhibit P-9/1 or the statements contained therein. But it is not possible to accept his evidence. The evidence of P. Ws. 10 and 11 clearly establishes that it was the appellant who furnished the necessary materials against the respondent as contained in the three issues of Vidrohi and Exhibit X-5 and P-9/1.

36. Mr Gupte, learned Counsel for the appellant, referred us to the evidence of P. W. 13 who was himself a printer and publisher at Bahadurgarh, and who is stated to have been contacted by the appellant for printing. According to Mr. Gupte it was unnecessary for the appellant to have gone about from press to press in New Delhi, as facilities were available even in Bahadurgarh. We are not inclined to accept this contention, for P. W. 13 himself has stated that Hindi and Urdu posters could not be printed at his press and that his idea was to arrange to have them printed from Delhi. But his evidence makes it clear that the appellant and Surajmal had come to him for printing certain materials and that on the next day they informed him that they would have the necessary materials printed at Delhi itself and took back the materials given to P. W. 13. This evidence also makes it clear that the appellant was going with Surajmal to the press of P. W. 13 and, if this be so, there is nothing strange in his having gone personally to P. Ws. 10, 11 and 14.

37. Exhibit X-5, we have already pointed out, does not give the date as such, but the evidence of P. W. 10 is that it was published on May 1, 1968. That it must have been published on May 1, 1968, as spoken to by P. W. 10 is corroborated by the evidence of Khosla, P. W. 4. He is the Staff Reporter of the Tribune for Rohtak District and his report P. W. 4/2R, dated May 2, 1968 refers to his having seen huge posters one of which is Exhibit X-5.

38. P. W. 3, Dandekar, who was the General Secretary of the Swatantra Party, has also given evidence to the effect that during his tour of the constituency before the 6th or 7th of May 1968 he saw the poster Exhibit X-5 in several places. Therefore the evidence of P. Ws. 3 and 4 clearly establishes that the poster Exhibit X-5 had been published and circulated, at any rate, in Bahadurgarh town before the date of the poll. The evidence of Dandekar is also corroborated by the evidence of Professor Ranga, who was examined on commission.

39. Similarly, regarding Exhibit X-6, the evidence of Dandekar, P. W. 3 establishes that it had been widely circulated in Bahadurgarh before the date of the poll. That will be seen from the fact that P. W. 3 has produced a copy of the pamphlet, Exhibit X-6, with an endorsement of the respondent, dated May 11, 1968. The endorsement has been marked as P. W. 3/2-A to the effect: "Mr. Dandekar, you may like to see this is an example of the sort of propaganda that I am being subjected to - Hardwarilal, 11-5-68". P. W. 3 has stated that he received this handbill with the endorsement of the respondent on May 12, 1968 and the copy produced by him contained the initials of P. W. 3. He has stated that the allegations contained therein are absolutely false.

40. So far as we can see, no cross-examination has been made of P. W. 3 when he has spoken to Exhibits X-5 and X-6 having been pasted and distributed in Bahadurgarh before the date of the poll. It is also in evidence that on May 11, 1968 Mr. Chavan was to address a meeting in support of the appellant and that is why he was very anxious that the handbills, Exhibits X-6, should be made available to him for distribution to the members of the public who come to attend the meeting. We have already referred to the evidence of P. W. 14 that he got printed 10000 copies of Exhibit X-6 and gave as many copies as he could print even on May 11, 1968.

41. As pointed out above, the evidence of P. Ws. 3 and 4 and of Professor Ranga, clearly establish that Exhibits X-5 and X-6 were circulated and distributed before the date of the poll.

42. P. Ws. 15 and 16 have also spoken to distribution of Exhibits X-5 and X-6 near the villages round about Bahadurgarh. P. W. 24, Jagdish Grover, who was a Municipal Commissioner of Bahadurgarh, has given evidence to the effect that during the mid-term election he worked for the appellant and he was in charge of the city election office in the Dharamsala of Ram Kanwar (R. W. 5) which was at a distance of about 3 furlongs from the Adda. According to him there are two Dharamsalas of R. W. 5, one in the city and the other near the Adda. It was his duty to engage rickshawallas and other workers for "pasting the posters and distributing and making arrangements for the meetings to be held in Bahadurgarh. He had engaged before the date of the poll all the rickshaws for transporting the voters. He has stated that Amar Lal, P. W. 15, was engaged not by him, but by Surajmal. He has referred to issuing under instructions from the appellant, to the workers for distribution the handbill Exhibit X-6 and the poster Exhibit X-5 as well as the issues of Vidrohi and Kalakar. All these were distributed in the city of Bahadurgarh. He has stated that he has nothing to do with their distribution in the rural areas. He further speaks to having made arrangements for having shamianas from Kamla Tent House put up for the meeting organised by the appellant on May 11, 1968. He further states that he worked as counting agent of the appellant.

43. According to the appellant, Jagdish Grover was not in charge of his election office and that on the other hand it was really Ram Kanwar Gupta, R. W. 5 who was in charge of his election office in the Dharamshala near the bus stand. But he admitted ultimately that he had cited Grover as one of his witnesses, but did not examine him. He also admitted that Grover was one of his counting agents but his explanation in this regard as to why he appointed him as a counting agent is very flimsy. He says that as Jagdish Grover happened to be near the counting booth on the date of poll, he appointed him as his counting agent. We have no hesitation in rejecting the evidence of the appellant that Grover was not in charge of his city office. In fact it is seen that the respondent in the election petition had specifically stated that the appellant had six offices and there has been no denial by the appellant in this regard, though in the witness box he was prepared to say that he had only one election office. It is no doubt true that P. W. 15 does not refer to Grover being in charge of the city office, but we have already referred to the fact that Grover was appointed as the counting agent by the appellant even on his own admission & the further fact that he included him as one of the witnesses to be examined on his behalf, clearly shows that Grover must have played a very prominent part in connection with the mid-term poll on behalf of the appellant. The evidence regarding the arrangements made by P. W. 24 for the meeting held on May 11, 1968 in connection with the visit of Mr. Chavan to address an election Meeting in support of the appellant is

corroborated by the evidence of the proprietor of Kamala Tent House, P. W. 26, Shiv Dev Singh. P. W. 26 has stated that he had supplied shamiana, loud-speaker, stage etc., to the respondent in connection with the election meeting held on May 10, 1968, and at the request of Grover, P. W. 24, he allowed all those articles to be utilised for the meeting to be held on May 11, 1968 in support of the appellant and that he received the necessary charges for the same from Grover, P. W. 24. We have also referred to the fact that P. W. 14, Sohanlal, has spoken to the fact that Surajmal a close associate of the appellant during one of his visits was accompanied by Jagdish Grover. The evidence of P. Ws. 30 and 34, who are both polling agents of the appellant, shows that Exhibits X-5 and X-6 and the issues of Vidrohi and Kalakar had been widely distributed in Bahadurgarh.

44. The evidence of P. W. 34 who was one of the polling agents of the appellant, clearly refers to the two Dharamsalas of Ram Kanwar one in the city and one near the bus stand. This clearly supports the evidence of Jagdish Grover, P. W. 24 that there was an election office in the city and also another near the Adda.

45. Mr. Gupte, learned Counsel for the appellant, sought to discredit the evidence of P. W. 24 by relying upon the evidence of Ram Kanwar Gupta, R. W. 5 who has given evidence to the effect that the election office of the appellant was in the Dharamsala near the Adda and that there was no election office in the City. He also claimed to be in charge of the election office of the appellant at the Adda and he has stated that Grover was neither a Congress worker nor was in charge of the appellant's election office. The evidence of R. W. 5 does not impress us as that of a truthful witness. R. W. 5 had not been cited by the appellant as his witness for this purpose and, as pointed out by the High Court, the case that R. W. 5 was in charge of the office is clearly an after-thought.

46. To conclude, the evidence of P. Ws. 3, 4, 15, 16, 24, 30 and 34 and of Professor Ranga, clearly establish that Exhibits X-1 and X-5 were widely distributed and published in Bahadurgarh before the date of the poll. The evidence of some of the witnesses discussed above and as stated earlier; also show that the distribution and circulation were at the instance and with the consent of the appellant.

47. Regarding the distribution of Exhibits X-5, X-6, the three issues of Vidrohi and Kalakar in the rural areas, the evidence is furnished by several witnesses, P. Ws. 9 and 17 to 23. Most of these witnesses were the polling agents of the appellant and one criticism that was leveled against accepting their evidence was that they, once worked for the appellant during the elections and the fact that they had now turned against him, would show that their evidence could not be true. It is no doubt true that most of these witnesses were all the polling agents of the appellant and the fact that they are giving evidence against the appellant is urged as a ground for their evidence being rejected in toto. We are aware that under those circumstances, their evidence will have to be treated with great caution. But, in this case there is the evidence of P. W. 25 which clearly shows that these posters, handbills and copies of Vidrohi and Kalakar were very widely distributed in the rural areas before the date of the poll. He was a congressman and he fought the election against the respondent in 1962, 1967 as also in the by-election in 1967 but lost in all those elections. Even during the mid-term election in question, he applied for a Congress ticket, but it was given to the appellant. Being a Congressman, he was working on behalf of the Congress candidate, viz., the appellant. He has stated that in his tour round the various villages he came across Exhibits X-5 and X-6 and the

copies of Vidrohi and Kalakar which were very widely distributed on behalf of the appellant. He has also referred to the fact that Surajmal was an ardent supporter of the appellant, All these posters and other things were seen by him before the date of the poll. P. W. 25 has spoken to the fact that the respondent, when he was a Minister, had suspended him while he was working as a Sarpanch and that clearly shows that he cannot be too friendly with the respondent. There is no suggestion as to the polling agents of the appellant who have given evidence that they have been won over by the respondent, nor is it established that their evidence is false, as their statements are well corroborated by the other evidence on record.

48. Another witness, R. W. 19 also speaks to having seen the poster with the cartoon, Exhibit X-5. The other witnesses referred to above, clearly speak to the manner in which the distribution of these posters, handbills and copies of Vidrohi and Kalakar were made on behalf of the appellant and at his instance. Their evidence has been considered in great detail by the High Court and we do not think it necessary to traverse the ground over again. Their evidence clearly establishes that the documents under consideration were all published and circulated in the rural areas on behalf of and with the consent of the appellant before the date of the poll.

49. Mr. Gupte, learned Counsel, urged that Surajmal has been referred to as having played a very important part in support of the appellant in the elections and that he had also given manuscripts to P.Ws. 10, 11 and 14. He urged that the burden of proving the corrupt practice alleged against the appellant is on the respondent and he should have examined Surajmal to prove that the necessary materials contained in the pamphlets and news paper publications in question were furnished by the appellant and that the publication and circulation were also made by the appellant or with consent.

50. We are not impressed with this contention of the learned Counsel. That Surajmal was actively associated with the appellant is borne out by the evidence already discussed. The appellant himself has admitted, as R. W. 22, that Hari Chand, brother of Surajmal and their employee one Sia Ram, were Ms counting agents. No doubt he has stated that he appointed Hari Chand and Surajmal as his counting agents because they happened to be near the polling station along with certain other workers of the appellant. This is the same explanation that the appellant gave regarding Jagdish Grover and has not been accepted by us. The only explanation that the appellant gave for not examining Surajmal was that he was neutral. In fact, in his evidence as R. W. 22, the appellant had further stated that he was not prepared to join even in any joint request that may be made to the court for examining Surajmal as a Court witness. So far as we can see, there is absolutely no suggestion to P. Ws. 10, 11 and 14 that the manuscripts produced by them are not in fact in the handwriting of Surajmal.

51. In view of all these circumstances, the non-examination of Surajmal, by the respondent, is of no consequence.

52. It follows, in view of what is stated above, that the appellant must be held guilty of a corrupt practice, under Section 123(4) of the Act, in respect of the printing, publication, circulation and distribution of Exhibits X-5, X-6, the three issues of Vidrohi and the issue of Kalakar, which contained statements relating to the personal character and conduct of the respondent and which

have been held to be false and which the appellant could not have believed to be true. Those statements had been made by the appellant to prejudice the prospects of the respondent in the election.

53. The appeal therefore fails and is dismissed with costs.