

Kanhaiyalal vs Mannalal & Others on 23 March, 1976

Equivalent citations: 1976 AIR 1886, 1976 SCR (3) 808, AIR 1976 SUPREME COURT 1886, 1976 3 SCC 646, 1976 TAX. L. R. 1629, 1976 3 SCC 705, 1976 SCC (TAX) 383, 1976 UPTC 430, 1976 3 SCR 862, 1977 (1) SCJ 75, 37 STC 483, 1978 3 SCR 806

Author: P.K. Goswami

Bench: P.K. Goswami, Syed Murtaza Fazalali

PETITIONER:
KANHAIYALAL

Vs.

RESPONDENT:
MANNALAL & OTHERS

DATE OF JUDGMENT 23/03/1976

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
FAZALALI, SYED MURTAZA

CITATION:
1976 AIR 1886 1976 SCR (3) 808
1976 SCC (3) 646
CITATOR INFO :
R 1977 SC 813 (13)
R 1978 SC 351 (15)
RF 1985 SC 236 (63)

ACT:
Representation of the People Act, 1950 -S. 123(4)-
Corrupt practice-Degree of proof-Election dispute not a
private feud.

HEADNOTE:
Respondent No. 1, an elector in the constituency in his election petition alleged that the appellant, the successful candidate, got printed and published and personally distributed on a large scale throughout the constituency a pamphlet containing statements in relation to the personal

character or conduct of one of the candidates, reasonably calculated to prejudice the prospects of his election, and thereby committed the corrupt practice under s. 123(4) of the Representation of People Act, 1950. The High Court allowed the election petition.

Allowing the appeal-

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HELD : (1) (a) The allegations mentioned in the document related to the personal character and conduct of one of the candidates and were reasonably calculated to prejudice the prospects of his election. If the distribution of the same by the appellant was established and if it was also established that the statements of facts therein were false and that the appellant either believed them to be false or did not believe them to be true, he would be guilty of corrupt practice under s. 123(4) of the Act. [815 E-G]

(b) The charge of electoral corrupt practice being of a quasi-criminal character, the onus on an election petitioner is heavy as if in a criminal charge. The allegations must be established beyond reasonable doubt to the satisfaction of the court by independent and unimpeachable evidence. [817 G-H]

2.(a) There is no doubt that the pamphlet was in existence prior to the date of poll. [817 A-B]

(b) The High Court committed a serious error in linking up the printing of the document allegedly at the instance of the appellant, for which there was no evidence whatsoever, with the distribution of the same by the appellant in the constituency. It further committed an error of law in not dealing with the two matters of printing and its distribution separately and independently. [819 F-H]

(c) The High Court did not adopt a uniform standard in appreciating the evidence of the witnesses of the contending parties. Nor was it right in its conclusion that the charge of distribution of the pamphlet by the appellant was established against him. While one of the defeated candidates took care to prepare a panchnama for the distribution of the offending pamphlet by the agents of the appellant, and lodged a complaint with the returning officer, there was no documentary evidence, no complaint or service of lawyers' notice or preparation of a panchnama in regard to the distribution of the pamphlet by the appellant himself. It is absurd to suppose that the respondent would not have moved in the matter when the appellant had personally distributed the pamphlet. The petitioner had not been able to establish the allegations about the distribution of the pamphlet by the appellant before the election. [820 B-F]

3 (a) An election dispute is not a private feud between one individual and another. The whole constituency is intimately involved in such a dispute. Shaky and wavering oral testimony of a handful of witnesses cannot still the dominant voice of the majority of the electorate. [826 A-B]

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(b) It is difficult to hold that a serious charge of this nature is established on the mere oral testimony of the petitioner's witnesses. [825 E]

(c) Oral testimony will have to be judged with the greatest care and an electoral victory cannot be allowed to be nullified by a mouthful of oral testimony without contemporaneous assurance of a reliable nature from an independent source. [825 H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 870 of 1974.

From the Judgment and Order dated the 7-3-74 of the Madhya Pradesh High Court (Indore Bench) in Election Petition No. 9 of 1972.

B. R. Nahata and Rameshwar Nath for the Appellant. Hardayal Hardy and S. K. Gambhir for Respondent No. 1. S. S. Khanduja and Sushil Kumar Jain for Respondent No. 4.

Ex parte; Respondent Nos. 2 and 3.

The Judgment of the Court was delivered by GOSWAMI, J.-This is an appeal under section 116A of the Representation of the People Act, 1951, against the judgment of the High Court of Madhya Pradesh in an election petition filed by an elector named Mannalal (respondent No. 1 in this appeal), hereinafter to be described as the petitioner, for setting aside the election of the appellant Kanhaiyalal Nagori.

The constituency was Javad Constituency of the Madhya Pradesh Legislative Assembly. The poll took place on March 8, 1972 and the result was declared on March 12, 1972. There were four contesting candidates. The appellant Kanhaiyalal who was a Congress candidate and respondent No. 1 in the election petition, obtained 25,594 votes. Virendrakumar Saklecha (for brevity Saklecha) who was a Jan Sangh candidate, being respondent No. 4 both in the election petition as well as in this appeal, obtained the second highest number of votes viz., 23,064. Ravishankar Sharma (respondent No. 2) who was a Socialist candidate, obtained 1300 votes and Jagmohan (respondent No. 3) an independent candidate obtained 1,104 votes. The last two candidates forfeited their security deposit. The appellant Kanhaiyalal was declared elected by a margin of 2,530 votes.

Saklecha was being returned from this constituency since 1957 having won the election in that year and in the next two successive years 1962 and 1967. In the 1967 election wherein he won, there was an election petition against him. The High Court set aside the election on the ground of certain corrupt practices, but this Court set aside the judgment of the High Court in January 1972.

In the year 1968, Congress Government was defeated and Samyukt Vidhayak Dal (briefly S.V.D.)

came into power in the State. Saklecha was the Deputy Chief Minister in that Government from July 1967 to March 1969. The S.V.D. Government fell in 1969.

As stated earlier the election of the appellant was challenged by an elector Mannalal by an election petition filed on April 24, 1972, alleging corrupt practices under section 123(4) of the Representation of the People Act (briefly the Act) which reads as follows:-

123. "The following shall be deemed to be corrupt practices for the purposes of this Act:-

x x x x (4) The publication by a candidate or his agent or by any other person, with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

It may be appropriate to describe from the election petition itself the allegations against the returned candidate, Kanhaiyalal Nagori:

"5. That the election of the returned candidate, respondent No. 1 is liable to be declared void and set aside on the following grounds:-

(A) That the respondent No. 1 got published through Block Congress Committee, Javad, a pamphlet entitled "Saklecha Ke Karyakal Par Ek Nazar" and it was distributed throughout the Javad constituency by the respondent No. 1 himself and by his workers and agents with his consent. The said pamphlet was printed in Shriman Press, Neemuch and the signatories to the said pamphlets are all members and important office bearers of the Congress party and who were actively conducting the election propaganda of the respondent No. 1.

Respondent No. 1 was official Congress candidate and he was also Provincial Congress Committee member representing Block Committee Javad and President Janpad Panchayat Javad. The said pamphlet is in Malvi dialect and was distributed on a large scale throughout the constituency by the candidate himself and through his workers and agents by his consent and connivance. By the said pamphlet the respondent No. 1 through his agents Parasram Agarwal of Singoli, Chosarmalji of Singoli, Bhanwarlal Badolia of Kadwasa, Ghanshyam Patidar of Neemuch. Vijaychankar Sharma of Neemuch, Shankarlal Bhatevara, President of Block Congress, Javad, and Dheeraj Vyas, Secretary, Block Yuvak Congress Javad, published statements of fact which are totally false and which the respondent No. 1 and his said agents believed to be false or did not believe to be true, in relation to the personal character or conduct of the respondent No. 4, being statements reasonably calculated to prejudice the prospects of the election of respondent No. 4. The said pamphlet contained allegations against the respondent No. 4, which are totally false to the knowledge of respondent No. 1 and his said agents and other persons who distributed the said pamphlet. The aforesaid pamphlet

(an English rendering) reproduced below (sic) false allegations against the personal character and conduct of respondent No. 4:

"Ex. P-1"

INDIRA GANDHI JINDABAD/PRAKASHCHAND SETHI JINDABAD Election Symbol Birds Eye View of Saklecha's Regime Dear Villagers, This is the election period. In our constituency voting shall be on 8th, the Wednesday. We have been returning the Deepakwala-Saklecha for the last 15 years and he has been sitting in the Assembly for the last 15 years. Saklecha has remained Deputy Chief Minister but did no work. He only served his interest. You have read this news in 'Nai Dunia' newspaper that Saklecha has devoured lakhs of rupees from dacoits. During his period of rule he has tortured people by selecting them. He troubled people indiscreetly. Saklecha has ploughed thousands of bighas of land on the Sukhanad side, when people are not getting land. Saklecha has ploughed the grass land of Bhutiakhal of Baval and has installed electric water pump on the Khal, when people are starving for water for irrigation of their land. This is a matter for consideration that what has been done by Saklecha for the villagers.

He filled his belly. You gave him opportunity to work for 15 years, but he did nothing. Arey? you think about it, that if you would have given water to a Babool tree, then it would have also given you a blessing, but Saklecha has done nothing in 15 years. On our side we have a great scarcity of water, if he would have desired, then at the time of his Govt. he would have got Tube wells prepared. But he did not think about it as for him there is a water pump fitted at Bhutia Khal and there is road for him to go to his home. He has helicopter and aeroplane for his travel. He talks only in the air. In Saklecha's Govt. they purchased Dodge Chasis in place of Mercedes and did much bungling with (sic) which God alone knows. He has devoured the land of one Baba of Javad area. This is known to the whole world. Therefore you have to consider it and be not deceived this time otherwise we will lay behind for other five years. Our area is lagging behind. This is a matter for you to remember. Therefore for the development of the area and for removal of shortage of water you have to put your seal on the Cow & Calf symbol of Kanhaiyalal Nagori and make him succeed. Remember this. Our interest lies in this. You have to strengthen the hands of Indiraji. Do not forget it.

You have to put your seal this time on Cow and Calf. Parasram Agarwal, Singoli, Vice-President of Janpad Panchayat Javad, Chosarmal Sarpanch, Panchayat, Singoli, Bhanwarlal Badolia, Sarpanch, Panchayat Kadwasa, Ghanshyam Patidar, Pleader, Neemuch (Janakpur), Vijayshankar Sharma, Neemuch (Mahudia) Shankarlal Bhatevara, President, Block Congress Javad, Dheeraj Vyas, Secretary, Block Youth Congress.

Best place for
Printing-Shriram Printing Press, in front of Jaju Bhawan, Neemuch."

"5(B). The said pamphlet was distributed by the respondent No. 1 and with his consent and in his presence and under his direction by his agents and workers who were accompanying him in the jeep while touring the constituency the particulars of which are given below:-

Name of the person who distributed Pamphlet.	Place	Date
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1. Kanhaiyalal Naogri Newas 2.3.72

2. Shankarlal Bhatevara Jawi 2.3.72 of Javad, Thadoli 2.3.72 President, Block Lasur 2.3.72 Congress, Javad. Daroli 2.3.72

1. Kanhaiyalal Nagori Diken

2. Dheeraj Vyas Mantri Ratangarh of Ratangarh, Carwada 3.3.1972 Block Yuvak Congress, Alori Javad. Kabriya 3.3.1972 Singoli 3.3.1972

5(C). The said pamphlet was also distributed with the consent of the respondent No. 1 by the following persons the particulars whereof are as follows:-

N a m e o f t h e p e r s o n	P l a c e	D a t e
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1. Ghanshyam Patidar Village 25.2.72.

2. Jagdishchandra Airen Dhaneria

3. Shivalal Rawat, and Jawi Advocate of Neemuch. Tehsil

4 . P a r a s m a l s / o K a n h a i y a l a l N a g o r i N e e m u c h

The said persons were active workers and agents of the respondent No. 1 and the said Parasmal is his son and agent. The said persons distributed the said pamphlet which they were carrying on for the respondent No. 1.

The statements contained in the said pamphlet are false and which the said persons and the respondent No. 1 believed to be false and did not believe to be true. 5(D). That the respondent No. 1 through the Block Congress Committee Javad published an election bulletin dated 6.3.1972 under the caption of 'Congress Tatha Anya Dalo Kee Sachhi Hakeekat' and got it distributed free on a large scale throughout the Javad constituency. In this bulletin there is a reference to an interview with the Congress candidate respondent No. 1 in the form of questions and answers. The questions put to him and answers given by him included the following question-answers":

It is not necessary to reproduce what was published in the "Haquikat" particularly because the charge of distribution of the same by Kanhayalal on 6th March, 1972, in

various places such as Morwan, Daroli, Diken, Ratangarh, Singoli and Jhantla, is not being pressed by Mr. Hardy although evidence was led to that effect in the trial court.

In the affidavit annexed to the election petition, the petitioner stated as follows:-

"(c) The information regarding distribution has been received as detailed below:-

Name of the person	Place of corrupt practice committed	para of the petition
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1. Modidas Bairagi, village Newas . . . Newad 5(B)
2. Madanlal Sharma, village Jawi . . . Jawi 5(B)(C)
3. Onkarlal Khati, village Thandoli. . . Thandoli 5(B)
4. Ramniwas Patidar, village Lasoor. . . Lasoor 5(B)
5. Mishrilal Tailor, village Diken . . . Diken 5(B)(D)
6. Lakshminarayan Latha, vill Ratangarh . Ratangarh 5(B)(D)
7. Shankerlal Cheran, vill Garwada Aloni. Garwada 5(B) Aloni
8. Bhanwar Singh, village Kabriya . . . Kabriya 5(B)
9. Bapalal son of Bhanwarlal, vill Singoli Singoli 5(B)(D)
10. Keshar Singh, village Dhaneria . . . Dhaneria 5(C)
11. Khemraj Moti Jat, village Morwan . . . Morwan 5(D)
12. Balooram Dhakar, village Jhatla . . . Jhatla 5(D)"

The petition was contested only by Kanhaiyalal. He denied the printing, publication and distribution of the aforesaid two pamphlets either by himself or by others with his consent.

On the pleadings the following issues were raised in the trial:-

"1. Whether respondent No. 1 Kanhaiyalal through the Block Congress Committee, Javad, got published the pamphlet (Saklecha Ke Karyakal Par Ek Nazar) as

reproduced in para 5(A) of the Petition? 2(a) Whether respondent No. 1 Kanhaiyalal and with his consent, in his presence and under his direction his agents and workers named in paragraph 5(B) of the petition also distributed the said pamphlet at the places and on the dates mentioned in the said paragraph?

(b) (i) Whether the said pamphlet was also Kanhaiyalal by the persons at the places and on the dates mentioned in paragraph 5(C) of the petition?

(ii) Whether the persons named in paragraph 5 (C) of the petition were active workers and agents of the respondent No. 1 ?

3. Whether the said pamphlet contained statements of facts which were false and/or which the respondent No. 1 and his alleged agents and workers did not believe it to be true ?

4(a) Whether respondent No. 1 Kanhaiyalal through the Block Congress Committee, Javad, published the bulletin as reproduced in para 5(D) of the petition and also got it freely distributed on a large scale and on the dates mentioned in para 5(d) of the petition ?

(b) Whether the statement of facts in the said bulletin was false and/or which the respondent No. 1 did not believe it to be true in regard to the personal character and conduct of respondent No. 4 ?

(c) Whether the said statement was calculated to prejudice the result of the election of respondent No. 4 ?

5. To what relief the parties are entitled to?"

The trial judge answered the first question in favour of the election petitioner, issue No. 2(a) also in favour of the petitioner except at the places Newad and Kabriya, Issue No. 2(b)(i), 2(b)(ii) and Issue No. 3 in favour of the petitioner, Issue No. 4(a) also in favour of the petitioner except at the places, Dadoli, Diken and Jhantia, and Issue No. 4(b) and (c) also in favour of the petitioner. The trial judge answered Issue No. 5 holding that the petition deserved to be allowed.

Mr. Nahata, who appeared on behalf of the appellant, the returned candidate, has addressed us with reference to all the issues that were held against him. Mr. Hardy, the learned counsel on behalf of the petitioner (respondent), however, did not press the charges with regard to the distribution of "Haquikat" (Ex.P-13). He also did not press the charges with regard to the distribution of Ex.P-1 by agents and by workers of the returned candidate with his consent, as alleged in the election petition, some of which have even been held in his favour by the High Court. He, however, submits that pamphlet Ex.P-1 is a false and libellous document affecting the personal character or conduct of the respondent, Saklecha, and so far as the same was distributed by Kanhaiyalal personally at Jawi and Thadoli on 2nd March, 1972, the charges have been fully established and this Court should not interfere with the

findings of the High Court in favour of the appellant. Mr. Khanduja appearing on behalf of the respondent, Saklecha, adopted the submission of Mr. Hardy in toto.

Before we proceed further we should observe that in the trial the petitioner produced evidence to prove all the allegations mentioned in the election petition by examining as many as 42 witnesses including himself and by producing relevant documents. The appellant also gave rebuttal evidence with regard to all the charges levelled against him by examining 21 witnesses including himself and by producing various documents.

In this appeal we are concerned with only one species of corrupt practice contemplated in section 123(4) of the Act. Section 123(4) consists of three types of corrupt practices, namely (1) the publication of an offending or incriminating statement by a candidate, (2) by his agent within the meaning of the Explanation (1) to section 123 and (3) by any other person with the consent of the candidate or his election agent. We are not concerned in this appeal with the types in (2) and (3) in view of the stand taken by Mr. Hardy and Mr. Khanduja.

We may first examine whether Ex.P-1 comes within the mischief of section 123(4). The allegations mentioned in Ex.P-1, if false, and believed to be so, or not believed to be true, would come within the mischief of section 123(4). We have gone through the document and we are clearly of opinion that the allegations mentioned in the document relate to the personal character and conduct of Saklecha and are reasonably calculated to prejudice the prospects of Saklecha's election. If the distribution of the same by Kanhaiyalal is established and if it is also established that the statements of facts therein are false and Kanhaiyalal either believed them to be false or did not believe them to be true, he will be guilty of corrupt practice under section 123(4) of the Act.

Since the pamphlet on the face of it is shown as being printed at Shriram Printing Press, Neemuch, evidence was led by the petitioner by examining Harishankar (PW 32), the proprietor of the Press, who produced the register containing the printing orders. He stated that during the last General Elections 5000 copies of the pamphlet like Ex.P-1 were printed in his Press. He was, however, unable to state who had come to place the order as he was indisposed and his son Shivshankar took the order. The entry in the register also was not made by him but was made by his son, Shivshankar, who was not examined in the case. From the entry in the register (Ex.P-14) it appears that on 24th February, 1972, Congress Committee Javad placed orders for printing of 5000 pamphlets with the caption "Saklecha Ke Karyakal Par Ek Nazar". There is an obvious interpolation in the entry showing that Ghanshyam Patidar placed the orders on behalf of the Block Congress Committee, but the witness could not say who had made this interpolation. He could not identify the handwriting in the interpolation. The trial judge has noted the demeanour of this witness stating that "it appears that he did not intend to stick to any particular answer and tried to change his version as and when he found it convenient". The petitioner wanted to establish that Ghanshyam Patidar, who according to him, was actively working for the Congress went to the Press for placing the orders and later on even distributed some pamphlets with the consent of Kanhaiyalal. It is in that context that this interpolation assumes significance. We are unable to hold that on the evidence of PW 32 the fact of

Ghanshyam Patidar placing the order is established. There was no attempt to examine the son who had personal knowledge about the placing of the order. Even so, we are satisfied that the pamphlets were printed in this Press but it is difficult to hold as to who placed the orders for printing. That this pamphlet was printed in order to advance the cause of the Congress candidate and to prejudice the interests of Saklecha cannot be in doubt. Apart from this the proprietor was prosecuted for printing this pamphlet for contravention of the provisions of section 127A of the Representation of the People Act, and he was convicted on his plea and sentenced to pay a fine of Rs. 50/-. We are, therefore, satisfied that the pamphlet was printed in the Shriram Printing Press, but in the absence of the evidence of Shivshankar we are unable to agree with the High Court that Ghanshyam Patidar had anything to do with the placing of the orders or printing of Ex.P-1.

We must next consider as to when this document came into existence. The register of the Press shows that the order for Ex. P-1 was placed on 24th February, 1972, that is to say about two weeks before the poll and the allegations of its distribution were on 25th February and on 2nd March, 1972. Having come to know of the distribution of this offending pamphlet, Saklecha complained to the Returning officer by a letter dated 26th February, 1972, by enclosing a panchnama testifying to the distribution of the pamphlet at Jawi. Although it is not specifically established that this letter was posted on 26th February, 1972, or that it was received by post by the Returning Officer, it is clear even from the application on behalf of the respondent Kanhaiyalal for summoning the Returning Officer that Saklecha had personally handed over this complaint to the Returning Officer on 5th March, 1972, which was definitely prior to the poll. There is a further fact which has been established. Under the instructions of Saklecha, Hiralal Mehta, Advocate (PW 1) sent out registered notices dated 27th February, 1972, to seven signatories of the pamphlet (Ex.P-1), namely, Parasram Agarwal, Chosarmal, Bhanwarlal, Ghanshyam Patidar, Vijayshankar Sharma, Shankarlal Batevara and Dheeraj Vyas. Some of the witnesses examined on behalf of the respondent, Kanhaiyalal, (RWs 5, 6 and 8) admitted to have received the registered notices of the Advocate to which they did not send any reply. The fact of denial by Ghanshyam Patidar (RW 1) is not of much significance. There is, therefore, no doubt whatsoever that the pamphlet (Ex.P-1) was in existence during the election period prior to the date of poll on 8th March, 1972.

We are satisfied that 5,000 copies of the pamphlet were printed in the Shriram Printing Press. Evidently these were printed for the purpose of distribution in order to advance the cause of the appellant and to harm the interests of Saklecha. We are not concerned in this appeal with the distribution of the pamphlet on 25th February, 1972. Since these pamphlets were alleged to be distributed on 25th February, 1972, not by the appellant himself but by other persons, the petitioner had also to establish consent of the appellant in the distribution. Although the High Court has held that even consent was established, Mr. Hardy has not pressed his case regarding the allegation of distribution of the pamphlet on 25th February, 1972.

Mr. Nahata submits that in view of the newspaper reports and the Assembly proceedings, in particular the statements on the floor of the Assembly on a Vote of No Confidence against the S.V.D. Ministry where particular reference had been, inter alia, made in severe terms creating a furor about the activities of Saklecha in his capacity as the Deputy Chief Minister in-charge of the Home Department, any person reading these will have reasonable belief that the allegations in Ex.P-1 are

true and at least not false. It is also emphasised by counsel that at no time Saklecha ever publicly contradicted the allegations, nor took any action against the publishers.

Mr. Hardy submits that none of the correspondents of the newspapers, nor the authors of the allegations whether made through the Press or on the floor of the House, or through a regular complaint, were examined by the appellant to make out even a prima facie case for reasonable belief of the truth of the wild allegations against the personal character and conduct of Saklecha. It is submitted by Mr. Hardy that the statements made on the floor of the Assembly are privileged and they are also privileged when published in the authorised organs under the order of the House, but to publish these again without the authority of the House will not be protected by privilege under article 194(2) of the Constitution.

Section 123(4) is a punitive rule against character assassination of candidates during the period of election. A charge of electoral corrupt practices being of a quasi- criminal character, the onus on an election petitioner is heavy as if in a criminal charge. The allegations must be established beyond reasonable doubt to the satisfaction of the court by cogent and unimpeachable evidence. That being the position in law the petitioner will have to satisfy the court that the returned candidate had reason to believe that the allegations in the offending pamphlet were false or not true. Even assuming this ingredient is satisfied, since the charge may fail, if it is not established that the appellant himself distributed the offending pamphlet as alleged, we will immediately address ourselves to that aspect of the matter.

Before advertng to the evidence we have to take note of certain factors. Ex concessis, the allegations of the publication of the pamphlet (Ex.P-1) on 25th February, 1972, by the workers and agents with the consent of the appellant have to be held as not established. So far as the distribution of the pamphlet on 25th February, 1972, at Jawi and at Dhaneria, two respective panchnamas were exhibited. A complaint enclosing a copy of the panchnama regarding the distribution of the pamphlet on 25th February, 1972, was lodged before the Returning Officer and it was received by him prior to the poll although the exact date was not proved. So far as the distribution of the pamphlet Ex.P-1 on 25th February, 1972, there was, therefore, both oral and documentary evidence. Even so, since the appellant was not associated with the distribution, it could not be established that the distribution, even if it took place, was with his consent. The charges relating to the 25th February, 1972, were, therefore, rightly abandoned before us.

So far as, however, the distribution of the pamphlet on 2nd March, 1972, at Jawi and Thadoli, which alone survives for consideration, the petitioner relies entirely upon oral testimony and the court will have to be cautious and circumspect in accepting the same.

This Court in *Rahim Khan v. Khurshid Ahmed & Ors.*(1), dealing with the oral testimony in election cases pithily observed at page 656 as follows:-

"We must emphasize the danger of believing at its face value oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must be remembered that corrupt practices may perhaps be proved by hiring

half-a-dozen witnesses apparently respectable and disinterested, to speak to short simple episodes such as that a small village meeting took place where the candidates accused his rival of personal vices. There is no x-ray whereby the dishonesty of the story can be established and, if the Court were gullible enough to gulp such oral versions and invalidate elections, a new menace to our electoral system would have been invented through the judicial apparatus. We regard it as extremely unsafe, in the present climate of kilkenny cat election competitions and partisan witnesses wearing robes of veracity, to upturn a hard won electoral victory merely because lip service to a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, unlying circumstances or unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life".

Ordinarily this Court will be slow to interfere with the findings of the High Court regarding appreciation of evidence except for good and sufficient reasons. Have we good and sufficient reasons to depart from the findings of the High Court ? Our answer is in the affirmative and we will set out the reasons:

(1) The High Court while dealing with the distribution of the pamphlet (Ex.P-1) at Jawi by Ghanshyam Patidar and others felt assured from "the subsequent conduct on the part of Virendrakumar Saklecha" in preparing panchnama (Ex.P-11), instructing Advocate, Hiralal (PW 1) to serve registered notices (Ex.P-17) to the distributors of the pamphlet and in making a complaint (Ex.P-18) to the Returning Officer enclosing a panchnama. The High Court held that "this subsequent conduct on the part of Virendrakumar Saklecha naturally lends corroboration to his statement and the statements of the petitioner's witnesses who have deposed about the publication and distribution of this pamphlet on the dates referred to by them in their statements. Thus on a consideration of the petitioner's evidence I feel satisfied that the pamphlet Ex.P-1 was distributed by Ghanshyam Patidar, Jagdishchandra Airen, Shivilal Rawat and Parsamal in Jawi and Dhaneria as alleged in the petition."

The above approach, which is correct, particularly in an election matter, was totally lost sight of by the High Court in dealing with the allegations of distribution of the pamphlet (Ex.P-1) by Kanhaiyalal at Jawi and Thadoli on March 2, 1972. The High Court did not look for or adopt the same test with regard to the aforesaid distribution of the pamphlet (Ex.P-1).

(2) The High Court arrived at a completely erroneous finding regarding the printing of the document Ex.P-1 at the instance of Ghanshyam Patidar. As shown earlier, there was no legal evidence before the High Court on which it could come to the conclusion that "the person who got this Ex.P-I printed in the Press of PW 32 Harishankar was none else than RW 1 Ghanshyam Patidar on behalf of the Javad Block Congress Committee". In the absence of any direct evidence from the press the above finding cannot be sustained in law from the fact that Ghanshyam Patidar denied receipt of and did not reply to the registered notice of the Advocate and that he denied his signature in a certain tour programme Ex.P-29.

(3) The High Court committed a serious error in linking up the printing of the document Ex.P-1 by Ghanshyam Patidar at the instance of Kanhaiyalal for which there was no evidence whatsoever with the distribution of the same by Kanhaiyalal in the constituency for holding:

"If the respondent Kanhaiyalal had not in any way been associated with the printing and publication of this pamphlet, then he would not have been one of the persons who would have distributed this pamphlet, as alleged in paragraph S(B) of the petition".

The High Court committed an error of law in not dealing with the two matters of printing of the pamphlet and of its distribution separately and independently.

(4) The High Court did not adopt a uniform standard in appreciating the evidence of the witnesses of the two contending parties. For example, while RW 2 was disbelieved by the High Court holding "admittedly he was the pollining agent of the respondent Kanhaiyalal and must have had sympathies for him during the election period", polling agents of the respondent Seklecha did not come under the same hostile comment for rejecting their testimony.

(5) It is manifest that the High Court was largely influenced by its finding that the pamphlet was printed by the Javad Block Congress Committee through Ghanshyam Patidar at the instance of the appellant. When this finding disappears, as we have shown above, the edifice of the judgment cracks and it is no more a matter of mere reappreciation by us of the evidence, simpliciter, but of proper appreciation by us of the evidence, simpliciter, but of proper appreciation of only oral evidence produced regarding distribution of the pamphlet by Kanhaiyalal at Jawi and Thadoli on March 2, 1972, which we will, next, undertake.

Saklecha took care to prepare panchnamas for the distribution of the offending pamphlets at Jawi and Dhaneria on 25th February, 1972. He instructed his lawyer to serve registered notices on the signatories of the pamphlets and registered notices bear the date 27th February, 1972. Seklecha lodged a complaint dated 26th February, 1972, with the Returning Officer about the distribution of the pamphlet enclosing a copy of the panchnama prepared at Jawi on 25th February 1972. This was quick action indeed. All this documentary evidence lands corroboration to the existence of the pamphlet prior to the poll and even to its circulation. On the other hand, there is no documentary evidence of any complaint or service of lawyer's notice or preparation of a panchnama regarding distribution of the pamphlet by Kanhaiyalal Nagori on 2nd March, 1972. It is absurd to suppose that if Kanhaiyalal had actually personally distributed the pamphlet at Jawi and Thadoli the matter would not have taken air and Saklecha would not have moved in the matter. This is particularly so, since, in the case of distribution by workers and other persons, consent of Kanhaiyalal was necessary to establish the corrupt practice whereas if Kanhaiyalal had personally distributed, the charge would have been established without the requirement of proof of consent.

So far as the distribution of the pamphlet Ex. P-1 at Jawi on 2nd March, 1972, is concerned, we have the evidence of PWs. 2, 3, 4 and 5 on behalf of the petitioner and RWs 15, 16, 17 and 21 in rebuttal on behalf of the appellant.

Madanlal (PW 2), Nanalal (PW 3), Mohanlal (PW 4) and Ramshankar (PW 5) stated about distribution of the pamphlet (Ex. P-1) by Kanhaiyalal and Shankarlal Bhatevara at Jawi Bazar on March 2, 1972.

There is a significant revelation in the evidence of Madanlal (PW 2) which the High Court has absolutely failed to consider. According to Madanlal he did not personally know about the pamphlet being distributed on 25th of February, 1972, at Jawi. He also did not see a panchnama being prepared. He deposed only about the distribution of the pamphlet by Kanhaiyalal and Shankarlal Bhatevara at Jawi about five or six days before the date of poll. This would show that he was deposing only with regard to the distribution of the pamphlet by Kanhaiyalal on 2nd March, 1972. He stated in his evidence:

"I met Saklecha the same day when I saw Ex.P-1. I had a talk with Saklecha regarding the pamphlet Ex. P- 1".

He further stated that-

"this pamphlet was given to me by Kanhaiyalal....I handed over the same pamphlet to Saklecha which was given to me by Kanhaiyalal".

If the above statements are true, he met Saklecha on 2nd March, 1972. In the way Saklecha reacted to the distribution of the pamphlet on 25th February, 1972, his utter inaction with regard to the distribution of the pamphlet by Kanhaiyalal on 2nd March, 1972, is absolutely inexplicable. The absence of any complaint to the Returning Officer against Kanhaiyalal even after receipt of the information and the pamphlet from Madanlal would go to show that the entire allegation regarding Kanhaiyalal's distribution of the pamphlet is an after-thought to reinforce the charge against the returned candidate. In the way Saklecha was following a certain procedure of his own regarding the alleged illegal activities of the appellant's campaigners, there was no reason why a panchnama would not have been prepared at Jawi on 2nd March, 1972, when Madanlal informed him about Kanhaiyalal's distribution of the pamphlet which was even handed over to him that very evening.

We find that Madanlal (PW 2) is contradicted by Nandlal (PW 3). Although Madanlal, who is the informant about the distribution of the pamphlet by Kanhaiyalal at Jawi on 2nd March, 1972, denied the fact of the panchnama being prepared on 25th February, 1972, at Jawi, Nanalal (PW 3) stated:

"While the panchnama was under preparation Ramshankar, Madanlal Tiwari, who has been examined to- day, and two others had also come there".

It is difficult to appreciate why Madanlal had suppressed the fact of his knowledge of the panchnama prepared on 25th February, 1972. It will be relevant to note here that in the affidavit annexed to the election petition, Madanlal has been shown as the informant regarding the distribution of the pamphlet at Jawi on 25th February as well as on 2nd March, 1972. Madanlal, however, in his evidence disowns personal knowledge about the distribution of the pamphlet on 25th February, 1972. According to Nanalal (PW 3) after the preparation of the Panchnama on 25th

February, 1972, Saklecha addressed a meeting in front of his shop by the public address system. Madanlal (PW 3) also deposed that he only saw once Saklecha addressing some persons assembled in front of Nanalal's shop by the public address system. He further stated that he handed over the pamphlet to Saklecha on that date. This falsifies his evidence regarding March 2, 1972.

Madanlal's statement about distribution of the pamphlet by Kanhaiyalal to him on 2nd March, 1972, is open to grave suspicion, rather smacks of padding.

Madanlal is admittedly a member of the Jan Sangh party although, according to him, he is not an active worker. Since his evidence is intrinsically unacceptable, it is not necessary to refer to the various contradictions in his evidence. To mention one instance only, he contradicted himself in the cross-examination when he stated that "some time before the pamphlet was given to me by Kanhaiyalal, I got another copy of the same pamphlet from some boys in the village earlier and that was given by me to Saklecha. I cannot say if the pamphlet given to me by Kanhaiyalal is or is not still with him (sic)".

Nanalal (PW 3) deposed to the distribution of the pamphlet at Jawi on 25th February as well as on 2nd March, 1972. In the course of cross-examination he stated that he did not personally tell anyone that Kanhaiyalal had distributed the pamphlet in the village. He did not have any talk with Nanalal Agarwal (the petitioner) regarding the pamphlet. He further stated that when Kanhaiyalal Nagori gave the pamphlet to him he was the only person present in his shop. He admitted that on the date of poll he acted as a Polling Agent of Saklecha. If the same standard has to be adopted which the High Court has done with regard to the appreciation of the evidence of Shivilal Rawat (RW 2) whose testimony was rejected because he acted as the Polling Agent of Kanhaiyalal, Nanalal's evidence would have to be treated in the same manner. Even by the standard adopted by the High Court the testimony of this witness cannot be accepted.

Mohanlal Jain (PW 4) is the second grocer examined on behalf of the petitioner. He deposed to the distribution of the pamphlet on both the dates, on 25th February and on 2nd March, 1972. He admitted that he exhibited posters and put up banner of the Jan Sangh Party. He is, therefore, a highly interested witness. He also admitted that he did not tell anyone that any pamphlet had been given to him by Kanhaiyalal. His evidence also cannot be acted upon.

The last witness examined with regard to Jawi distribution is Ramshankar (PW 5), a real brother of Madanlal (PW 2). The evidence of Madanlal about distribution in Jawi is that the offending pamphlet was distributed to all the shopkeepers and to also those who met them. It appears that the Jawi bazar has about eight or nine shops. Yet only two shopkeepers, namely, Nanalal and Mohanlal Jain were examined Madanlal and his brother, Ramshankar are cultivators and not shopkeepers at Jawi bazar. As against this the appellant examined two shopkeepers of Jawi, namely, Ratanlal (RW 15) and Gordhanlal (RW 16), who denied the distribution of the pamphlet by Kanhaiyalal. Kanhaiyalal himself also stated on oath that he did not distribute the pamphlet nor accompanied Shankarlal Bhatevara for the purpose of distribution of the pamphlet. Similarly, Shankarlal Bhatevara (PW 8) also denied the distribution. It is not even necessary to closely scrutinise the evidence of the appellant and his witnesses when we are satisfied that the petitioner has not been

able to establish the allegations about the distribution of the pamphlet by Kanhaiyalal at Jawi on 2nd March, 1972. We are of opinion that the High Court is not right in its conclusion that the charge of distribution of pamphlet by Kanhaiyalal at Jawi is established against the appellant.

This takes us to the distribution of the pamphlet by Kanhaiyalal on 2nd March, 1972, at Thadoli. Onkarlal Khatri (PW 9) was the informant regarding the distribution at Thadoli. According to him about five or six days before the date of poll he was sitting with a few others by the side of the village temple when he saw Kanhaiyalal Nagori and Shankarlal Bhatevara coming to them. Amongst others, Tulsiram (PW 7) and Bhanwarlal (PW 8) were also sitting with him. He stated that Kanhaiyalal told them that the Jan Sangh candidate was being elected for the last fifteen years and the constituency was very much handicapped and that this time the Congress candidate should be elected. Then he distributed the pamphlet similar to Ex. P-1. The pamphlet was distributed both by Kanhaiyalal and Shankarlal Bhatevara. He further stated that about six days after the poll he met Mannalal and talked to him about "the incorrect statement circulator in the form of pamphlet" which affected the result of the election. In the course of cross-examination he stated that Kanhaiyalal and Shankarlal Bhatevara were not accompanied by any person on that day. He denied that he was a Jan Sangh worker. He did not preserve the pamphlet which was given to him and it was destroyed after he had read it. Two other witnesses are Tulsiram (PW

7) and Bhanwarlal (PW 8) to corroborate him about the distribution of the pamphlet by Kanhaiyalal and Shankarlal Bhatevara five or six days before the date of poll.

Amongst these Tulsiram was a Polling Agent for Saklecha at Thadoli as has been admitted by Saklecha himself. This witness, however, suppressed this fact and denied that he was a Polling Agent of Saklecha.

Bhanwarlal (PW 8) similarly deposed that five or six days before the date of poll when he and others were sitting in the temple precincts he saw Kanhaiyalal and Shankarlal Bhatevara coming to them and after some canvassing both of them distributed pamphlets like Ex. P-1.

We are invited to rely on the above oral testimony to hold that Kanhaiyalal distributed the offending pamphlet.

Kanhaiyalal (RW 21) and Shankarlal Bhatevara (RW 8) have denied the allegations. The appellant also examined Mangilal of Thadoli (RW 18) to state that Tulsiram, Bhanwarlal and Onkarlal are the Jan Sangh party workers at Thadoli. He was admittedly a person who accompanied the distributors to the village. There is thus practically oath against oath with regard to the distribution of the pamphlet by Kanhaiyalal at Thadoli.

To summarise this part of the case, the High Court while deciding about the truth or otherwise of the allegations of distribution of the pamphlet by Kanhaiyalal at Thadoli, as also in other places, seems to have a large degree of assurance from its finding that the offending pamphlet was got printed by Kanhaiyalal through Ghanshyam Patidar. That finding, as shown above, no longer survives. We are now only left with the oral testimony of PWs 7, 8 and 9 regarding distribution of

the pamphlet at Thadoli by Kanhaiyalal and Shankarlal Bhatevara. These three witnesses are pitted against three others, Kanhaiyalal (RW 21), Shankarlal (RW 8) and Mangilal (RW 18) stating to the contrary. Mangilal was admittedly in the company of the distributors of the pamphlet when they entered Thadoli village. Mangilal as RW 18 denies the visit of Kanhaiyalal to Thadoli. Again PW 7 speaks with two voices regarding the day of Kanhaiyalal's visit to Thadoli for the purpose of distribution of the pamphlet. He stated at first that it was ten or twelve days before the poll and then said about five or six days before the poll.

Bhanwarlal (PW 8) saw Kanhaiyalal and Shankarlal Bhatevara coming on foot and only heard the sound of vehicle coming near the village. PW 7 saw them coming in a motor vehicle. They were all sitting together and even then they are discrepant as to how Kanhaiyalal and Shankarlal Bhatevara came there. PW 8 makes a curious statement in cross examination:

"All those who were sitting by my side had seen the distribution of pamphlets. Besides them I did not tell anyone about the distribution of pamphlets".

It passes one's comprehension why he had to tell them. He also stated that-

"besides Shankarlal and Kanhaiyalal there was no other person who accompanied them".

On the other hand, according to PW 7 Bhanwarlal Sutar and Mangilal Mahajan accompanied them when they entered the village after parking the car outside.

Onkarlal (PW 9) stated in examination-in-chief:

"About six days after the polling I met Mannalal in Neemuch Dhan Mandi where he enquired from me about the result of the election. I then told him as to what was the result. I also talked to him about the incorrect statement circulated in the form of pamphlet".

In the course of cross-examination he stated:

"The only talk that I had with Mannalal was that the false pamphlets had its effect on the election. At that time I had no other talk with him".

Whatever be the effect of the above statements which Mr. Hardy wanted to explain away, it is clear that PW 9 did not mention at all that he had told the petitioner, Mannalal, the names of Kanhaiyalal and Shankarlal Bhatevara as distributing the pamphlet at Thadoli. On the other hand, he referred to the only talk which he had about the effect of the pamphlet. He also admitted that his talk with Mannalal was only a casual talk. This is not the quality of evidence we expect from the only informant of the publication of the pamphlet at Thadoli.

We have referred to some of the above incongruities and inconsistencies in the evidence of PWs 7, 8 and 9 in order to show how unsafe it is to rely merely on oral testimony which is not vouchsafed from any other safe source.

It is true that the High Court has relied upon the oral testimony of the above witnesses but we express grave doubt if the High Court would have based its decision to upset an election merely on their oral testimony if it had not come to conclusion that Kanhaiyalal had earlier got the offending pamphlet printed at the Press. The latter finding had obviously its decisive effect on the mind of the learned trial judge.

We are unable to suppose that Saklecha would not know of such illegal activities of his opponent, if true. It is alleged that the offending pamphlets had been distributed by Kanhaiyalal in a number of places in the constituency commencing from March 2 and ending on March 6, 1972; in one case, even in a bus stand, watched by the petitioner. It is impossible to imagine that such nefarious activities, if true, would not reach the ears of Saklecha with his network of workers and campaigners for the purpose of the election. Between March 2 and March 8, no complaint had been made by Saklecha or by anyone regarding distribution of the offending pamphlet by Kanhaiyalal. We are, therefore, unable to hold that a serious charge of this nature is established on the mere oral testimony of the aforesaid three witnesses.

Before concluding, we may only refer to the petitioner, Mannalal's evidence to highlight how far oral testimony can go. Both Kanhaiyalal and Mannalal are residents of village Daroli. It is the evidence of Mannalal (PW 42) that Kanhaiyalal distributed the offending pamphlet Ex. P-1 on 2nd March, 1972, at Daroli to him and to many others. Although we are not concerned with the distribution of the pamphlet by Kanhaiyalal at Daroli in this appeal, it is absurd that Kanhaiyalal would choose to hand over an offending pamphlet of this nature to Mannalal who is an active worker of Jan Sangh party and keen supporter of Saklecha unless he foolishly chose to create evidence against him. It is true that the charge regarding distribution at Daroli is not pressed before us but we cannot close our eyes to the extent to which the petitioner could go in levelling charges of corrupt practice against the appellant.

Oral testimony, therefore, will have to be judged with the greatest care and an electoral victory cannot be allowed to be nullified by a mouthful of oral testimony without contemporaneous assurance of a reliable nature from an independent source. The matter would have been different if there had been an immediate written complaint to the Returning Officer against Kanhaiyalal as had been made in the case of his workers.

An election dispute is not a private feud between one individual and another. The whole constituency is intimately involved in such a dispute. Shaky and wavering oral testimony of a handful of witnesses cannot still the dominant voice of the majority of an electorate.

We are, therefore, clearly of opinion that the distribution of the pamphlet (Ex. P-1) by Kanhaiyalal at Jawi and Thadoli has not been satisfactorily established on the oral testimony of the witnesses.

It is, therefore, not necessary to deal with the submission of Mr. Nahata as to whether Kanhaiyalal had reason to believe that the statements of facts in Ex. P-1 were not false or that they were not untrue.

In the result the appeal is allowed with costs in this Court as well as in the High Court. The judgment of the High Court is set aside and the election petition stands dismissed.

P.B.R.

Appeal allowed.