

Supreme Court of India

Bhagat Ram Alias Bhagtu Ram vs Bhagat Ram And Ors. on 22 November, 1974

Equivalent citations: AIR 1975 SC 1484, (1975) 3 SCC 804, 1975 (7) UJ 9 SC

Author: R.S. Sarkaria

Bench: A Alagiriswami, R Sarkaria

JUDGMENT R.S. Sarkaria, J

1. This appeal is directed against the judgment, dated January 2, 1973, of the High Court of Punjab and Haryana, declaring void the election of the appellant Bhagat Ram @ Bhagtu to the Haryana State Assembly. The material facts are these :

2. Election to the Haryana State Legislature took place in March, 1972. Bhatu Ram Appellant, Bhagat Ram respondent and three others contested the election as rival candidates from Kalayat Constituency (Reserved). The result was announced on March 12, 1972. Appellant secured 17032 votes as against 15812 polled by Bhagat Ram, respondent herein. Appellant was declared elected.

3. Bhagat Ram respondent filed an election petition under the Representation of the Peoples Act, 1951 (hereinafter called the Act) challenging the election of the appellant on three grounds. Of them, only these two are relevant for the purpose of this appeal; (1) The returned candidate and his workers with his consent published a statement of fact (poster, Exh P.W. 1/1) which was false and which he either believed to be false or did not believe to be true and that statement relating to the personal character and conduct of the petitioner, was reasonably calculated to prejudice the prospects of the petitioner's election and thus he committed a corrupt practice under Section 123(4) of the Act. (2) The returned candidate incurred or authorised, in connection with his election, expenditure to the tune of Rs. 15,000/-, in contravention of the requirements of Section 77 of the Act and thus committed the corrupt practice under Section 123(6) of the Act.

4. Issues 1 and 2 framed by the learned trial Judge relate to the first charge, and Issue 6 to the second. Issues 1 and 2 were decided against the petitioner. Under Issue 6, it was held that the returned candidate had incurred, in connection with his election, expenditure of Rs. 93.02 in excess of the permissible limit of Rs. 9,000/-. On this short ground the election petition was allowed, and the election of the returned candidate was set aside. Hence this appeal.

5. In the statement of Account, Ex P.W 6/1, filed under Section 78 of the Act, the appellant showed the incurring of a total expenditure of Rs. 1,668.92 in connection with his election. The permissible limit being Rs. 9,000/- the election petitioner, in order to succeed, had to prove that the returned candidate had incurred or authorized the election expenses, aggregating more than Rs. 7331.08, in addition to those disclosed in the return, Ex. P W 6/1.

6. The learned trial Judge found that the returned candidate had incurred or authorized, in connection with his election, these items of expenditure, which are not covered by his return of election expenses, Ex. P.W. 6/1 :

(i) Hire of Jeep, HRB. 3638 Rs. 2800.00 (ii) Hire of Jeep, HRJ-698 Rs. 2800 00 (iii) Hire of Taxi DLY-371 Rs. 720-00 (iv) Excess amount of petrol and mobil oil purchased from M/s. Chiranji Lal Sardha Ram Rs. 734 71 (v) Amount of petrol etc. purchased from M/s. Kali Ram Rs. 369.39 Mittal and Brothers, Narwana. Total : Rs. 7424.10.

Shri Kapil Sibal, learned Counsel for the appellant assails the findings of the High Court regarding items (i), (ii) and (iv) only.

7. A peculiar feature of the case, as rightly stressed by Shri Sibal, is that annoyed by the post-election somersault taken by the appellant, his principal workers, Suresh Chande, Lal Chand, Ch. Inder Singh, Advocate and others, who had steered his election campaign so victors at the Polls, are now making a concerned effort to see him unseated through the instrumentality of the election petition. Although at the outside-proceeds the argument-the learned trial Judge noticed this feature which overshadows the entire case, he overlooked it while appraising the oral evidence of the drivers of the jeeps, HRF-3638 and HRJ-698. Counsel maintains that the entire evidence in this case should have been appraised against the above back ground. It is submitted that since the election-petition has been conceived and propelled with the support of the former workers of the appellant, who have now turned hostile to him, it was hazardous to accept the oral evidence of the drivers of the jeeps, when it had not been corroborated by unimpeachable documentary evidence.

8. As against the above, Shri D??kshit, Learned Counsel for the respondent, submits that the oral evidence adduced in regard to Issue No. 6, was materially corroborated by documentary evidence, furnished by the entries in the accounts books of M/s. Chiranjilal Sardha Ram, petrol dealers, and the Statement of election expenses, Ex. R W. 1/10, which admittedly bears the signature of the appellant.

9. It is true that there is one peculiar feature which casts its shadows on all the warp and woof of this case and cautions the court to examine the evidence with more than ordinary care. The learned trial Judge also adverted to it thus :

One broad feature of this case which has to be kept in view while appraising the evidence of the parties is that though the respondent had been elected on the Congress (O) ticket with the support of the Jan Sangh and some other opposition parties, he appears to have annoyed his supporters by his post election political conduct resulting in his supporters having become his avowed enemies who are now anxious to get him unseated. his principal workers in the election were P W. 4 Suresh Ghander, President of the Jind District Congress (O) Committee, Chaudhary Inder Singh Advocate, who has conducted this case on behalf of the election petitioner, and PW 9 Lal Chand, the scribe of the two manuscripts of the disputed poster....

The counsel for the petitioner has tried to justify the action of the supporters of the respondent in trying to get their own erstwhile candidate unseated by reference to what has been called by him defection of the respondent from the Congress (O) party. Be that as it may, the fact remains that I will have to be very cautious in placing reliance on (he bare oral testimony of such witnesses unless the Same is corroborated in material particulars by some unimpeachable evidence or some proved

documents.

10. The learned Judge had thus correctly enunciated the principle of prudence, which had to be strictly adhered to in the peculiar circumstances of this case. The question is: Did he do so while appraising the evidence relating to Issue No. 6, in Particular? Bearing this question in mind, we will now consider the evidence relating to items (i) and (ii).

11. The evidence produced by the petitioner to establish the hiring charges of Jeep HRF-3638 and Jeep HRJ-698 consisted of the oral statements of Chander Singh, P.W. 10, and Hazura Singh P.W. 11, the alleged drivers of those vehicles.

12. Chander Singh, P.W. 10, is a resident of village Sadhana, Tehsil Hansi, District Hissar. He stated that he had become a driver of Jeep Regd. NRP-3638, owned by Megha Ram about five or six months before the date of his deposition (i.e. in February, March, 1972). According to the witness, Bhagtu Ram (appellant) and his son, Balbir Chand both had come to Jind, where the owner of the jeep was then living, and hired this vehicle for 35 days at the rate of Rs. 80/- per day, for a total amount of Rs. 2800/-, out of which, Rs. 1000/- were then paid in advance against a written acknowledgment given by the witness to Balbir Chand. The balance of Rs 1800/- was to be paid at the time of returning the vehicle. Balbir Chand also gave a writing to the witness to the effect that the jeep had been hired for 35 days. Chander Singh further stated that at the time of the final payment, he passed a receipt to Balbir Chand and returned Balbir Chand's original writing to the latter. His evidence further was that during the hiring period, Chiranji Lal, petrol-dealer of Narwana used to supply him petrol for this jeep on the basis of chits issued by Suresh Chander. Witness further tried to support the petitioners case, saying that Jeep No. 4311 driven by Ram Sarup, and Jeep No. 698 driven by Harnam Singh, were also hired and used by Bhagtu Ram in connection with his election.

13. We will comment generally on the evidence given by Chander Singh and Hazura Singh, latter. At this place three weak spot in the statement of Chander Singh may be noted Firstly, he did not give the date or even the month to fix the time when, Bhagat Ram and Balbir Singh came to Jind to hire the jeep. He simply said that he was engaged as a driver of this jeep five or six months before the date of his deposition He was examined on August 25, 1972. The date of his employment as driver of the jeep would work out to the 4th week of February or March 1972. The hiring of the jeep, therefore on this interpretation of Chander Singh's statement, took place at the earliest, towards the end of February 1972 and not in the first week of that month. Secondly in examination in chief his position was that Megha Ram, the owner of the jeep was living in Jind and that was why Bhagtu Ram came and contacted him and the witness there.' In cross-examination, he seems to have deviated from that position. There, he said that Megha Ram was living in village Budian and not in Jind, which is 17-18 miles from Jind, and that the hiring deal was not made with Megha Ram but with the witness. Witness was anxious to keep Megha Ram out of the picture. Thirdly, never before this jeep had been hired out. It was a private vehicle, which was formerly used by the owner for domestic purposes only. Nor did Bhagtu Ram take or borrow this vehicle on any prior occasion

14. P W 11 H zoora Singh's statement is of the same pattern as that of Chander Singh (P W 10). He however, expressly said that the Jeep Regd. No HR J. 698, driven by him, was hired on the 5th February 1972. at Jind by Bhagtu Ram who was then accompanied by his SOD, Balbir Chand, at Rs. 80/- a day for 35 days. He received Rs. 1000/- in advance and the balance of Rs. 1800/- on March 11, 1972 at the conclusion of the work and passed one consolidated receipt for the entire sum of Rs. 2800/- to Bhagtu Ram. Of course, this witness did not say, that Bhagtu Ram had obtained any voucher from the witness regarding the advance payment of Rs. 1,000/. He also stated that petrol used to be obtained from the filling station of Chiranji Lal of Narwana against chits issued by Suresh Chander, and in the latter's absence, against chits issued by Suresh Chander's uncle. Like Chander Singh, this witness also does not confine his evidence to the hiring of the Jeep driven by him, but also goes on to say with regard to the hiring and use of Jeep No. 3638 driven by Chander Singh, Jeep No 4311 driven by Ram Sarup. Further, he claims to be a witness of the payment of Rs. 1000/- or Rs 1200/- to Ram Sirup and Rs. 1800/- to Chander Singh. He admitted that Jeep No HRF. 698 did not belong to him but to an army man, named Hukum Singh of Sindhir Khera.

15. The learned trial Judge has told that P.Ws Chander Singh and Hazur Singh were independent witnesses we do not think so. Although both these witnesses tried hard to keep out Suresh Chander from the hiring deal, yet from what had been elicited in the cross-examination of Inder Singh, P W. 14, it was clear that it was Suresh Ghander, the principal worker and office-holder of Congress (O) Party who had procured or hired these vehicles. Inder Singh P W. 14, in examination-in-chief had stated that Jeep Nos. 698 and 3638 had been obtained from Jind but the witness did not know the names of their drivers. In cross-examination Inder Singh clearly said that on 5-2-1972 when these jeeps arrived from Jind, Pt. Suresh Chander and Balbir Singh were with them. No attempt was made in re-examination to show that Bhagtu Ram was also with those vehicles at that time.

16. The version of P Ws. 10 and 11 that Bhagtu Ram himself had gone to Jind along with his son to hire these jeeps was otherwise highly improbable. Election campaign must have by then gained momentum and the candidate could ill-afford to be away from his Constituency at that time. Pt Suresh Chander, the General Secretary of the District Congress (O), Jind was the best Person to do this job. Moreover, Bhagtu Ram, the candidate of their party was an Illiterate person. He had left the Organisation and conduct of his election campaign entirely to Suresh Chander, Ch. Inder Singh and other workers of the party.

17. As already noticed, both P.Ws. Chander Singh and Hazura. Singh admitted that petrol for these vehicles used to be drawn against chits issued by Suresh Chander Hazura Singh further admitted that arrangement for the stay of the workers of Bhagtu Ram had been made on the first floor of the shop of Suresh Chander. Both these witnesses betrayed an anxiety to give an omnibus account covering all the vehicles, which according to Suresh Chander P W. 1 were used in the election campaign of Bhagtu Ram. Their evidence appears 'to bear the stamp of P. W. Suresh Chander.

18. As a matter of caution therefore, it was unsafe to accept the ipso dixit of the drivers of these Jeeps without its being corroborated in material particulars by unimpeachable evidence.

19. We will now examine the oral evidence given by P W 4 Suresh Chander. He went whole hoc to support the allegations in the petition. Regarding the vehicles hired and used in the election compaign of Bhagtu Ram, he said:

So far as I remember, the particulars of the vehicles which were being used by the contesting respondent in connection with his election were these:

(i) one jeep registered No. 4311, belonging to his relative Ram Sarup of Moonak hired by the contesting respondent at Rs. 70/ per day driver by Ram Sarup himself. This vehicle was used by the contesting respondent for about five weeks;

(ii) Two jeeps had been obtained on hire by the contesting respondent from Jind at Rs 80/- per day per vehicle. I do not remember the registered numbers of those vehicles. Chander and the other by Hazoora Singh both those jeeps were used by the contesting respondent from February 6, 1972 to March 11, 1972

(iii) One car had been hired by the contesting respondent from Delhi with effect from March 4, 1972, at so far as I remember Rs. 80/ per day. That vehicle worked for the contesting respondent for about nine days in the course of the election;

(iv) Some vehicles had been obtained by respondent No. 1 from Marwana and some from Kalayat;

(v) Respondent No 1 himself used his own jeep Sometimes he used to go in other vehicles also.

He further stated that the hiring charges of these vehicles were exclusive of petrol and oil, which was supplied from the filling station of Messrs Chiranji Lal Sardha Ram against chits issued by the witness.

20. It may be noted that P.W. 4 Suresh Chander, the star witness of the petitioner was accuated by a spirit of revenge against the appellant who had proved unfaithful to the witness and the party that had supported him in the election. The evidence of P W 4 Suresh Chander therefore was rightly not accepted to a material extent by the learned trial Judge who found that an attempt had been made by Suresh Chander to fabricate false evidence with the aid of P.W. Ramkumar, the Munim of M/s. Chiranji Lal Sardha Ram. Suresh Chander's evidence which was per se unreliable could not land assurance to the oral evidence of Chander Singh and Hazoora Singh Rather at already observed the hand of P.W. Suresh Chander in procuring the jeep and the evidence of P Ws. 10 and 11 was faintly discernible, it having been unfittingly revealed by P.W 14, in cross-examination.

21. Now we turn to the documentary evidence, which appears to have been used by the High Court to corroborate P.Ws. 10 and 11.

22. The first document, which has been so used, is Ex R.W. 10/1.

23. It is not disputed that this statement bears the signature of the appellant, Bhagtu Ram explained that he was an illiterate man, and he had left all the election-matters including the preparation of return of election expenses entirely to Chander Singh, Advocate and Pt. Suresh Chander who prepared it and got it signed and then presented it to him for signature Bhagtu Ram could not say whether his signatures were obtained by Ch. Inder Singh and Suresh Chander two or three such returns. Witness expressed ignorance as to how many of those returns were type-written and how many hand written. Even the return Ex. P W 6/1 was not prepared or typed in the presence of the witness. Witness did not care to check up before signing the returns of election expenses put up to him for signatures as to what was the total figure of expenses shown in each of them. On further cross-examination Bhagtu Ram stated that Ghaudhary Inder Singh and Pt. Suresh Chander had obtained his signatures on two or four large blank sheets, besides hundreds of blank-forms He did not ask them why his signatures were being obtained on blank sheets of paper. The entire record used to remain with Pt Suresh Chander. Bhagtu Ram has said that he had such a confidence in Pt Suresh Chander and Chander Singh that had entrusted "his life to them". He emphatically denied ever hired or used jeep Nos. HRB 3638 and HRJ-698 in connection with his election.

24. The learned trial Judge noted that the hiring charges stated in Ex R W./10/1, did not "tally with the amount mentioned in the charge leveled by the petitioner," Again, later on, he observed: The entry in the return Ex RW10/1, alone cannot be relied upon for proving the particular charge against respondent No. 1 as it is the admitted case of both sides that the amounts mentioned in the return were not correct " Nevertheless, the learned Judge held that "Ex. R.W. 10/1, can be utilized for the purpose of corroborating other evidence."

25. In our opinion, the circumstances delineated by Bhagtu Ram coupled with the dubious manner in which Ex. R.W. 10/1 was smuggled into the case at very late stage, were sufficient to condemn it as to totally unworthy of reliance. It was of no use even for corroboration. Far from corroborating, it stood in sharp contradiction to the evidence given by Paws. 10 and 11 on all the essential points in issue, namely, the amount of the hiring charges, the rate of hire and the period of hiring. Even as a previous statement, it could be used only to corroborate its author, and not Paws. 10 and 11. In any case, Ex. P W. 10/1, does not lend any assurance to the oral evidence of P Ws. 10 and 11 on material points.

26. The second piece of evidence of P.Ws. 10 & 11, Shri Dikshit corroborates the evidence of P Ws. 10 and 11, consists of two credit memos/ entries, dated 1-3-72, in the account-books of M/s. Chiranji Lal Sardha Ram. The first, Ex. P Ws. 4/46 evidence that petrol/oil worth Rs. 351.78 was drawn for vehicle No. HRB-3638 by Risal Singh. The other, Ex. PWs 4/47, shows that on the same date (1-3-72) petrol worth Rs. 30 46 was drawn by vehicle No. HRJ-698 The name of the person at whose instance this petrol was given, is not entered therein.

27. In the first place, as held by the High Court, in the accounts of the said firm some interpolations had been made "to show that entries after January 8, 1972 in the Rokar relate to respondent No. 1" and that "this is a crude attempt at creating evidence against respondent No. 1". Secondly, Ex. P W. 4/46 and Ex PW 4/47 do not evidence that these vehicles (HRB 3638 and HRJ 698) were on hire with the appellant on that day. At the most they show the possible use of these vehicles on March 1,

1972 only in connection with the election, Thus even if Ex P W. 4/46 and Ex PW 4/47 were genuine, they would corroborate the oral testimony of P.W. 10 and 11, only to an insignificant extent. They furnish no corroboration of their evidence in material particulars, namely, the hiring of these jeeps, the rate of the hire, and the period of the hire.

28. In the light of the above discussion the conclusion is inescapable that the evidence of the drivers of the aforesaid jeeps had not been substantially corroborated by other unimpeachable evidence, oral or documentary. Bearing in mind the hostile atmosphere in which the case was conceived and the vindictive spirit in which it has been piloted by the erstwhile workers of the appellant, we think, the uncorroborated oral testimony furnished by Chander Singh and Hazoor Singh had failed to establish the allegation in the petition relating to items (i) and (ii) Accordingly, we reverse the findings of the High Court regarding these items.

29. As regards item (iv), it is contended by Shri Sibal that the High Court should not have relied on anything whatever in the account-books which according to the finding of the High Court, contained false and fraudulent interpolations.

30. The contention does not stand a close examination.

31. The learned Judge of the High Court has meticulously sifted the grain from the chaff in these accounts. Only the headings in these accounts were found to be interpolated The rest of the accounts was held to be genuine. We find no fault with the dissection and assessment of the documentary evidence and the calculations made by the High Court on its basis. We therefore, do not think it necessary to reappraise the evidence ourselves. Suffice it to say that the conclusion arrived at by the High Court with regard to expenditure item (iv) is sound and we affirm it.

32. Mr. Dikshit contends that the High Court had erred in holding in Issues 1 and 2, relating to the publication of the poster Ex P W 1/1, against the petitioner Counsel submits that the findings of the High Court on these Issues be reversed and its decision sustained on that ground, also. Rendered into English, the poster Ex. PW 1/1, reads as follows :

Black Deeds of Shri Bhagat Ram Candidate of the New Congress. Shri Bnagatram is contesting the election from the Kalayat Constituency on the ticket of the New Congress He is a characterless person. He is keeping a widow teacheress in his house with him as his wife and has deserted his own wife, who is wandering from pillar to post.

Shri Bhagatram is a tout of the police by profession. He takes bribe and gets it paid from the people.

Last year, Shri Bhagatram got several applications submitted by the Harijans to the Tehsil (Office) Narwana on the pretext of allotment of land to the Harijans and after playing a fraud with them he himself charged a fee of Rs. 20/- per application dishonestly and thus misappropriated thousands of rupees.

Shri Bhagatram has administered an oath to the whole of CHAMAR brotherhood by getting salt put by them in a LOTA (Utensil) that they will cast their votes in his favour. I also appeal to the whole of my Balmiki brotherhood that they should also take an oath in the name of religion and make me successful by casting their votes in my favour. I have full hope that you will also not vote for characterless, bribetaker and tout like \Bhagat Ram.

26-2-1972 Issued by Milan Printers, Bhagat Ram Lawrence Road, Rampura, Bhagatram Candidate Delhi-35. (Old Congress).

33. Lalchand, P.W. 9 is the star witness of the petitioner with regard to the printing and publication of the above poster. He is the Sarpanch of Kamalpur, a village in Kalayat Assembly Constituency. He was a worker and polling Agent of the appellant in the election. He stated that the manuscript Ex. PW 1/2 was written by him at the dictation of Bhagatram (Appellant) in his election office at Kalayat on February 26, 1972 at about 9 a.m. At about 11 a.m. witness accompanied the appellant to a press, having a name like "Millan" at Rampura. At the Press, Bhagatram handed over the manuscript Ex. PW 1/2 to the Manager, and directed him to print 4000 copies thereof. The Manager asked Bhagatram to sign the manuscript. Bhagatram thereupon pointed out his signature on the manuscript. Bhagatram, wanted the posters to be printed on the same day. The Manager expressed his inability to print the posters before March 1, 1972 Bhagatram then told the Manager that the posters would be collected on March 1, 1971. The printing charges were settled at Rs. 64/- The witness was thereafter sent by Bhagtu Ram with Rs 100/- to the press for collecting the posters Accordingly, on March 1, 1972, he collected the printed posters on payment of Rs. 64/-, and wrote to the acknowledge ment Ex P.W. 1/6A on the carbon copy of the bill Ex. PW 1/6 On March 2, 1972, witness accompanied Bhagturam in his jeep along with others, and went to villages, namely Simla, Bahr, Wazir Nagar, Kod and Kharl, where the posters were distributed mostly by the other persons with them.

34. Cross-ex mined, Lal Chand stated that Bhagtu Ram had dictated one more manuscript apart from Ex. PW 1/2. He was questioned as to the necessity of preparing this 'second manuscript He replied that Bhagturam, after perusing the first manuscript, said that the second manuscript Ex. PW 1/2, to the witness, Pressed further, Lal Chand had to admit that Bhagtu Ram was not very literate, although he could sign his name in Hindi, He however, added that Bhagtu Ram could read Hindi Newspaper. He shifted this stand also and said that he had seen the appellant taking Hindi Newspaper and therefore, he presumed that Bhagtu Ram could read such newspapers Inconsistently with his earlier position, the witness stated that after scribing the first manuscript, he read it over, without any difficulty to Bhagtu Ram at the latter's request. Questioned further, the witness tried to reconcile his contradictory versions by saying that Bhagtu Ram had simply gaze at the first manuscript for two minutes and then asked the witness to prepare the second manuscript.

35. The appellant's case which he later elaborated as P.W 10 was that he had given several blank sheets of paper to P.W. 4 Suresh Chander. After the election, Lal Chand at the instance of Suresh Chander, prepared the manuscript Ex. P W. 9/1. On one of those blank sheets and got the posters in question printed. Appellant got scent of it. He got that manuscript secretly removed from the Millan Press with the help of one Tyagi. After the mysterious disappearance of Ex P.W. 9/1, Lal Chand, at

the instance of Suresh Chander, prepared the second manuscript on a similar blank sheet of paper and got it produced by Sita Ram, Manager of the Press.

36. The first part of the appellant's case was put to Lal Chand without showing him Ex. P.W. 9/1. He denied that suggestion. He however, perused Ex. P W 1/2 for a few seconds, and then categorically said that this was the second manuscript and not the first one. He significantly added that the figure "4000" below (he manuscript must have been written by the press man. It was at this stage that Lal Chand was confronted with Ex P.W. 9/1, which was then produced by the appellant's Counsel. Lal Chand stated that this was the first manuscript prepared by him. He was asked to explain as to how and when it had been signed by the appellant. His discomfiture was manifest because according to his version, the first manuscript had not been signed by the appellant. The witness further expressed ignorance as to who had written the figure "4000" on Ex. PW 9/1. Nor could Lalchand give any explanation as to why on the first manuscript he had written the full description of the appellant below his signature. At this stage the second part of the defence case, regarding the disappearance of the first manuscript and the preparation of its substitute by the witness, was put to him. This suggestion was also denied.

37. Sitaram P.W. 1, the Manager of the Millan Press stated that he knew Bhagtu Ram (Appellant) since 1966 as the latter used to come to his uncle Witness had printed, apart from the poster in question, other material also in connection with the election of the appellant. Sita Ram produced the manuscript Ex. PW 1/2 and asserted that it had been given to him by appellant on February 26, 1972 who was then accompanied by Lalchand, Appellant asked the witness to print 4000/- copies of the manuscript. Witness thereupon wrote the figure "4000" on the manuscript. Sitaram further claimed that 4000 copies of the printed poster Ex. P.W. 1/1 were handed over to Lal Chand, after receiving the printing charges amounting to Rs. 64/- on March 1, 1972.

38. Sitaram admitted in cross examination that his press was totalled only in 1970 The effect of this admission was two-fold, Firstly, it falsified Lal Chand's claim that the appellant had got posters printed from this Press in connection with the 1967 election. Secondly, it made Sita Ram's claim about his acquaintance with Bhagtu Ram since 1966, doubtful. In cross-examination, Sita Ram further revealed that he was not maintaining proper accounts and regular records. Acknowledgments of many customers had not been obtained. Sitaram did nothing to comply with the requirements of Section 127A of the Act with regard to the printing of the poster, Ex. P W. 1/1. Sitaram further disclosed that he was not paying any income tax.

39. The learned trial Judge has, in his judgment, brought out in bold relief the comics, antics, hesitations prevarications, twists, and turns of Lal Chand in the witness-box. He rightly appreciated this evidence in the setting that Lal Chand is one of the erstwhile strong supporters of the respondent and is acting like a jilted lady trying to teach the respondent a lesson. He suspected that Lal Chand might be playing "the villain of the piece in the story of the poster". He found the story of the printing and publication of this poster told by Lal Chand and Sita Ram inconsistent with the surrounding circumstances and probabilities of the case. In that context, after stressing that Lal Chand, Suresh Chander were seasoned politicians, wholly in charge of the election campaign of the appellant, a complete simpaton, the learned Judge observed :

Lal Chand P.W., the scribe of the poster was an experienced election worker who was keenly interested in the respondent during the election days. It is conceivable that if the respondent in fact dictated such a defamatory poster to Lal Chand, he would not tell the respondent that the publication of a poster containing those allegations was likely to create trouble for him. Again Lal Chand must have been aware of the fact that if his hand in the publication of the poster was proved, he may render himself liable to prosecution for defamation or make him liable for damages for libel of the petitioner.

40. Thus after a careful and close scrutiny of the statements of P. Ws. Lal Chand and Sita Ram, the Judge did not find them worthy of credit. As against them, he preferred to believe the evidence of R.W. 1 Shameher Singh, Advocate, that no poster like the one in question was distributed in the Constituency at any time before the election. He further found that there was a reasonable possibility of the defence suggestion being true. He concluded that:

The possibility of the poster in dispute having been got printed by some friend or associate of the petitioner after the election cannot be ruled out. Nor can the possibility of both the manuscripts having been prepared on blank papers bearing the signatures of the respondent which were in the hands of his earlier workers (who have now turned his enemies) be excluded.

41. In our opinion, the reasoning and the conclusion drawn by the learned Judge with regard to this ground of corrupt practice alleged in the petition, are sound. We therefore, affirm his finding of Issues (1) and (2).

42. In view of our finding on Issues (6), we would allow this appeal and set aside the judgment of the High Court and dismiss the election petition with costs throughout.