

Supreme Court of India

Virendra Kumar Saklecha vs Jagjiwan And Ors on 22 March, 1972

Equivalent citations: 1974 AIR 1957, 1972 SCR (3) 955

Author: M H Beg

Bench: Beg, M. Hameedullah

PETITIONER:

VIRENDRA KUMAR SAKLECHA

Vs.

RESPONDENT:

JAGJIWAN AND ORS.

DATE OF JUDGMENT 22/03/1972

BENCH:

BEG, M. HAMEEDULLAH

BENCH:

BEG, M. HAMEEDULLAH

RAY, A.N. (CJ)

GROVER, A.N.

RAY, A.N.

CITATION:

1974 AIR 1957

1972 SCR (3) 955

1972 SCC (1) 826

CITATOR INFO :

E 1975 SC 968 (5)

R 1979 SC 234 (11)

D 1991 SC 1557 (23)

ACT:

Election Petition--Corrupt practices under s. 123 (2), (3) and (4) alleged--Proof--Affidavit in support of Petition alleging a fact on information must give source of information. There is no inconsistency between form 25 of Conduct of Election Rules, 1961 and Rule 7 of Madhya Pradesh High Court Rules.

HEADNOTE:

The appellant and the three respondents were candidates for election to the Madhya Pradesh Assembly at the general election held in 1967. The appellant was successful at the election, Respondent no. 1 challenged his election in an election petition charging him with corrupt practices. It was alleged by the election petitioner that in speeches made to the voters on the basis of religion within the meaning of s. 123 (3) of the Representation of the People Act 1951, the voters were threatened divine displeasure within the meaning

of s. 123 (2), and also statements were made about the election petitioner within the meaning of s. 123 (4). The affidavit in support of the petition did not disclose the source of information whereby respondent no. learnt the speeches constituting corrupt practice. The High Court however believed the oral evidence produced on behalf of the respondent, disbelieved that produced on behalf of the appellant and allowed the election petition. Appeal to this Court was filed under s. 116-A of the Representation of the People Act, 1951.

Allowing the appeal,

HELD : (i) The affidavit filed by the respondent along with the election petition did not disclose the source of information in respect of , speeches alleged to have been made by the appellant. Although the respondent claimed in his evidence that he came to know of the speeches through notes made by certain persons who heard them, neither the notes nor these persons were produced in Court. The non-production of the notes and the persons who made them must lead to an irresistible inference against the respondent that the same would not have supported respondent's case. [959 H; 962 A-B]

Rule 7 of the Madhya Pradesh High Court Rules states that every affidavit should clearly express how much is a statement and declaration from knowledge and how much is a statement made on information or belief and must also state the source or ground of information belief' with sufficient particularity. Form No. 25 of 'the Conduct of Election Rules, 1961 requires the deponent of an affidavit to set out which statements are true to the knowledge of the deponent and which statements are true to his information. In so far as form No. 25 requires the deponent to state which statements are true to knowledge there is no specific mention of the sources of information in the form. The form of the affidavit and the High Court rules are not inconsistent. The High Court Rules give effect to provisions of Order 19 of the Code of Civil Procedure. [960 C-F]

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The non-disclosure of grounds or sources of information in an election petition which is to be filed within 45 days from the date of election of the returned candidate, will have to be scrutinised from two points of view . The non-disclosure of the grounds will indicate that the election petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to 'the other side to test the genuineness and veracity of the sources- of information . The other point of view is that the election petitioner will not be able to make any departure,

from the sources of grounds. If there is any embellishment of the case it will be discovered. [961 E-F]

State of Bombay v., Parshottam Jog Naik, [1952] S. C. R. 674, Padmabati Dasi v. Raik Lal Dhar, I.L.R. 37 Cal. 259, Barium Chemicals Ltd. & Anr. v. Company Law Board and Ors., [1966] Supp. S.C.R. 331 and A. K. K. Nambiar v. Union of India, [1970] 3 S.C.R. 121, referred to.

(ii) The High Court was wrong in pronouncing observations on the First Information Report relating to an incident at one of election meetings in question when a criminal case based on that Report was pending. [1964 F-G]

(iii) The overwhelming impression produced by the witnesses on behalf of the respondent is that they were all prepared on the same pattern of evidence. On the entire evidence it could not be held that the allegations constituting corrupt practice were proved. [1971 H-972 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : C.A. No. 2509 of 1969. Appeal under Section 116-A of the Representation of the People Act, 1951 from the Judgement and Order dated the 30th September, 1969 of the Madhya Pradesh High Court, Indore Bench in Election Petitions Nos. 19 and 19A of 1967. S.L. Sibbal, Advocate-General for the State of Punjab, S. L. Garg and S. K. Gambhir, for the appellant.

M. N. Phadke, U. N. Bachawat, P. C. Bhartari, J. B. Dada- chanji, O. C. Mathur, Ravinder Narain, for respondent No. 1. N. K. Shejwalla, Pramod Swarup, S. S. Khanduja and Lalita Kohli, for respondent No. 4.

The Judgment of the Court was delivered by Ray, J. This is an appeal from the judgment dated 30 September, 1969 of the High Court of Madhya Pradesh setting, aside the election of the appellant. The High Court held the appellant to be guilty of corrupt practice under section 123(4) of the Representation of the People Act, 1951 (hereinafter referred to-as the Act) with reference to a speech at Singoli on 29 January, 1967 a speech at Athana on 9 February, 1967 and a speech at Jhatia on 12 February, 1967. The High Court further held the appellant to be guilty of corrupt practice of appealing on the ground of religion as defined in section 123(3) of the Act and also threatening the electors, with divine displeasure being a corrupt practice as defined in section 123(2) of the Act in regard to the speech at Jhatla on 12 February, 1967. The High Court also held the appellant to be guilty of corrupt practice of appealing on the ground of religion and threatening with divine displeasure those who voted for the Congress in the three speeches delivered on 15 February, 1967 at Morwan, Singoli and Diken by the Swamiji of Bhanpura at the instance, and in the presence, and after introduction by the appellant of the Swamiji of Bhanpura to the audience at those three places.

On 31 January, 1972 we delivered the order holding that we did not agree with the finding of the High Court and we also held the appellant to be not guilty of any corrupt practice. We stated then that we would give the reasons later. We now give those reasons.

The appellant and the respondent Jagjiwan Joshi and the other two respondents were four candidates from Jawad Constituency for election to the Madhya Pradesh Assembly at the general election held in the year 1967. The appellant was successful at the election. The respondent Joshi challenged the election of the appellant. The allegations under section 123 (4) of the Act fall under two classes. The first relates to the speech delivered by the appellant at Singoli on 29 January, 1967 and a speech delivered by the appellant at Athana on 9 February, 1967. The speech at Singoli was alleged to be as follows :--

The Congress candidate has on payment of Rs. 5000 set up Kajod Dhakad..... so that the Jan Sangh votes may be split and he might win. If he practises such corruption even now what service can he do to the public later on. You, should not vote for such corrupt men".

The speech at Athana in addition to the allegations already made in respect of the speech at Singoli was as follows :-

"Joshi has set up Kajod Dhakad on payment of Rs. 5000."

The other allegations of corrupt practice under section 123 (4) of the Act were in relation to. the same speech at Athana on 9 14-L1061SupCI/72 February, 1967 and a speech at Jhatla on 12 February, 1967. The alleged speech at Athana was as follows "Shri Joshi has set up a man to hit me with a knife. Accordingly, if he becomes a legislator the rule of violence (goonda gardi) would be permanently established. Therefore, the public should not only defeat such bad characters (badmash) of the Congress but. also see that their deposit is forfeited".

The alleged speech at Jhatla was as follows "This Congress candidate gave a knife to Mohammad Kasai and got him to attack me. But I have the strength of the janata janardhan and my life is dedicated to you. It lies with you whether to save such goondas who try to commit murder or to get their deposit for-

feited."

The allegations of corrupt practice as defined in sections 123(2) and 123(3) of the Act in relation to the same speech at Jhatla on 12 February, 1967 were as follows :-

"The votes shall be cast on the 20th and it is fortunate that it is a sacred day being a Monday gyaras. To give a vote to the cow- killing Congress on that day is equivalent to cutting down one cow and it will be on you to bear the responsibility for this sin".

The allegations of corrupt practice within the meaning of sections 123(2) and 123(3) of the Act against the appellant in regard to three speeches delivered on 15' February, 1967 at Morwan, Singoli and Diken by the Swamiji of Bhanpura were as follows :--

At Morwan :--

"Today the Hindu dhartna is being destroyed. Sadhus and sanyasis being shot. The Congress is killing the cow-progeny (go-vansh) of Bhagwan Gopal. so this time you sho uld cast your invaluable vote for up-rooting that government. You put your seal on the deepak symbol (Jan Sangh symbol) on the 20th which is Monday gyaras. To vote for the Congress on such a sacred day is to commit the sin of cow- killing".

At Singoli :-

"In the Congress Government sixteen cows are being killed every minute. How long will this cow-killing Congress rule the country ? How long will it show in-difference to the feelings of the overwhelming Hindu majority just on the strength of the support of a handful of cow-eating Musalmans If you love the Hindu dharma, if there is Hindu blood in your veins, do not vote for the Congress; but uproot it. Form a new Government by putting your seal on the Jan Sangh deepak. Shri Saklecha is your Chief Minister to be. The 20th February as a sacred day being Monday gyaras. Do not on such a sacred day vote for the cow-killing Congress and bring yourself to hell (narak ke bhagi na bane) " .

At Diken:-

"There was a yagna for putting an end to the cow killing in this country. Many sadhus and sanyasis have sacrificed their life for this, but the Congress, intoxicated with power has along with cow-killing killed sadhus also. It is the dharma of every Hindu not, to vote for such murderous Congress. The 20th is Monday gyaras and a sacred day. So put your seal on the deepak and make the Jan Sangh successful. The Jan Sangh will put an end to the cow- killing and you will get merit (punya) and endless bliss (akhand sukh)".

With regard to the speech at Athana on 9 February, 1967 the allegations within the meaning of section 123(4) of the Act were twofold. First that the appellant published the false allegation that the respondent had bribed Kajod Dhabad with Rs. 5000 and had set up him as a candidate. The second allegation was that at the same speech the appellant published the false story that the respondent had set up a man to, hit the appellant with a knife. The High Court accepted the oral evidence of the respondent and four witnesses Kishan Lal Teli P.W. 1, Ghisa Dhakad P.W. 2, Laxmi Lal P.W. 5 and Chand Mohammad P.W. 6. The High Court did not accept the oral evidence of the appellant or of the witnesses on behalf of the appellant. The High Court found the witnesses on behalf of the respondent to be straightforward and impartial. On the other hand, the High Court found the witnesses on behalf of the appellant to, be persons who knew what they had come for and asserted general statements of denial.

The respondent filed an affidavit along with the election petition. The affidavit did not disclose the source of information in respect of the speeches alleged to have been made by the appellant. Section 83 of the Act requires an affidavit in the prescribed form in support of allegations of corrupt practice. Rule 94-A of the Conduct of Election Rules 1961 requires an affidavit to be in form No. 25.

Form No. 25 requires the deponent to state which statements are true to knowledge and which statements are true to information. Under section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. Under section 102 of the Code the High Court may make rules regulating their own procedure and the procedure of the Civil Courts subject to their supervision and may by such rules vary, alter or add to any of the rules in the First Schedule to the Code.

Rule 9 of the Madhya Pradesh High Court Rules in respect of election petitions states that the rules of the High Court shall apply in so far as they are not inconsistent with the Representation of the People Act, 1951 or other rules, if any, made thereunder or of the Code of Civil Procedure in respect of all matters including inter alia affidavits. Rule 7 of the Madhya Pradesh High Court Rules states that every affidavit should clearly express how much is a statement and declaration from knowledge and how much is a statement made on information or belief and must also state the source or grounds of information or belief with sufficient particularity.

Form No. 25 of the Conduct of Election Rules requires the deponent of an affidavit to set out which statements are true to the knowledge of the deponent and which statements are true to his information. The source of information is required to be given under the provisions in accordance with Rule 7 of the Madhya Pradesh High Court Rules. In so far as form No. 25 of the Conduct of Election Rules requires the deponent to state which statements are true to knowledge there is no specific mention of the sources of information in the form. The form of the affidavit and the High Court Rules are not inconsistent. The High Court Rules give effect to provisions of Order 19 of the Code of Civil Procedure.

The importance of setting out the sources of information in affidavits came up for consideration before this Court from time to time. One of the earliest decisions is *State of Bombay v. Parshottam Jog Naik*, [1952], S.C.R. 674, where this Court endorsed the decision of the Calcutta High Court in *Padmabati Dasi v. Rasik Lal Dhar*, I.L.R. 37 Cal. 259, and held that the sources of information should be clearly disclosed. Again, in *Barium Chemicals Ltd. & Anr. v. Company Law Board and Ors.*, [1966] Supp. S.C.R. 331, this Court deprecated 'slip short verifications, in an affidavit and reiterated the ruling of this Court in *Bombay*, case (supra) that verification should invariably be modelled on the lines of Order 19 rule 3 of the Code 'Whether the Code applies in term, or not'. Again, in *A. K. K.*

Nambiar v. Union of India, [1970] 3 S.C.R. 121 this Court said that the importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. Counsel on behalf of the appellant contended that non-disclosure of the sources of information in the affidavit was a fatal defect and the petition should not have been entertained. It is not necessary to express any opinion on that contention in view of the fact that the matter was heard for several months in the High Court and thereafter the appeal was heard by this Court. The grounds or sources of information are to be set out in an affidavit in an election petition. Counsel on behalf of the respondent submitted that the decisions of this Court were not on election petitions. The rulings of this Court are consistent. The grounds or sources of information are to be set out in the affidavit whether the Code applies or not. Section 83 of the Act states that an election petition shall

be verified in the manner laid down in the Code. The verification is as to information received. The affidavit is to be modelled on the provisions contained in Order 19 of the Code. Therefore, the grounds or sources of information are required to be stated.

The non-disclosure of grounds or sources of information in an election petition which is to be filed within 45 days from the date of election of the returned candidate, will have to be scrutinised from two points of view. The non-disclosure of the grounds will indicate that the election petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the sources of information. The other point of view is that the election petitioner will not be able to any departure from the sources or grounds. If there is any embellishment of the case it will be discovered.

The non-disclosure of grounds or sources of information in the affidavit of the election petitioner in the present case assumed importance by reason of the fact that the respondent said that he had a written report about the alleged speech at Athana and the report was given to the respondent by Ram Kumar Aggarwal. Ram Kumar Aggarwal was also a candidate of the Congress party at the same election from the same constituency which is the subject matter of the appeal. Ram Kumar Aggarwal was not examined as a witness. The written notes of Ram. Kumar Aggarwal were admitted by the respondent to be with him. The respon-

dent gave the explanation for non-production of Ram Kumar Aggarwal that he produced only such witnesses who either opposed him in the election or were independent. As to persons who opposed him in the election the respondent stated that they were summoned by him through court and those who were independent were brought by him personally to court. The non-production of Ram Kumar Aggarwal and of the notes made by him at the meeting at Athana raises as irresistible inference against the respondent that the same would not have supported the respondent's case. Witnesses on behalf of the respondent Kishan Lal Teli Ghisa Dhakad, Laxmi Lal, Chand Mohammad and Bansi Dhar Bairagi gave oral evidence in identical words and language that the respondent had instigated Mohd. Kasai to attack the appellant with a knife and that the respondent had set up Kajod Dhakad paying Rs. 5000 and if Joshi became a legislator there will be rule of goondas.

Kishan Lal Teli was the polling agent of the respondent. He denied that he was one. He was shown the polling agent forms Exhibits R-1/39 and R-1/40. He stated that the signatures might be his. The respondent admitted that Exhibits R-1/39 and R-1/40 were signed by him but Kishan Lal was not prepared to admit his own signatures on the polling_ agent forms. Kishan Lal Teli was neither straightforward nor impartial. Kishan Lal Teli said that there were 5 or 6 meetings in the village during the time of the election but the only meeting which he attended was at Athana. That is indeed strange and significant. Kishan Lal Teli said that there were 6 speakers and he remembered the sequence in which the speaker spoke. Kishan Lal Teli said that he spoke entirely from memory.

Ghisa Dhakad also spoke from memory. He mentioned about 6 speakers. Ghisa Dhakad also happened to be a witness who attended the meeting at Athana only. A curious feature of Ghisa

Dhakad's evidence is that he did not speak about the speech to anybody till he gave evidence in court. It would be beyond comprehension as to how the respondent would cite Ghisa Dhakad a witness to support the allegations when Ghisa Dhakad gained silent and unknown. It is also in evidence that Ghisa Dhakad was the worker of the appellant's opponents.

Laxmi Lal P.W. 5 also happened to have attended the solitary meeting at Athana and no other meeting. Laxmi Lal also mend the speakers in the same sequence as the other witnesses Laxmi Lal said that he remembered the speeches of everybody who spoke. Laxmi Lal in cross-examination stated that the ant also talked of 'Lagan'. When he was asked as to why he did not mention this fact in his examination-in-chief, his answer Was that the appellant had mentioned of 'Lagan' at the end of the speech, and, therefore, he did not speak about it in examination in-chief. This indicates as to how Laxmi Lal tried to impart originality to his version of remembrance of things.

Chand Mohammad was believed by the High Court with regard to his presence at Athana but was disbelieved with regard to his presence at Sarwania Masania. It may be stated here that the High Court did not accept the case of the respondent with regard to Sarwania Masania. Chand Mohammad happened to be a casual witness with regard to the meeting at Athana. His evidence was that he was going to the house of Dhakad Kheri and he stopped for a minute or two to listen to Jan Sangh speakers. That is how he heard the appellant speaking. The fortuitous manner in which Chand Mohammad attended the meeting at Athana shows that he was introduced to support the respondent by repeating what the previous witnesses said about the Athana meeting. This will be apparent in view of the fact that when Chand Mohammad was examined for the second time like some other witnesses he said that he heard the speech of the appellant for a minute or two but he left the meeting before the appellant's speech Was over. When Chand Mohanunad was confronted with his previous statement his explanation was that on the earlier occasion he was thinking about the meeting of Kajod Dhakad, yet the High Court accepted the evidence of Chand Mohammad to be impartial and impressive.

Bansi Dhar Bairagi P.W. 4 was found by the, High Court to be angry with the appellant's party. But the High Court accepted the evidence of Bansi Dhar Bairagi on the ground that his evidence was corroborated by the statements of Laxmi Lal, Ghisa Dhakad and Chand Mohammad. Bansi Dhar Bairagi proposed the name of Ram Kumar Aggarwal who was supposed to, have taken notes of the Athana meeting and who never came to, the witness box. Bansi Dhar Bairagi was also associated with Kajod Dhakad. Bansi Dhar Bairagi's evidence was that he went to, propose the name of Kajod Dhakad but when he was going to propose the name his hand began to shake. That is indeed a very shaky explanation. A curious part of the evidence of Bansi Dhar Bairagi is that the appellant spoke of cow killing at the Athana meeting. That was not the case even of the respondent. Bansi Dhar Bairagi's evidence in respect of his presence at Sarwania Masania was not accepted by the Court on the ground that he was a casual witness. Bansi Dhar Bairagi was the election agent of Kajod Dhakad. The nomination paper of Kajod Dhakad was proposed by Ram Chand Nagla brother of Badri Nath Nagla the President of Jawad Mand Congress. Badri Nath Nagla was the proposer and the counting agent of the respondent. These features point to the inescapable conclusion that the witness was not only interested but also partisan.

The witnesses on behalf of the respondent appeared to be. present only at the Athana meeting. They did not attend any other meeting. They spoke entirely from memory. Their version of the speeches was in the same words and language, One of the witnesses was unknown to the respondent and the respondent also did not know anything about him until he gave evidence in court. The witnesses on behalf of the respondent seemed to have phenomenal memory. Each witness spoke in the same sequence. Each witness spoke in the same language. Each witness mentioned the names of the speakers in the same order. The entire evidence on behalf of the respondent is tutored and prompted to support the respondent. The High Court was wrong in relying on the oral evidence of the respondent and his witnesses. In the background of the entire oral evidence adduced on behalf of the respondent it is apparent as to why the respondent did not mention the grounds or sources of information in the affidavit. There were no real sources. Sources were fabricated. There is not a single piece of documentary evidence to support the case of the respondent. The alleged notes of the meeting at Athana which were admitted by the respondent to be in existence never saw the light of the day. The withholding of that document gives a lie to the respondent's case. It is obvious that if there were in existence any notes the respondent would have exhibited them at the earlier opportunity.

The High Court not only disbelieved the witnesses produced on behalf of the appellant with regard to the meeting at Athana but also made certain observations about the first information report lodged by Sunder Lal Petlia R.W. 35. with regard to an incident at Athana at the day of the meeting. A criminal case is pending as a result of that report lodged by Petlia. The High Court held that the first information report is a forgery. It is true that the High Court in one part of the judgment stated that whatever was stated by the High Court about the first information report should not affect the judgment of the Magistrate. The High Court was wrong in pronouncing observations on the report lodged by Petlia. We are unable to accept the views of the High Court on the report lodged by Petlia inasmuch as the criminal case is pending.

The respondent's allegations with regard to the meeting at Jhatla on 12 February, 1967 are under two heads. First, that the appellant is guilty of corrupt practice as defined in section 123 (4) of the Act inasmuch the appellant published falsely that the respondent had set up somebody armed with a knife to attack the appellant. The second head was that the appellant was guilty of corrupt practice as defined in sections 123(2) and 123(3) of the Act by appealing to voters on the ground of religion and threatening them with divine displeasure if they voted for the Congress candidate. The speech alleged to be made by the appellant at Jhatla on 12 February, 1967 was that 20 February, 1967 was the sacred day being a Monday gyaras and to give a vote to the cow killing Congress on that day was equivalent to cutting down one cow and it would be on the voters to bear the responsibility for the sin. The High Court accepted the oral evidence of the respondent and his witnesses. The respondent said that Mohan Lal Ramji Lal took notes of the meeting at Jhatla. Mohan Lal Ramji Lal was not examined by the respondent. The, alleged notes were also not produced. These features indicate that there were no such notes for if the notes were in existence the respondent would have produced the same in proof of the allegations. The respondent is a lawyer. The respondent not only understands but also appreciates the importance of documents if they happen to be contemporaneous documentary evidence.

The witnesses on behalf of the respondent with regard to the speech at Jhatla were Daulat Ram Sharma P.W. 12, Kastur Chand Jain P.W.13, Ratan Lal Jain P.W. 14 and Prabhu Lal P.W. 15. The common features of all these witnesses are that each witness spoke in identical words and in the same sequence about the speeches of the appellant. Daulat Ram Sharma admitted that he had no occasion to repeat the speech to anybody except when he came to depose in court. Daulat Ram Sharma went in search of his cattle to the pond at Jhatla. He could not find his cow. He went to purchase tobacco. When he reached the shop he saw a meeting of Jan Sangh going on. He heard the speech of the appellant. He does not belong to Jhatla but lives 'at Jhabarka Rajpura at a distance of 3 furlongs from Jhatla. It is indeed remarkable that a person who by chance walked to the meeting would not only remember the entire speech ascribed to the appellant in the election petition but also depose to it in court without ever having mentioned the speech to anybody and in particular the respondent. Daulat Ram Sharma stated that this was the only meeting attended by him in his life. Such a witness cannot inspire any confidence. Kastur Chand Jain was the polling agent of the respondent. He discussed with the respondent the latter's defeat about two months after the election. He told the respondent that he would give evidence in court without any summons. He attended the Congress Session and is associated with the Organisation. As an instance of his power of memory he said that he could repeat the speech of the Congress Parliamentary candidate delivered on 24 February, 1967. This witness appears to be partisan. Ratan Lal Jain was also associated with the Congress organisation. He went to the extent of saying that he did not know that voting for Congress meant voting for the respondent who was a Congress candidate.

Prabhu Lal came to give evidence along with Ratan Lal Jain P.W. 14 and Kastur Chand Jain P.W. 13. They all stayed together at Mahalaxmi Lodge. They also met the respondent though they denied that they had any talk with the respondent about the evidence. It is incomprehensible as to how the respondent would cite such persons as witnesses unless the respondent knew what they were going to speak about. A witness is not called by a party unless the party knows that the person can testify to the facts in the case. Witnesses on behalf of the respondent gave the impression that they never mentioned to anyone about what they knew,. If that be the position it would not be possible for the respondent to cite them as witnesses. These features indicate that the witnesses appeared to give a semblance of disinterestedness whereas in fact they were all tutored to support the case of the respondent. The impression produced by the witnesses is that their version of the speeches was similar to reading cyclostyled copies of the speech. We are unable to accept the conclusion reached by the High Court about the speeches of the appellant at Jhatla. The respondent alleged that the appellant delivered a speech at Singoli on 29 January, 1967. The allegations are that the appellant committed the corrupt practice within the definition of section 123(4) of the Act by publishing the false allegations that the respondent had paid Rs. 5000 to Kajod Dhakad to set him up as a candidate. The respondent also alleged that besides the appellant one Swami Brahmananda of Himachal Pradesh and Khuman Singh of Nimech also spoke at the meeting at Singoli on the same day. The High Court accepted the oral evidence of P.W. 16 Paras Ram,, P.W. 17 Bhanwar Lal, P.W. 18 Ram Chandra Sharma, P.W. 19 Nathu Lal and P.W. 22 Mange Lal Pancholi. P.W. 18 Ram Chandra Sharma admitted his signatures on Exhibits R-1/5 and R-1/6. These two documents are minutes Of meeting of the Congress party of Singoli held in the months of August and October, 1966. Ram Chandra Sharma's name appears in the notices of the meetings of the Congress Party in the months ,of August and October, 1966 at Singoli which are Exhibition R-1/7 and R-1/8. Ram

Chandra Sharma appears as a signatory to the minutes. After having admitted the signatures Ram Chandra Sharma made attempts to disown his signatures. Exhibits R- 1/9, R- I / I O, R- I / 1 1, R- I / 1 2, R- I / 13 and R- 1 / 14 are receipts signed by the witness Ram Chandra Sharma. These receipts relate, to expenses for meals and refreshments arranged for the workers near about the. time of the election. Ram Chandra Sharma denied his signature but he admitted that the Congress workers and other customers paid him for the meals. He denied that he gave the respondent any receipt. Ram Chandra Sharma obviously wanted to extricate himself from the receipts which nullified his oral evidence. Ram Chandra Sharma was a very interested witness and he was directly associated with the respondent. Ram Chandra Sharma said that the only meeting he attended in his life was the one at Singoli on 29 January, 1967. Such singular attendance is not only suspicious but also mendacious. Ram Chandra Sharma not only gave from, his memory the speech of the appellant at Singoli but also added a gloss to it by stating that the appellant spoke about tax on sugar. It was not even the case of the respondent that the appellant spoke about tax on sugar. P.W. 22 Mange Lal also supported the case of the respondent about the appellant's speech at Singoli on 29 January, 1967. Like Ram Chandra Sharma he also said that the appellant talked about tax on sugar. This shows how this pair of witnesses played the parrot in giving evidence, Mange Lal was confronted with Exhibit R-1/19 and Exhibit R-1/19A. These two receipts are in respect of rent of the building owned by Mange Lal. The receipts are on account of rent from the respondent. Mange Lal said that he gave the receipts at the instance of Radha Kishan. The further explanation given by the witness was that the house was mortgaged with Radha Kishan. No document was produced to prove the mortgage. Radha Kishan is Mange Lal wife's uncle. Mange Lal's attempt to explain away the receipts for rent was futile. Mange Lal also appears to be one of the conveners of the Congress meeting as will appear from Exhibits R-1/7 and R-1/8. He is also signatory to the minutes Exhibits R-1/6. Mange Lal said that the only meeting he ever attended was at Singoli on 29 February, 1967. He had never any talk with the respondent about the speech at Singoli.

These witnesses establish without any doubt that they were not truthful witnesses but came prepared to support the respondent's case.

The other witnesses P.W. 17 Bhanwar Lal and P.W. 19 Nathu Lal also spoke about the appellant's alleged speech at Singoli on 29 January, 1967. These two witnesses also gave evidence about the speech of Swamiji of Bhanpura at Singoli on 15 February, 1967. The High Court accepted the evidence of these witnesses.

We are unable to accept the evidence of Bhanwar Lai and Nathu Lai for the reasons to be given while discussing their evidence in connection with the meeting at Singoli on 15 February, 1967.

The respondent alleged that the appellant was guilty of corrupt practice within the meaning of sections 123 (2) and 123 (3) of the Act by reason of the three speeches delivered by the Swamiji of Bhanpura on 15 February, 1967 at Morwan, Diken and Singoli. The respondent alleged that the speeches were at the instance of audience.

With regard to the speech at Morwan apart from the respondent there were three witnesses on his behalf. They were P.W. 7 Manek Lai, P.W. 8 Ratan Lai Gaur Banjara and P.W. 9 Gulzari Lai

Mahajan. Manek Lai gave evidence twice. The second time he gave evidence was in accordance with the understanding given by the respondent before this Court to produce some of the witnesses at his own cost. That undertaking was given at the hearing of an application by the appellant in this Court for transfer of the Case to another court. When Manek Lai gave evidence On the first occasion he did not mention that Swamiji of Bhanpura said at the meeting at Morwan on 15 February, 1967 that 20 February was a sacred day and to vote for Congress on such a sacred day would be to commit the sin of cow killing. Manek Lai said that he attended the meeting of the Congress and of the Jan Sangh and he voted.

Gulzari Lai said that the, Morwan meeting was the only meet- ing he ever attended. Both Manek Lai and Gulzari Lai like other witnesses gave evidence about the speech of Swamiji of Bhanpura in identical language and in the same sequence. The hollowness of the evidence adduced on behalf of the res- pondent is revealed by the testimony of Ratan Lai Banjara. He was confronted with Exhibit R-1/27. The High Court described this document to be "purloined brief." Exhibit R- 1/27 is a document which contains the date and hour of the meeting at Morwan, the text of the speech at Morwan. Thereafter there are 7 questions and answers. The questions are as to when did Swamiji come; how he came; who came with him; and it is also written in that document that the appellant came and listened to the speech and expressed gratitude and thanks to the public. Ratan Lai Banjara denied that he was tutored through that document. The alleged speech of Swamiji of Bhanpura is typed in Hindi. One of the notes in that document is that Moti Khema Jat and Gordhan Singh were not seen at the meeting. Those, two persons were cited by the appellant as witnesses. it is indeed curious that witnesses would,specifically say as to who were not present and the names of such persons who were not present are those who are cited by the respondent as witnesses. It is not only unnatural but extraordinary that witnesses would notice as to who were not present at the meeting which, according to the witnesses, was attended by 500 persons.

The respondent was shown Exhibit R-1/27. His explanation was that the notes were prepared for instructions to his counsel. The tenor of the document and the questions and answers point with unerring accuracy that the document was prepared to coach witnesses. The respondent said that he had prepared such notes for every meeting. Other documents did not see the fight of the day. That would support the conclusion that other witnesses had been similarly prepared. It explains why all witnesses spoke the same language. All witnesses were coached.

The respondent said that Jai Ram Jat had taken notes of the meeting at Morwan and gave the same to the respondent. The respondent said that the notes were not of significance, and, therefore, he did not take the notes from Jai Ram Jat. If the notes were not significant the Morwan meeting also became insignificant. The non-production of the notes and of the author of the notes, are additional features to establish the vacuity of the respondent's allegations about the speech of Swamiji of Bhanpura at Morwan. The High Court referred to an article published in 'Sudesh in the issue dated 30 November, 1966. There was an article written by Swamiji of Bhanpura. The High Court observed that Swamiji of Bhanpura wrote in that article that the killing of cow was one manner of killing God, and, therefore, it was extremely probable that a person who held that view would while speaking of cow protection give a deeply religious complexion and would condemn those who did not share his views. This is a strange logic. We are unable to accept the evidence of the respondent and his wit-

nesses that there was any speech at Morwan that to vote for the Congress would be to commit the sin of cow killing. The respondent's further case is that Swamiji of Bhanpura delivered a speech at Singoli on 15 February, 1967. This speech was also alleged by the respondent to be an appeal on the ground of religion and a threat that the voters would incur divine displeasure if they voted for the 'cow killing Congress'. The High Court relied on the evidence of P.W. 16 Paras Ram and P.W. 17 Bhanwar Lal. Paras Ram was confronted with a document Exhibit R-1/50. That document contains the minutes of the meeting of the Congress party at Singoli on 26 August, 1966. The name of Paras Ram is mentioned there. The name of one Ratan Lal is also mentioned there. The High Court held that Paras Ram was a common name and there was nothing to show that Paras Ram in Exhibit R-1/50 was the same Paras Ram who appeared as a witness.

Paras Ram said that Madan Lal Sharma a Jan Sangh worker made an announcement about the meeting. Madan Lal Sharma R.W. 16 gave evidence on behalf of the appellant and denied that he made any announcement. The High Court relied on the cross-examination of Bhanwar Lal P.W. 17. Bhanwar Lal in his evidence stated that Madan Lal Sharma of Singoli made the announcement. It was suggested to Bhanwar Lal in cross-examination that there was no such announcement. The High Court read that suggestion to mean that there was no person of the name of Madan Lal Sharma in existence. That is totally misreading the suggestion. It is also not reading the evidence of Madan Lal Sharma R.W. 16 in the correct perspective.

Paras Ram was living at Nimech for the last 15 years. The respondent also admitted that Paras Ram lived at Nimech. Paras Ram said that he never attended any meeting excepting the one at Singoli. Paras Ram narrated the speech of Swamiji from memory. He also said that he never had any discussion with any witness or even with the respondent about the speech. If that were so, the respondent would not be able to call Paras Ram as a witness. This attitude is typical of almost all the witnesses on behalf of the respondent. The witnesses wanted to give the appearance of detachment and disinterestedness. The evidence indicates that they were coached and they were not only interested in the Congress Organisation but also in the case of the respondent.

Paras Ram denied that there was any case pending against him under section 107 of the Criminal Procedure Code. When he was confronted with Exhibit R-1/4 he admitted that he was prosecuted. He also admitted that the respondent was his counsel in suits which were pending against him. Paras Ram also admitted that his father went on a pilgrimage and Bhanwar Lal P.W. 17 was taken by his father. Paras Ram said that he came to court in the company of Bhanwar Lal. Bhanwar Lal was known to the respondent. The respondent was his lawyer. Bhanwar Lal cooked for Congress workers. He came to Singoli for election purposes. Bhanwar-lal admitted that he went with the father of Paras Ram on a pilgrimage. Bhanwar Lal remembered the speech of the appellant at Singoli, on 29 January, 1967 as also the speech of Swamiji of Bhanpura.

Bhanwar Lal and all other witnesses who spoke about the speech of Swamiji narrated the 'same in the same language and in the same order. The first part of the speech related to cow, the second part being an appeal to religion and the third part related to an pattern of evidence We are unable to hold on the entire evidence that there was any appeal on the ground of religion or that there was any threat to voters of divine displeasure if they voted for the Congress.

The respondent alleged that there was a meeting at Diken on 15 February, 1967 where Swamiji of Bhanpura spoke. The allegations are that there was an appeal on the ground of religion. The respondent produced two witnesses Shanti Lal P.W. 10 and Ram Bilas P.W. 11.

Shanti Lal's evidence was that the cow slaughter should be stopped and Monday gyaras was a holy day and all should vote for Jan Sangh and thus earn happiness and bliss and it was the duty of every Hindu not to vote for cow killing Congress. This evidence does not support the respondent's case. Shanti Lal said that his family left on 10 February, 1967. His family members went to Byama in Rajasthan to attend a marriage ceremony. Shanti Lal however said that he stayed on. He left on 16 February, 1967, and returned on 28 February, 1967. This was to make it possible for him to be present at Diken on 15 February, 1967.

Ram Bilas P.W. 11 narrated the speech of Swamiji of Bhanpura. He however said that he had no talk with the respondent. It becomes difficult to follow as to how the respondent would know about the presence of the witness at Diken and then cite him as a witness.

The respondent gave an undertaking to this Court to produce the witness for cross-examination. The witnesses however were not produced. That is another reason to hold that the respondent's case was not true.

For the foregoing reasons the judgment of the High Court is set aside. The election petition is dismissed. The trial in the High Court lasted over 180 days. Both parties should have conducted the case with precision and clarity. The parties could have shortened the matter. Both parties are to pay and bear their own costs. in the High Court as well as in this Court.

G.C.

Appeal allowed.