VATAL NAGARAJ

v

R. DAYANAND SAGAR

October 11, 1974

[H. R. KHANNA, M. H. BEG AND V. R. KRISHNA IYER, JJ.]

Representation of the People Act (43 *of* 1951), *ss.* 77, 101 *and* 123(6)—*Difference between facts constituting corrupt practice and illustration of corrupt practice—Approach of trial Court to poll verdict—Approach of appellate Court to evidence—Declaration in favour of rival candidate, when permissible—Reform of election law in relation to expenditure, suggested.*

The appellant was declared elected to the State Legislative Assembly and the first respondent, who get the next highest number of votes, challenged his election on various grounds and also prayed that he should be declared elected in the appellant's place. One of the grounds alleged against the appellant was that by hiring 10 cars for campaigning, and spending money for printing election materials, he spent by way of election expenses, money beyond the legal limit, and thus committed the corrupt practice under s. 123(6) of the Representation of the People Act, 1951. The High Court held this ground proved and also that some of the printed handbills contained libellous matter, and set aside the election and declared the first respondent elected.

In appeal to this Court,

HELD : The setting aside of the appellant's election by the High Court should be confirmed, but the declaration in favour of the first respondent should be set aside. [399 B—C]

(1) The numbers of the some of the cars hired as set out in the petition were different from those given in evidence. But the infirmity would not have any effect on the first respondent's case since no prejudice has been sustained by the appellant by the change and no integral element in the ground of corrupt practice, namely excessive expenditure for the election, has been kept back. In the law of election, facts *constitutive* of corrupt practice must be averred in the petition itself or brought in by amendment by leave of court within the limitation period. But particulars *illustrative* of corrupt practices alleged stand on a different footing. Proof at minor variance with alleged particulars may be allowed by the court provided the opposite party has not sustained any prejudice and is given an opportunity for adducing rebutting evidence. [388 G—389E]

Bhagwan Datt Shastri v. *R. R. Gupta*, 11 E.L.R. 448, 456 followed.

(2) Where the trial court has watched the delivery of testimony by the witnesses its opinion on their credibility is entitled to much credit by the appellate court. [389G—H]

(3) An election tribunal must know that there exists an initial presumption in favour of the poll verdict; and that the whole constituency is invisibly party to the *lis*. The voice of the voters will be interfered with only if the votes in favour of the elected candidate were illegally procured. In the present case, the High Court has weighed the evidence fairly and correctly. The approach of the court to the evidence is impeccable. There may have been adulteration of evidence; but, after full consideration of the entire material, the finding of the High Court that the appellant had committed the corrupt practice under s. 123(6) must be confirmed. [390 C—D, E—F; 394H—395A]

(4) But assuming that some of the allegations in the hand bills had undoubtedly amounted to character assasination of the first respondent and injured his poll prospects, and group disaffection or threat, as stipulated in s. 123, could be read into them the sanctity of the poll verdict will stand violated, if the tribunal without the strict compulsion of statutory provisions, substitutes for an elected representative a court picked candidate. The erquirements under s. 101 before the

court can declare a rival candidate as the returned candidate, are, (*a*) the returned candidate must have obtained votes by operation of corrupt practices, (*b*) such tainted votes must be quantified with judicial assurance, and (*c*) after deduction of such void votes the petitioner or some other candidate must be shown to have secured a majority of the valid votes. Therefore, in the present case the decisive factor would be satisfactory proof of the number of votes, if any, attracted by the appellant into his ballot box by the corrupt means proved against him. But there is no evidence to show how many votes were definitely obtained by the appellant by the use of corrupt practices. There is no link between the polluted practice and the voters affected. Further, there is nothing to show why those voters would have preferred the first respondent and not any other candidate, there being as many as 10 contesting candidates. [396 B—C, H—397E; 398B—D]

T. Nagappa v. *T. C. Basappa*, A.I.R. 1955 S.C. 756 and *Jamuna Prasad* v. *Lachhi* and, AIR 1954 S.C. 686, 689: [1955] S.C.R. 608, referred to.

(5) Money power casts a sinister shadow on our elections Further, there is a built-in iniquity in the scheme, because, an independent candidate who exceeds the ceiling prescribed under the law commits a corrupt practice, but his rivals set up by political parties with considerable potential for fund-raising and using, may lay out a hundred times more in each constituency on their candidates and yet escape the penalty under s. 77 on the ground that the excessive expenditure was not spent by the candidate but by the party for its campaign. This evasion of the law by using big money through political parties is a source of pollution of the Indian political process. It may therefore be proper to infuse into the election law the cleansing spirit suggested by this Court in *Kanwarlal Gupta* v. *Amar Nath Chawla* [1975] 2 S. C. R. 259 and by the Select Committee on the Indian Election Offences and Enquiries Act, 1920. Elections. constituency wise are the corner stone of our parliamentary system and if the law is to reflect and ensure the democratic norms set by the nation in this strategic area, serious political consensus, not sanctimonious platitudes, on reducing the heavy expenditure on election by parties and candidates, must emerge. It is only to a limited extent that courts can respond to the fulfilment of this constitutional aspiration by a benignant interpretation of the legal limits on election expenditure set down in s. 77. [399 D—H; 400 A—D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1738 of 1973.

Appeal from the Judgment and Order dated the 6th November 1973 of the Karnataka High Court in Election Petition No. 4/72.

V. S. Desai, B. K. Ramachandra Rao, S. B. Chandrasekhar and *R. B. Datar*, for the appellant.

A. K. Sen, V. K. Govindrajulu, V. G. Vasanth Kumar and *M. Veerappa*, for respondent No. 1

Dewan Balak Ram, for respondent No. 2

The Judgment of the Court was delivered by

KRISHNA IYER, J.—The locale of this election litigation, now at the appellate stage, lies in Bangalore, an industrial city inhabited by a blend of multireligious poly-lingual communities. But, when a pathological power-scramble is on, the politics of stoop-to-conquer shows up in forms of unscrupulous opportunism and investment in group hatred and the Chamarajpet constituency in Bangalore City is alleged to have been injected by this virus by the appellant at about the time the State Assembly elections in March, 1972 were held. If multi-form corruption corrodes the electoral process—and that is the imputation here the gutter can come to power to adopt a phrase used

in a different context by a great writer. Judging by the general trend of vice and violation organised as election strategy, only glimpses of which Judges get in election cases, we wonder whether parties and individuals who practise these oblique techniques, fully realise the moral of the Frankenstain's monster episode. These dark forebodings, however, do not deter us from applying the sound tests laid down by a long line of cases in interpreting the provisions and evaluating the evidence in election cases. Out task has, however, become more uneasy because both sides have liberally contributed dubious testimony in a bid to win their respective cases.

A brief diary of events will bring into focus the issues over which the forensic controversy has raged. Sixteen persons filed nomination papers from the Chamarajpet constituency, six discreetly withdrew and the surviving ten went into battle on March 5, 1972 the date set for the poll. The voting strength of this constituency was 97,379 but the actual votes polled was only 52,720. While the D. M.K. and the Muslim League made a relatively good showing securing over 7,000 votes each, the real bout was between the appellant, an Independent glamourised as a heroic agitator for Kannada, the language of the vast majority of the people of the then Mysore State and the Ist respondent, a Congress Party candidate enjoying consequential advantages. The appellant won, polling 15,486 but the Ist respondent was close behind with 14,412. It is an uneasy feature that in our electoral system, even with hot contest as here, sometimes only half the voters turn up to exercise their franchise and he who gets 15% of the total votes of a constituency acquires the right to speak and act as its plenary proxy in the Legislature. We do not regard this aspect as falling within our province since this vexed question is Parliament's concern. Anyway, the infirmity of the poll victory agitated before us is that even this 15% was the product of illegal tactics sufficient to invalidate the election of the appellant and, what is more bathetic, the further relief sought is that the one who got only 14% *i.e.* the Ist respondent, should be declared the authentic elected member of Chamarajpet.

The charges made by the Ist respondent to demolish the declaration of the appellant made by the Returning Officer on March 11, 1972 relate to certain malpractices between February 11, 1972 and March 5, 1972. It is a melancholy reflection on the Ist respondent's methodology of winning his election petition that he has adduced evidence, some of which bears traces of forgery and tricky photography backed by perjury. This finding by the trial Court has not been shaken in argument before us. One should have expected a legislative aspirant representing a national party, an ex-Deputy Minister and barrister, to be cleaner in the Court while charging his opponent with corrupt practices at the polls.

The young appellant had personalised himself as the spear-head and become the President of the Kannadiga movement and its Chaluvali Kendra Mandali. The popular identification of the candidature of Vatal Nagaraj, the appellant, with this somewhat passionate organisation is gleaned from the fact that his Chief Election Agent in

A Chickpet, Sampangi P. W. 8, was the Secretary of the Mandali and on his resignation in May or June, 1972 Prabhakara Reddy, the Chief Election Agent of the appellant in Chamarajpet, took over the Secretaryship (The appellant was a candidate in both the constituencies, which were contiguous). It serves our understanding of the forces at work better if we also remember that there are sizable Tamil and Muslim groups in Bangalore. Some of the corrupt practices alleged B are linked up with Tamil presence in the City. While economic grievances and social backwardness are the basic causes of what, on the surface, shows up as language or parochial chauvinism, the fact remains that the masses are easily inflamed by economic-linguistic appeels peppered by provincialism.

We may now proceed to set out briefly the charges levelled against C the appellant, highlighting only those which have found favour with the trial Judge. However, the structure of s. 123 of the Representation of the People Act, 1951 (hereinafter called the Act, for short) is such that where a candidate is guilty of one or many of the enumerated corrupt practices, his election must be set aside and he should be visited, under s. 77 of the Act, with a six-year period of disqualification. In that view, it may well be that if we are satisfied about one of D the several charges, the appellant must lose. However, we shall deal with the allegations and evidence concisely, so that the conspectus of the case may not appear distorted, although primarily we propose to deal with the excess expenditure beyond the legal limit held by the trial judge to have been incurred by the appellant.

While a close-up of the few counts on which the appellant has been E held guilty is necessary, a quick look at the fasciculus of charges, many of which have been negatived, may unfold the characters of the play, their integrity and the foul measures apparently fair persons resort to, sacrificing means to ends. Purity in elections is a social process of public concern and national consensus, not just a legislative package or judicial verdict.

F The publication of many copies of offending leaflets at some cost, the hiring of ten cars at over Rs. 10,000/- and the payment of Rs. 500/- to a Kannada organisation hopefully to enlist their poll support, are the lethal vices, *inter alia*, levelled against appellant Nagaraj to undo his election. In the unhappy national context, of unprintable flood of leaflets, movement of fleets of automobiles, slanderous speeches and huge sums big Parties and rich candidates regard as the G natural resources to be exploited in aid of the politics of power-grab through adult franchise, this election petition projects a mountain molehill contrast. But the Court can only correct what comes before it and perhaps sound warning bells about the enormity of the environmental pollution during elections, for statesmanship to act, if law in this area is not to be robbed of pervasive potency.

H The Catalogue of corrupt practices begins with an election-eve gift of Rs. 500/- by this Kannada fighter and President of the Kannada Chaluvali Kendra Mandali, to the Karnataka Yuvaka Pourara Sangha,

Bangalore City, motivated by an appealing for voting support from its members. We are relieved from investigating the legal import of such financial support to an organisation wedded to the programme which is also the passion of the candidate since the story has been rightly rejected by the High Court and we agree with it. Certain photographs (Exs. P-7 and P-15) alleged to have been taken by P. W. 3 (an enemy of the appellant) at the Mandali Office and the maidan in Azad Nagar, respectively, on February 20, 1972 were relied on by the Congress candidate in this connection and the Court, after a detailed study, discovered that there were really taken on April 14, 1972 long after the election at a school where he (the appellant) was lured, 'taking advantage of the Ist respondent's age and vanity' and were cleverly fobbed off on the Court in hopeful proof of the offending February gift of Rs. 500/-. The agent used for this purpose was P. W. 30 and the learned Judge assessed him thus:

> "P. W. 30 Raghunath Singh is a creature of the petitioner, who acted as a spy in the opposite camp"

—a fifth column tactic hardly fair, if it is true. A suspicious February edition of a newspaper called Karmika Vani (Ex. P. 10) carrying two photos taken in April have also been introduced by the Ist respondent Dayananda Sagar. He has also placed a make-believe letter Exhibit P. 26, signed by the appellant as evidence of car hire payment although the trial Judge has seen through the Ist respondent's sharp practice. Vatal Nagaraj, invited to a school function, gave his post-election autograph to children in an exercise note book which page was later perverted to appear as a letter forwarding part of the car hire charges. This shady species of conduct in election litigation by seemingly important persons make us wonder whether character assassination cannot be self inflicted.

We will now move on the crucial issue of over spending by the appellant. He is alleged to have hired, for campaigning, ten cars from the Bangalore City Cooperative Transport Society, the hire charges being Rs. 12,600/-. Likewise, a sum of Rs. 7,500/-, it is stated, was paid by the appellant to Nirmala Printing Press which was run by P. W. 2 Devraj, for printing election materials.

An initial objection was raised by Shri Desai, arguing for the appellant, that there was substantial variation between pleading and proof in this regard, that the numbers of the cars hired, as mentioned in the petition, were different (regarding 6 out of 10) from what had been put forward in the evidence and this divergence had the triple crippling effects of causing prejudice, casting suspicion and disallowing the plea. Factually, Shri Desai is right but, legally, his objection is bereft of force.

A The law of elections is clear on this branch of pleading and proof and a sense of brevity forbids citation of a string of rulings where the rule of law is indubitable. Litigation is no hide and seek game but a search for truth and parties must place their cards on the table. And procedure is the handmaid, not the mistress, of justice and cannot be permitted to thwart the fact-finding course. In election jurisprudence tracking down corrupt practices is of paramount importance. In B doing this the rules of the game must be fairly observed. Facts *constitutive* of corrupt practices must be averred in the petition itself or brought in by amendment by leave of court; within the limitation period. The opposite party is thus put on his guard as to what charges he has to meet. Particulars, *illustrative* of the corrupt practices alleged, stand on a different footing. Even if there have been initial omis- C sions in pleading, they can be made up, by Court's leave, at any time. What is more to the point here—or it is common case that errors in particulars of car numbers have at no stage been rectified in the present case—proof, at minor variance with alleged particulars, may be allowed, the course open to the opposite party being to satisfy the trial Judge of prejudice sustained and of opportunity for adducing rebutting evidence. To shut out cogent and clear evidence of particulars D of corrupt practice (the ground itself being in the pleadings) on processual technicalities is to orphan the real, though absent, party viz., the silent constituency. This Court, in *Bhagwan Datt Shastri* v. *R. R. Gupta*[1] set out the true rule:

> "The question in such a case would not be one of absence of jurisdiction but as to whether there has been any material E prejudice occasioned by the absence of particulars. It is in that light that the validity of the objection raised by the appellant in this behalf before us had to be judged. It is, therefore, necessary to scrutinise the nature of the evidence on which this finding has been arrived at and to see whether the appellant had a fair opportunity of meeting it."

F Having heard Shri Desai at length, we are not persuaded that the infirmities he complains of have validity in the case on hand. No prejudice has been sustained by the change in the numbers of the taxi cars and no integral element in the ground of corrupt practice viz., excessive expenditure for the election has been kept back. Indeed, even most of the particulars have been correctly set out.

G Before proceeding to examine the evidence, we must make a further cautionary observation. When the trial Court (here a Judge of the High Court) has had an overall view of the case through the very process of oral and documentary unfolding, that panoramic perception cannot be equated with the studious perusal of the printed record by a higher Court. Where the tribunal has watched the delivery of testimony by the witnesses, some with equivocating unveracity, others H with nervous truthfulness or confident glibness, its opinion on credibility is entitled to much credit at the appellate stage. Of course,

(1) 11 E. L. R. 488, 456.

even among the judiciary a subjective factor in judging men and matters may creep in and so complete dependence on the assessment of human candour and cunning by trial Judges can degenerate into legal superstition.

It is apt to remember the words of Judge Jerome N. Frank(1) as a warning:

> "We do know, from occasional candid remarks by trial Judges, that some of them utilise absurd rules of thumb such as these: A witness unquestionably lies who, while testifying, throws back his head or wipes his hands or shifts his gaze rapidly; or blushes, or bites his lips or taps steadily on his arm-chair".

Having carefully considered the matter, we are convinced that the High Court has weighed the evidence fairly, tested the character carats of witnesses correctly and reached results rightly.

The trial Court has adopted a legally impeccable approach in assessing the evidence, as was pointed out by Shri A. K. Sen, counsel for the 1st respondent. Corrupt practices have to be viewed as quasi-criminal in character and the strict standard of proof applicable in such cases, in tune with the decisions of this Court, has been used as a touchstone by the trial Judge. The question is whether the few corrupt practices, upheld by the High Court, have been proved beyond reasonable doubt or whether the appellant has been able to make any big dent in the case found. We will now discuss the heads of charge, itemwise. The printed election literature has a dual roll in this case (a) to boost the cost beyond the legal ceilling and (b) to prove character assasination. Both are corrupt practices. A threat to Tamils i.e. undue influence; is also alleged to be involved in the handbills in question, Ex. P. 4 and Ex. P. 5. Indeed, an election tribunal must know that there exists an initial presumption in favour of the poll verdict and the whole constituency is invisibly party to the *lis*, their voice being interfered with only if their votes were illegally procured. As earlier indicated, this leaflet imputation may, in order of probative importance, be considered at a later stage since we are satisfied that its impact is somewhat indirect and its proof a shade inconclusive, notwithstanding the use to which Shri A. K. Sen has sought to put it in supporting the declaration, under issue no. 11, that his client obtained as the returned candidate.

The critical issue which, in our view, is fatal to the appellant's election, is the layout on hiring cars. By itself, that item exceeds Rs. 10,000/- and if true, the election must be set aside, without more. Issue 9 (b) relates to this subject and paragraph 14(b) of the petition sets out this ground. As stated earlier, while the numbers of the ten cars are enumerated therein, the last six do not tally with the documents produced or the Bangalore City Cooperative Transport

(1) 'Judical fact finding and psychology, 14 Ohio State Law Journal, 183, 186 (Spring 1953)—quoted in Psychology and the Law by Dwight G. McCarty-Prentice-Hall, Inc., Englewood Clifts, N.J., USA (1967 4th Printing).

A Society which was the bailor. The case is that the above Transport, Society had fallen on evil days and so had authorised its President, one Swaminath, P. W. 7, to ply its vehicles on a no profit no loss basis. Swaminath, who had thus taken over the transport operation with effect from August 1, 1971 and had, in turn, run a transport service in the name of Coop. TOUR COMBINED B BOOKING Centre is stated to have agreed to make available 10 cars on hire to the candidate Nagaraj. Rs. 60/- per day per car, exclusive of driver and fuel, from February 14, 1972 to March 5, 1972 were the terms alleged. It is further averred that the candidate had authorised Sampangi, P. W. 8, to arrange for the hire of these 10 cars on or about February 10, 1972. The latter had made an initial payment of Rs. 3,000/- on February 12, 1972 through P. W. 30, C Raghunath Singh, already referred to. The case runs on to the effect that a sum of Rs. 9,600/- was outstanding as payable to P. W. 7 on April 10, 1972 when the appellant lodged his account of election expenses, as required by statute. It is common ground that he did not enter the sums paid or payable by way of hire charges to P. W. 7 in his account submitted to the Election Commission. The petition sets out the payment, on April 14, 1972 of a sum of Rs. D 1,000/- to P. W. 7's Society towards car hire and this sum is stated to have been sent through P. W. 30, Raghunath Singh. Of course, the appellant, in his written statement, has denied this story of hiring and piece-meal payments, knowing fully how noxious its effect would be on his victory, in the light of s. 77 of the Act.

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We may straightway state that the learned Judge who tried the case has referred to P. Ws. 8, 30 and 7 as the principal witnesses to prove the hiring in of the cars. However, he has already described P. W. 30 as a spy of the Congress candidate who had slyly operated among the flock of Nagaraj, and has discredited him as an unscrupulous person. The learned Judge has also discarded the testimony F of P. W. 8, Sampangi, for reasons which are self-evident, even if one casually peruses his deposition. He is a self-condemned perjurer and has hardly any claim to judicial credence, particularly in a case of proof of corrupt practices in an election petition. Without expanding on these unscrupulous souls any further, we concur with the trial Court in proceeding to reject that part of the case of the petitioner which lives solely on the lips of P. Ws. 8 and 30. But the G fact that these two dubious beings have been frequently friendly with falsehood does not destroy the acceptability of their testimony to the extent it accords with other authentic documentary material and reliable verbal testimony. Indeed the trial Judge has discerningly observed:

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> "I am placing dependence mainly on the documentary evidence under this issue, supported by the testimony of P. W. 7, Swaminath."

This, we think, is a flawless approach. We are constrained to remark that experience proves the wisdom of scepticism in assessing oral evidence in Court. In the words of Osborn(1):

> "The astonishing amount of perjury in courts of law is a sad commentary on human veracity. In spite of the oath, more untruths are probably uttered in court than anywhere else. This deviation from veracity ranges from mere exaggeration all the way to vicious perjury. Much of this untrue testimony grows directly out of human nature under unusual stress and is not an accurate measure of truth speaking in general. In order to shield a friend, or help one to win in what is thought to be a just cause, or because of sympathy for one in trouble, many members of the frail human family are inclined to violate the truth in a court of law as they will not do elsewhere."

The High Court's discussion is exhaustive. The arguments before us have not suffered from inadequacy and since we are affirming the principal conclusion of fact of the trial Judge we content ourselves with stating only the essential reasons.

The version of the petitioner regarding the vehicles (although with different registration numbers has been substantially spoken to by Swaminath, P. W. 7. Most of the details deposed to by him fit in with the original averments and trivial discrepancies cannot disturb factual appreciation of the core.

P. W. 7, the President of the Society, has not been shown to be either interested in the petitioner or animated against the appellant. If, as he swears, he did run the business of transport during the relevant period, there is no reason to be sceptical about acting on his word on oath. Exhibit P-22, the proceedings book of the Board of Management of the Society, contains entries, dated July 2, 1971 (P-22A) evidencing the authorisation in his favour by the Board of Management. The marginal doubt, generated by the fact of the resolution, Exhibit P-22A, put him in charge of the Business only until January 31, 1972 while the period of the hiring was beyond that date, is insufficient to shake his testimony in the light of all the other circumstances. For, until April 17, 1972 the Board of Management had not made over its transport business to anyone else. On the other hand, Ex. P. 22B, the proceedings of the Board at its meeting held on April 17, 1972 (item No. 4) reinforces the case spoken to by P. W. 7. The criticism that these proceedings could have been manipulated into life subsequently stands crushed by the endorsement Exhibit P-22A(1) made on the proceedings book by the Assistant Registrar of Cooperative Societies, Shri Bhatia, on April 5, 1972. Even otherwise, P. W. 7's story suffers form no inherent improbability and there is no presentable alternative put forward by the appellant as to how he ran the automobile part of his election campaign. He swore, more incredibly, that he covered the 25 square miles of his constituency on foot, during the hectic period

(1) 'The Problem of Proof' -Albert S. Osborn, pp. 22.23 New York, Methew Bender & Co. 1926-quoted in (2) ibid, p. 226.

A of this bitter election campaign. May be, he had many volunteers of the Chaluvali Kendra Mandali to support him and they might well have covered the area on bicycles. May be, being militantly identified with an agitational issue (Kannada for Kannadigas, to capsule the movement in a slogan) his monetary inputs might have been puny compared to his more prosperous Congress rival. Even so, the *Padayatra* programme, eschewing automobile journeys B altogether, is too unrealistic and mendacious to be taken seriously. Moreover, there is other documentary evidence in proof of payment of hire charges. Exhibits P-23, P-24 and P-25 deserve probative credit, in this context, P. W. 8, Sampangi, is seen to have signed them and even if we disbelieve the integrity of P. W. 30 who is alleged to have carried Exhibit P-23 or of P. W. 8, who, admittedly, has C signed that letter, there is no gainsaying the fact that documentary evidence of advance payment of Rs. 3,000/- is forthcoming. Exhibit P-24, dated February 12, 1972 is a letter written by Swaminath to Nagaraj and Exhibit P. 24A is the office copy. Exhibit P-25 further clinches the matter since it acknowledges the delivery of the cars and bears the signature of P. W. 8, Sampangi, appended on behalf of his principal, Nagaraj. Not P. W. 8 nor P. W. 30, but the D documentary testimony and the credibility of P. W. 7 influence our conclusion.

Two major criticisms were levelled against this branch of the case by Shri Desai. Certain minor weaknesses were also pointed out which, for general considerations already indicated, do not need lengthy scrutiny. He contended that P. W. 8, Sampangi, was not E his election agent in Chamarajpet Constituency and was an obvious betrayer who had been bought up by the more powerful petitioner so much so his words or signatures could not command judicial confidence. Secondly, he urged that the evidence of P. W. 7 and the documents stood shaken in view of the reference therein to Exhibit P-26 which had been found by the trial Court to be a forgery. We may examine the force, if any, of these submissions.

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P. W. 8 is a consummate artist in terminological inexactitudes who owns up in cross-examination, with melodramatic audacity both perjury and fabrication. Even so, his political bond with Nagaraj *during* the election is undeniable. They were President and Secretary of the Chaluvali Kendra Mandali until May or June 1972 when the latter resigned. P. W. 8 was Chief Election Agent G of Nagaraj in the adjoining Chickpet Constituency and could not have confined his busy campaigning, activated by the larger Kannada cause, to the territorial limits of Chickpet. In June he ran for the Legislative Council seat from the Teachers' constituency and Nagaraj appealed for electoral support through a newspaper column carrying his photograph. Haunted though we are by hunches about the distance between honest processes of proof and the petitioner's H *modus operandi* in Court, unhesitatingly we held that Sampangi, P. W. 8, was an activist lieutenant of the appellant during the critical months of February, March and April.

Exhibit P-26, if we may recapitulate, is that pernicious paper on which Nagaraj scribbled his then sought-after autograph at a school function, hardly suspecting its potential transmigration, into a letter forwarding a part of the car hire. Without trivialising the trickery played upon the appellant for which vicarious guilt must belong to the 1st respondent, we find no difficulty in delinking this documentary effort at over-kill, through Ex. P. 26, from the other dependable evidence of hiring 10 cars. Some holes of perjured evidence somewhere cannot sink the whole case which can safely float on other tested testimony. All cobwebs of suspicion are brushed away by Ex. P. 28 and P. 29. Finding a large sum outstanding from Nagaraj by way of car hire, P. W. 7 Swaminath, a financially weak person, wrote to the treasurer of the Mandali pleading that since the appellant, the President, had owed a substantial amount in connection with the election where the Mandali had backed him the treasurer Lakshmipathi had better make good the money and adjust with the President later. Pat came the reply Ex. P.-29 from Lakshmipathi disowning liability from the Mandali. Again, Swaminath (P. W. 7) pursued his claim by writing for balance payment to the appellant with a copy to P. W. 8 (vide Ex. P. 30). What followed (it rings true) may be rendered in the words of P. W. 7:

> "I received the reply Ex. P. 31 from Sampangi. It is dated 22-4-1972. Through the reply Ex. P. 31 Sa. Kru. Sampangi asked me to accept Rs. 8,000/- from 1st respondent Vatal Nagaraj in full settlement. I went and collected Rs. 8,000/- from Sa. Kru. Sampangi on behalf of the 1st respondent Vatal Nagaraj on 24-4-1972, issued a temporary receipt. The office copy of that receipt is Ex. P. 32. On 25-4-1972 I wrote to the 1st respondent Vatal Nagaraj, with a copy to Sa. Kru. Sampangi and sent that letter by post. The office copy of that letter is Ex. P. 33."

We have the corroborative evidence of the receipt book kept by P. W. 7 Ex. P. 34 in his own words;

> "Exs. P. 34(a), P. 34(b), P. 34(c), P. 34(d), P. 34(e), P. 34(f), P. 34(g) P. 34(h) are the respective receipts regarding cars Nos. MYA 3981, MYD 9030, MYD 7575, MYD 6756, MYA 4044, MYA 4114, MYD 9779 and MYA 3633. The receipt Ex. P. 34(1) refers to the Society Car MYD 7222 and the receipt Ex. P. 34(1) refers to the Society Car MYD 8600".

These receipts relate to cars of others taken by P. W. 7 to make up the ten cars agreed to be supplied, his Society itself being only in possession of two cars. This wealth of documentary material is convincing enough, in the background of the trial Court's remark : P. W. 7 Swaminath has stood the test of cross-examination well and his answers seemed to be forthright." Shri Desai did exploit the divergence in car registration numbers and the unsatisfactory explanation offered by the 1st respondent in that behalf. So also the spurious Ex. P. 26. Adulteration of evidence perhaps there is, but, after full con-

A sideration of the total material we are satisfied with the affirmative finding on issue 9(b) given by the High Court.

Shri Desai feebly suggested that P. W. 6 was not his agent in Chamarajpet but in Chickpet, and P. W. 30 was not his men at all. We have disposed of the factual part of this plea but the law of agency in election jurisprudence, it may be noted, is more elastic. In a sense, B the corrupt act need not be done by the candidate or his chief election agent. It is enough if it is authorised by either, as we will later show and here the hiring was done as authorised by the candidate.

The anxious 1st respondent has made many other charges of corrupt practice which have been repelled by the trial court and we C concur. But two invalidating imputations have been repelled by the trial Court and we concur. But two invalidating imputations have been upheld by the learned Judge, both turning on the printed election material, its cost and libellous toxicity. We are not disposed to dissect the evidence in detail on these twin charges since a single fatal stab is as good as multiple mortal wounds if death is the goal. But the 1st respondent's ambition is not merely to destroy the declaration D of the appellant but to instal himself as the Chamarajpet MLA through the judicial process. "There's the rub". Of course, if the law allows it he must get it.

Exhibits P-4 and P. 5 are two handbills in Kannada and Tamil, respectively and exhibit P-9 is the election manifesto of the appellant says the 1st respondent. Of course, the appellant has denied respon- E sibility for this offending literature and has gone to the extent of contending that the alleged printer P. W. 2 was a vegetable vendor injected into the scene by the 1st respondent as an evenescant lessee of a press who, ostensibly, appeared on the scene about the time of the election, engaged himself solely in printing the appellant's election matter and vanished from the printing scene back to his vegetable vendors job after the election. May be the story, *prima facie*, is suspect, but, F on a closer scrutiny especially with Ex. R. 6 in mind, the finding of the trial court must pass muster. There is also some evidence of these leaflets being distributed by the workers of Nagaraj. Considerable debate there was at the bar as to whether Exhibit P-4, even if true, amounted to character assassination, or other corrupt practice but at least a portion of it relating to payment of money to voters undoubtly injures the petitioner's good morals although many other statements G may hover around the border line or cannot constitute corrupt practice. Accepting Ex. P. 4 as a passionate plea for Kannada and criticism of the rival as one who argues for English, it is not 'Character assassination', nor is a militant demand for larger areas for Karnataka State corrupt practice. Even notions on nude dances and or economic exploitation of people cannot be judged by mid Victorian prudery when interpreting s. 123 of the Act. We have to be aware of realities H informed by the current ethos of the community and remember the usual margin of electoral exaggeration, while construing such speeches and writings. It is indisputable that if the printing had been done by the appellant or his election agent and the cost thereof was as pleaded

in the petition, the ceiling on election expenses set by the statute would be further exceeded.

We are not inclined to upset the holding of the High Court that "there can be no reasonable doubt that regarding the handbills Exhibits P-4, P-5 and P-9 the petitioner's version is true" but do not embark on any long discussion as it is uncalled for. But the almost 'astrological' consequence claimed to be flowing therefrom that the 1st respondent would have obtained a majority of valid votes demands fuller examination. For purposes of argument, let us assume that Exhibits P-4, P-5 and P-9 were printed and distributed prior to the election and that P. W. 2 had been paid Rs. 7,500/- as printing charges. We may similarly assume that personal aspersions and implicit group disaffection or threat as stipulated in s. 123 of the Act could be read into these leaflets, as claimed in the petition. Even so, What?

This takes us to issue No. 11 which, perhaps, is the second most contested question in the whole case. Having exceeded, on our own finding, the financial ceiling set by s. 77 of the Act, a corrupt practice has been committed by the appellant and his election has been rightly set aside by the High Court. Inevitably, under s. 8A of the Act, the appellant has to be visited with the punitive six-year disqualification. So the High Court's finding on issue No. 12 also must stand.

The only bitter bone of contention beween the parties which survives is covered by issue no. 11. The sanctity of the poll verdict will stand violated if the tribunal, without the strictest compulsion of statutory provisions, substitutes for an elected representative a Court picked candidate. The relevant part of s. 101 may well be set out at this stage:

> "101. Grounds for which a candidate other than the returned candidate may be declared to have been elected:—
>
> If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion.
>
> * * * *
>
> (b) That but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes,
>
> the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

The insistent requirements of the section are that firstly the returned candidate must have *obtained votes by the operation of corrupt practices*; secondly, such obtained votes must be quantified with judicial assurance and thirdly, after deduction of such void votes, the petitioner

A or other candidate must be shown to have secured a majority of the valid votes. In the present case, the decisive factor is the satisfactory proof of the number of votes, if any, attracted by the appellant into his ballot box by the corrupt means. How many voters were lured for certain by the expenditure of several thousand rupees more than is sanctioned by the law ? Did the *campaigning in those hired* cars B snatch votes at all? Did deleterious leaflets draw into Nagaraj's net a specific set of voters : To capsule the enquiry, how many votes were definitely obtained by the use of each corrupt practice? This hinges not on mystic maybes and vague imponderables and prejudice to prospects but on tangible testimony that a number of persons, arithmetically assessed, swang towards and probably actually for the returned candidate, directly magnetised by the corrupt practice, so C that one could positively predicate those votes as having been *obtained by corrupt practices.* This clear nexus is of critical importance. Happy speculation, hypothetical possibility and clairvoyant surmise, however imaginatively and objectively made, cannot displace this drastic requirement. Where, for instance, a certain number of persons, in violation of the legal ban, have been transported by the candidate and they have been shown, with fair assurance, to have cast D their votes in his favour or where specific cases of false personation or double voting at the instance of the candidate or his agents have occurred and the margin of difference between the victor and the nearest vanquished is narrow and the gap is more than made up by the illegally procured votes, the case for the application of s. 101 will surely arise. Courts do not elect candidates or sign into parliamentary seats those whom the constituency has not yet favoured. E The normal democratic process cannot be by-passed conveniently on the score of corrupt practices by the rival except in those exceptional cases where s. 101 stands fulfilled. You must win not only an election petition but an election itself.

The decisions cited before us by Shri A. K. Sen do not take us further. Indeed there is a paucity of precedents in this area, for reasons F which are not difficult to guess. In *T. Nagappa v. T. C. Basappa*(1) this Court had to deal with a case where the lead of the winner was only 34 votes, there was cogent proof of about 60 voters having been transported by the offending candidates to the polling booth of whom 47 voted for him so that, if their votes were struck out, the margin of difference would disappear and the loser would have secured the larger number of valid votes. There the learned Judges were at pains G to point out that the petitioner got only 34 votes less than the respondent and that the tribunal (by a majority) had found that the bus procured by respondent No. 1 did carry to the polling booths about 60 voters, leading to the legitimate presumption that the majority of them did vote for respondent No. 1. Under those circumstances, the Court did not care to interfere with the Tribunal's factual view that if the votes attributable to the corrupt practice were left out of account, H the petitioner would have gained an undisputed majority. In that very case while pointing out that the High Court should not have

(1) A. I. R. 1955 S. C. 756.

upset a finding of fact of the Tribunal, this Court cautiously added that "it may be that the view taken by the dissenting member of the Tribunal was the more proper." Apparently, the dissenting member was not inclined to upset the poll verdict even on this evidence. Where there are a number of serious candidates contesting from a constituency, the situation, becomes complex and unpredictable. It is convenient assumption, not reasoned probability, to guess for whom, if at all, the voters of the winner who used corrupt practices would have alternatively cast their franchise. Sheer disenchantment with the vicious techniques might well have turned away many sensitive souls from the polling station. In the appeal before us the lead is over a thousand votes, no link between the polluted practice and the voters affected is forged ten candidates were in the field and some of them had polled well. The observations of this Court in *Jamuna Prasad's* Case(1) that "there is nothing to show why the majority of the first respondent's voters would have preferred the 6th respondent and ignored the 3rd and 4th respondents" under scores the hazard in such multiple-contest situations. Shri A. K. Sen's persuasive invitation to compute on imperfect date is to ask us to crystalgaze. We decline the essay in occult.

In the present case the reasoning of the trial Court dealing with this branch is not brief but a blank. All that the Court has said is that the difference is only 1044 votes between the appellant and the respondent and that a reasonable judicial guess is not taboo: "Therefore it can be reasonably concluded as per cl. (b) of s. 101 of the R. P. Act that but for the votes obtained by the returned candidate (1st respondent) by corrupt practices, the petitioner would have obtained a majority of the valid votes". We are sorry the sequitur is too obscure for us to see. There were ten candidates in the field and the curious plea bearing on this relief in the election petition appears to be that the petitioner has done social service and deserved victory and so there was no need to send him back to the constituency to seek a re-election—strange compliance with s. 101 of the Act. Indeed, the petitioner, himself a barrister and a former Deputy Minister, conversant with the requirements of election law knows that where a claim for a declaration in his favour is put forward at least formal averments tacking the corrupt practice onto obtaining the definite votes was necessary. On the other hand, all that he states is that as a result of the hate campaign against the Muslims and the Tamils, alleged to have been carried on by the appellant and his agents, "the Tamil speaking people thought that it would be to their advantage to support the D. M. K. candidate and the Muslim population thought that they would be protected only if the Muslim League candidate was returned to the Election." Therefore what? After adding that these two candidates had secured a large number of votes from the Tamils and the Muslims, the petition makes a puzzling statement: "These votes would have been polled by the petitioner and the Congress party but for the corrupt practices under section 123 committed by the 1st respondent, his election agent and the agents of the 1st respondent...." The abstruse logic, the bare assertion and the total absence of a tie-up

(1) A. I. R. 1954 S. C. 686, 689 (*Jamuna Prasad* v. *Lachhi Ram*) [1955] S.C.R. 608.

A between specific corrupt practices and the number of votes obtained *thereby* lead us to an outright rejection of the relief, not merely for want of proper averments but also for a total void in proof. Absent visible welding of the electoral vice established into the numerical measure of the victory, the votes at the polls alone, not the writ of the Court, can seat him in the legislature. We have no hesitation in reB versing the finding on issue No. 11.

The conclusion therefore is that the appellants' election is set aside and the constituency has to choose its representative by a fresh poll. It must be noted that half the term has already run out since the election which we now set aside. Having regard to the democratic process and the duty not to keep Chamarajpet orphaned in the legislature, C we expect the Chief Election Commissioner to proceed expeditiously to hold a fresh election.

The fate of this case has been the direct result, among other grounds, of the cost of campaigns, beyond the legal ceiling; incurred by the appellant who contested as an Independent. To give all candidates a fair chance, an operationally fairer, perhaps even radical plan to finance our elections, particularly the campaigning process, may have D to be devised. Money power casts a sinister shadow on our elections and the political payoff of undue expenditure in the various constituencies is too alluring for parties to resist temptation. Moreover, there is a built-in iniquity in the scheme because an independent candidate who exceeds the ceiling prescribed under the law legally commits a corrupt practice. His rival, set up by political parties with considerable potential for fund raising and using, may lay out a hundred E times more in each constituency on their candidates and yet hope to escape the penalty under s. 77. The convenient—not necessarily correct—plea would be that the candidate spent for his election but the party for its campaign. This likely evasion of the law by using big money through political parties is a source of pollution of the Indian political process. To channel funds into the campaign for specific candidates getting around the requirements of the law by establishing party comF mittees is all too familiar in this and some other countries. In this context it may be apt to draw attention to a recent ruling of this Court in *Kanwarlal Gupta* v. *Amar Nath Chawla* (1) on election expenses. It may be proper to infuse into the election law the cleansing spirit which was emphasized way back in 1920 by the Select Committee on the Indian Election Offence and Enquiries Act (XXXIV of 1920). Half a century ago it was observed there:

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> "We feel that there are distinct advantages at the present time when election is to play so important a part in the new public life of India that the public conscience should be markedly drawn in relation to the franchise whether that franchise relates to legislative or other bodies."

H Elections, constituency-wise, are the cornerstone of our parliamentary culture and if the law is to reflect and ensure the democratic

(1) [1975] 2 S. C R. 259.

norms set by the nation in this strategic area, serious political consensus (not sanctimonious platitudes) on heavy cut-back on poll outlay by Parties and candidates and basic morality in the electioneering methodology must emerge—a consummation devoutly to be wished. If campaigns run berserk and expenses unlimited become the rule general elections become national nightmares and the fabric of our freedom shakes. Courts come in only when specific cases are filed and cannot arrest this cultural contamination. We can only express the wish, with a sense of social awareness, that campaign finances reform, imposing, realistic limitations on spending on behalf of candidates directly or vicariously seem necessary if inequality of influence is not to operate upon the electoral process and later upon government decisions. To a limited extent Courts can respond to the fulfilment of this constitutional aspiration by a benignant interpretation of the legal limits on election expenditure s. 77 clamps down. This election case is also a caveat on election methodology. True, large monetary inputs are necessary evils of modern elections, but "once we assuage our conscience by calling something a 'necessary evil', it begins to look more and more necessary and less and less evil" (1). The manumission of the electoral process from money power is the dharma of our Republic.

In the hope that a fresh election for Chamarajpet would be held early and in the expectation that the candidates, independents and Party-nominees alike, would keep within the pecuniary limits set by the law as laid down by this Court, we allow the appeal in part, as above indicated. Parties will bear their own costs throughout.

V.P.S. *Appeal partly Allowed.*

(1) Sydney Harris—quoted by Hidayatullah J. (as he then was) in "Democracy in India and the Judicial Process"—Lajpatrai Memorial Lectures, 1965—Asia Publising House—P-60.