OM PRABHA JAIN

v.

CHARAN DAS & ANR

April 10, 1975

[M. H. BEG, Y. V. CHANDRACHUD AND A. C. GUPTA, JJ.]

Representation of the People Act (43 *of* 1951) *Ss.* 77, 116-*A and* 123(6)—*Corrupt Practice—Standard of proof.*

Practice and Procedure—Finding by High Court in election disputes—Interference by Supreme Court.

Section 77 of the Representation of the People Act, 1951, provides that every candidate at an election shall keep an account of expenditure incurred in connection with the election and that the total expenditure shall not exceed the amount prescribed.

The appellant and the first respondent contested the election to the State Legislature and the first respondent was successful. The appellant challenged the election on the ground, *inter alia,* that the first respondent was guilty of corrupt practice having incurred or authorised expenditure in contravention of s. 77. The election petition was dismissed by the High Court.

In appeal to this Court, it was contended that there was evidence to show that the expenditure incurred by D, in connection with the use of two jeeps during election was authorised by the first respondent and if that expenditure was added to the amount shown by the first respondent as his expenditure, the total expenditure would exceed the prescribed limit of Rs. 9000.

During the pendency of the appeal, s. 77 was amended by inserting two Explanations in the section. Explanation 1 provides that the expenditure incurred or authorised in connection wtih the election of a candidate by a political party or by any other association or body of persons or by any individual other than the candidate or his election agent, shall not be deemed to be expenditure in connection with the election, incurred or authorised by the candidate or his election agent.

Dismissing the appeal,

HELD : (*Per curiam*) *The allegation of corrupt practice against the* respondent has not been proved beyond reasonable doubt. [109H & 123F]

(*Per* M. H. Beg, J.)—If a charge of a corrupt practice is held to have been established against a candidate, it may have grave repercussions on his reputation and political future; and, therefore, prudence requires that the stricter standard of proof of a criminal charge should be applied. [109F]

The High Court has held that as the precise connection of D with the first respondent was not satisfactorily established, the charge of corrupt practice against the first respondent must fail. This Court will not, without a better reason than merely that another inference on the evidence is possible, disturb such a finding even on a statutory first appeal on facts. There is, if a bare balance of probabilities could decide the case, sufficient circumstantial evidence to connect the expenditure incurred by D with the respondent who did not even produce any account books, though the law requires him to maintain satisfactory accounts to support his return of expenses; yet, if the rules of circumstantial evidence were applied with the strictness with which they are applicable in criminal cases it must be held that the case against the first respondent has not been proved beyond reasonable doubt. [109D-E-F-G-H]

A (*Per* Y. V. Chandrachud and A. C. Gupta, JJ.) : (1) The appeal has to be decided in the light of the Explanation added to s. 77.

(2) The findings of fact recorded by the High Court should not be disturbed in an appeal under s. 116-A, unless there was some serious error in the findings. In the present case, the Judge who tried the petition, had recorded his impression about the demeanour of the witnesses whenever he B thought necessary. The findings based solely on the demeanour of the witnesses cannot be reversed in appeal, but the conclusions of fact recorded upon a consideration of the probabilities can be tested to see if they contain any serious error [121H 122A]

(3) A charge of corrupt practice is quasi-criminal in nature and must be proved beyond reasonable doubt. [122D]

C

(4) Before the High Court the parties proceeded on the footing that the question raised related to both allegations, namely, that the respondent *incurred or authorised* the expenditure incurred on the two jeeps, and, therefore, the scope of the inquiry in appeal cannot be limited only to the question whether the respondent himself *incurred the* expenditure. [121A]

D (5) There is no evidence of the respondent incurring or any direct evidence of his authorising the expenditure incurred for the jeeps. [121D]

(6) From the fact that the respondent used the jeeps once or twice, it could not be inferred that he paid for their hire, because, it is well known that candidates at an election very often use their supporters' vehicles. [121D-E]

E (7) There is also no reliable circumstantial evidence to connect the respondent with the expenditure incurred by D. [121H]

(8) The respondent did not produce his account of election expenses, his case being that he had destroyed the papers after preparing his return of election expenses. From the fact of non-production of accounts no adverse inference can be drawn against the respondent that the expenditure was really F incurred by the respondent himself. D who made the payments gave evidence, and he denied that the respondent authorised him to make the payments and this evidence was accepted by the High Court. [121 E-F]

D. P. Mishra v. *Kamal Narain and Anr.* [1971] 1 S.C.R. 9, distinguished.

(9) The circumstances proved in the case are: (a) that D worked for G the respondent; (b) that D hired the two jeeps and used them for the respondent's election campaign; and (c) that he sometimes operated from the respondent's election office. But these circumstances do not justify the inference that the respondent put D in charge of his transport arrangements. [122F-H]

(10) As regards the money spent by D it is not believable that he spent his own money. But the only alternative inference is not that it was the respondent's money that was spent and that the respondent authorised D to H spend it, especially when there is evidence to show that the respondent's election campaign received financial assistance from other sources, such as the Jan Sangh Party. [123B-C]

(11) A note book put in evidence by the appellant seems to suggest that a part of the money paid for the 2 jeeps was taken from the respondent. But, the note book was not kept in the regular course of business, it was not a reliable document and there was no independent evidence proving the correctness of the entries therein. Therefore, it is not possible to rely on the entries in the note book and it must be left out of consideration. [120E-121C-122H-123A]

(12) It may be difficult to get hold of evidence in an election dispute to prove such a corrupt practice, but the law requires proof beyond reasonable doubt. [123E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1551 of 1973. A

From the judgment and order dated 31st August 1973 of the Punjab & Haryana High Court in Election Petition No. 42 of 1972.

L. M. Singhvi, A. Gupta, S. L. Yadava, S. K. Dhingra and *S. Swarup,* and *J. B. Dadachanji,* for the appellant. B

H. L. Sibal, S. S. Khanduja, Susnik Kumar Jain, Vishwanath K. V. and *Kapil Sibbal,* for respondent No. 1.

The Judgment of the Court was delivered by

BEG, J.—I would like to point out that the High Court, in the judgment under appeal, recorded the finding, after a very comprehensive and detailed discussion of the whole evidence "that the two jeeps in question actually worked in support of the respondent's election campaign right from February 18, 1972 to March 11, 1972 under the charge and direction of Duni Chand". Nevertheless, the High Court finally held that, as the precise connection of Duni Chand with the contesting respondent was not satisfactorily established, the charge of corrupt practice against the respondent must fail. It is the well established practice of this Court (see e.g. *B. B. Karemore & Ors.* v. *Govind & Ors.*)(1) that it will not, without a better reason than merely that another inference, on evidence on record, is possible, disturb such findings even on a statutory first appeal which is not confined to questions of law. C D E

We cannot forget that, if a charge of a corrupt practice, as an electoral offence, is held to have been established against a candidate, it may have grave repercussions on his reputation and political future. Therefore, prudence requires that we should apply the stricter standard of proof of a criminal charge in such a case and not decide the case on a bare balance of probabilities. F

It appears to me that, although there is, if a bare balance of probabilities could decide the case, sufficient circumstantial evidence to connect the expenditure incurred by Duni Chand with the respondent, who did not even produce any account books though the law requires him to maintain satisfactory accounts to support his return of election expenses, yet, if we are to apply the rules of circumstantial evidence with the strictness with which they are applicable in criminal cases, it may be held here that the case against the contesting respondent is not proved beyond reasonable doubt despite all the circumstances appearing against him. There are other circumstances which suggest another possible inference. Hence, we are left in doubt on the question whether he or the Jan Sangh party, from which he broke away after his election, had incurred these expenses through Duni Chand. I, therefore, though not without some hesitation, agree with the conclusion reached by my learned brethren that this appeal must be dismissed. I also agree that, in the circumstances of this case, the parties should bear their own costs. G H

(1) A.I.R. S.C. 405.

A GUPTA, J.—This is an appeal under Section 116A of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") from an order passed by the Punjab and Haryana High Court at Chandigarh dismissing the election petition filed by the appellant calling in question the election of the first respondent to the Haryana State Legislature from the Kaithal Assembly Constituency in 1972. B Poll was taken on March 11, 1972. The first respondent who secured 26095 votes was elected defeating the nine other candidates who contested the election. Appellant Om Prabha Jain who polled 22673 votes secured the next position in the contest. In her election petition the appellant hereinafter also referred to as the petitioner, C alleged various corrupt practices against the returned candidate seeking his election to be declared void under sec. 100 of the Act and also prayed for an order under sec. 99 naming him guilty of corrupt practice so that he might be disqualified under sec. 8A of the Act. In this appeal the challenge is confined to the allegations of corrupt practice under sub-sec.(6) of sec. 123—"incurring or authorising of D expenditure in contravention of Section 77". Sec. 77 as it stood when the election petition was presented was in these terms:

> "77. *Account of election expenses and maximum thereof.*—(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and E correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive.
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> F
>
> (2) The account shall contain such particulars as may be prescribed.
>
> (3) The total of the said expenditure shall not exceed G such amount as may be prescribed."

For the State of Haryana the prescribed limit on election expenses was Rs. 9000.

H During the pendency of the appeal in this Court an Ordinance, namely, the Representation of the People (Amendment) Ordinance, 1974 was promulgated amending sec. 77 of the Act by inserting two explanations to sub-sec. (1) thereof. The explanations read as follows :—

> '*Explanation* 1.—Notwithstanding any judgment, order or decision of any court to the contrary, any expenditure incurred or authorized in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the

candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorized by the candidate or by his election agent for the purposes of this sub-section :

Provided that nothing contained in this Explanation shall affect—

(a) any judgment, order or decision of the Supreme Court whereby the election of a candidate to the House of the People or to the Legislative Assembly of a State has been declared void or set aside before the commencement of the Representation of the People (Amendment) Ordinance, 1974;

(b) any judgment, order or decision of a High Court whereby the election of any such candidate has been declared void or set aside before the commencement of the said Ordinance if no appeal has been preferred to the Supreme Court against such judgment, order or decision of the High Court before such commencement and the period of limitation for filing such appeal has expired before such commencement.

Explanation 2.—For the purposes of Explanation 1, "political party" shall have the same meaning as in the Election Symbols (Reservation and Allotment) Order, 1968, as for the time being in force.'.

The Representation of the People (Amendment) Ordinance, 1974 was subsequently repealed and replaced by the Representation of the People (Amendment) Act, 1974 (Act 58 of 1974) inserting the aforesaid explanations in sec. 77 of the Act. The appeal before us does not attract the proviso to Explanation 1 and sec. 77 with the explanations added will govern this case.

The particulars of the charge that the returned candidate incurred or authorized expenditure above the prescribed limit are set out in clauses (a) to (l) of paragraph 14 of the election petition. Dr. Singhvi, learned counsel for the appellant, confined his submissions to the expenditure incurred in connection with the use of two jeeps bearing Nos. 6424 and 1116 mentioned along with several other vehicles in clause (e) of paragraph 14. It is alleged in that paragraph that though the first respondent showed in his return his total expenditure as Rs. 5844/24 p., his expenses exceeded in any case the prescribed limit of Rs. 9000/-. The contents of paragraph 14 of the election petition are denied in paragraph 14 of the written statement of the first respondent wherein he has stated that he never used most of the vehicles mentioned in the election petition including the jeeps 6424 and 1116.

A Of the Issues framed, only Issues Nos. 14, 15 and 16 are relevant for the purpose of this appeal. These Issues are as follows:—

"(14) Whether respondent No. 1 incurred or authorised expenditure on the various items enumerated in sub-
B paragraph (a) to (1) of paragraph 14 of the election petition.

(15) If any of the items of expenditure referred to in the preceding issue is proved to have been incurred by the returned candidate, does the addition of that
C extra amount to the amount of expenses shown by the returned candidate to have been incurred by him in the return of election expenses take the total amount spent by him above the statutory limit of Rs. 9,000/- ?

D (16) If the preceding issue is proved, has the returned candidate not committed the corrupt practice defined in section 123(6) read with section 77 of the Act ?"

Before we turn to the evidence bearing on these issues it would
E be appropriate to state here certain facts in the background which must be kept in mind in considering the evidence. The appellant contested the election as a candidate of the Indian National Congress. The first respondent had filed several nomination papers, two of them as a candidate of the Bhartiya Jan Sangh and two as indepen-
F dent. He had signed the pledge of the Jan Sangh, but ultimately he contested the election as an independent candidate. He had been a member of the Municipal Committee of Kaithal on the Jan Sangh ticket and was elected its President in April, 1971 as a nominee of that party. Some time after the election in question in the present appeal was over, the first respondent was served with a charge-sheet
G by the Bhartiya Jan Singh, Haryana State, alleging that he had betrayed the organisation by failing to join the Jan Sangh Legislature Party which, it was said, he had promised to do as soon as the result of the election was declared; finally he was expelled from the Party. These facts are not in dispute.

H The first witness examined by the petitioner to prove that the two jeeps in question were hired for the first respondent is P.W. 3 Jagjit Singh, a taxi driver of Delhi. He proves the letter Ext. P.W. 3/1, said to have been given to him by Brij Mohan, a neighbour, who asked him to send four or five jeeps to respondent Charan Dass at Kaithal. Ext. P.W. 3/1 is a letter dated February 20, 1972 addressed to Brij Mohan by one Duni Chand Gupta. The letter translated into English from the original Urdu reads as follows :—

"Kaithal.

20-2-72.

Babu Brij Mohan Ji.

It is requested that I had taken from you two Nos. jeeps on dated 18-2-1972 bearing No. 1116 and 6424 for the election of Shri Charan Dass, for which I had paid you the amount of Rupees two thousands in Advance. Now I require five Nos. jeeps more. If you can manage then inform at once so that I may send the advance through somebody. Inform at once, hire charges are no consideration, the work should be done.

Sd/- Duni Chand Gupta,
Kaithal.
C/o Shri Charan Dass,
Election Office
Kaithal."

Two things are to be noted in this letter, that Duni Chand claims that he had paid Rs. 2000/- in advance for the two jeeps bearing numbers 1116 and 6424, and that he gives his address, care of Charan Dass election office, Kaithal. The evidence of P.W. 3 is that he could secure only two jeeps from a place called Abohar which he sent to Charan Dass.

The next witness who speaks about these two jeeps is P.W. 5 Puran Chand. He is a shopkeeper in District Shri Ganga Nagar in Rajasthan. He claims that he was the owner of jeep numbered 6424 and his cousin Munshi Ram owned the other jeep, 1116. His evidence is that he and Munshi Ram left Shri Ganga Nagar on February 13, 1972 with the two jeeps reaching Delhi the next day where they contacted Brij Mohan, a commission agent, for getting their "vehicles hired out". On February 17, Duni Chand came to Brij Mohan seeking to hire two jeeps. Brij Mohan settled the terms of hire which were that Duni Chand would pay Rs. 130/- per day for each jeep from February 18 to March 11, 1972 besides Rs. 5/- per day to the driver of each jeep and also pay for the petrol. The witness says that Munshi Ram and he were each paid Rs. 1000 in advance by Duni Chand. On March 4, Duni Chand paid him Rs. 3500/- at Kaithal towards the hire of both the jeeps and got a receipt from him which is Ext. P.W. 5/1; the balance, Rs. 740/-, was collected later by the drivers of the jeeps.

P.W. 6 Surja Ram and P.W. 7 Madan Lal are the drivers of jeeps Nos. 1116 and 6424 respectively. P.W. 6 claims that respondent Charan Dass used to go about in his jeep and the respondent's own car "used to remain parked in those days". The witness states further that the respondent never went in the jeep driven by Madan Lal. The statement that the respondent's car was not used during the election days is not consistent with what appears from paragraph 14 (b) and (c) of the election petition where the petitioner states

A that the respondent used his car in connection with election campaign but has not shown the expenses incurred on that car.

P.W. 7 Madan Lal's evidence is that on arriving at Kaithal with the jeep the witness was deputed by Duni Chand to work at village Cheeka. This witness claims that the first respondent travelled in B his jeep on two occasions, first on the 18th of February and on another day, thus contradicting P.W. 6 who had said that the respondent never used the jeep driven by P.W. 7.

From the evidence of P.W. 3, P.W. 5, P.W. 6 and P.W. 7 it C would appear that Duni Chand hired the two jeeps in question to help the election campaign of the respondent.

Duni Chand, also known as Duli Chand, was examined as a Court Witness. His evidence is that he and six or seven other persons D had formed a party to work against the Congress candidates in the Kaithal and Pehowa constituencies. This party, however, was not given a name nor did it hold any meeting or issue any poster. He says that each member of this party contributed Rs. 1000/- to carry on the election propaganda. He admits having written the letter Ext. P.W. 3/1, and that he had hired the two jeeps in question E through Brij Mohan to work against the Congress candidates in the aforesaid two constituencies. According to him the members of this party went round in those jeeps to canvass support for respondent Charan Dass as they considered the respondent to be the best of the candidates. Asked about the reason why in the letter Ext. P.W. 3/1 he had given his address as "care of Charan Dass' election office, F Kaithal", he says that this was done "to facilitate Brij Mohan's man to find me for collecting the balance of the hire money.....the man could have enquired the address of my shop from the election office of Charan Dass". The witness denies that he had given that address because he was "incharge of the election work of the respondent relating to employment of motor vehicles". The witness adds G that he and his friends who worked for first respondent at the election did not maintain any record containing particulars of how the jeeps were employed by them during those days. In answer to a question put to him in cross-examination regarding a note-book which figures prominently in this case, Duni Chand admits that the note-book, Ext. P.W. 8/5, is partly in his handwriting.

H

This note-book which we will consider in due course was also written partly by Raghbir Chand who like Duni Chand was examined as a Court Witness. He claims to be one of the group of seven or eight persons spoken of by Duni Chand who were helping the first respondent.

The petitioner herself deposing as P.W. 30 has narrated how she came to know of the said two jeeps being employed by respondent Charan Dass. According to her fifteen to twenty jeeps were used by him for his election work. She noted the numbers of these

vehicles in a diary; this record is based on her personal observation and also on information received from her workers. In answer to a question put by the Court she read out the numbers of the jeeps noted in her diary in the following order: "5948, 6055, 6009, 2574, 1710, 9997, 6424, 1116, 6675, HRJ—5324, HIM—4147, 6170 and 8363." A B

The note-book, Ext. P.W. 8/5, seems to be the most important documentary evidence produced on behalf of the petitioner to prove that the two jeeps in question had been employed by respondent Charan Dass. On some pages of this note-book are recorded in an extremely haphazard manner the numbers of several vehicles with certain dates and figures seeming to indicate when some of the vehicles first reported for duty and how they were deployed. The note-book also mentions different sums of money stating or hinting at the sources wherefrom these amounts were collected and includes certain entries suggesting payments made for the use of these vehicles. The two jeeps, 6424 and 1116 are among the vehicles mentioned in the note-book. The petitioner states in her evidence that P.W. 9 Mohan Bahadur brought the note-book to her at her residence in Kaithal in the last week of September, 1972. P.W. 9 Mohan Bahadur, whose deposition was recorded on October 5, 1972, states that the note-book was given to him "last week" by Punnu Ram, Joint Secretary of the Kaithal Jan Sangh. According to the witness, Punnu Ram told him that Jan Sangh had expelled Charan Dass from the Party and that the note-book would be of help to the petitioner in her election petition. The witness adds that Punnu Ram knew that the witness was a supporter of the petitioner. C D E

In this note-book the name of Anil Kumar Gupta, a son of the first respondent, appears to be written at two places. Admittedly, Anil Kumar was a B.A. student in the R. K. S. D. College, Kaithal, and one of his subjects was Civics. Pages 3 to 8 of the note-book contain certain notes on Civics. According to Mohan Bahadur and the petitioner there were three loose sheets of paper inside the note-book. These loose sheets of paper which have also been produced with the note-book are: (1) a Hindi manuscript containing instructions for the polling agents (Ext. C.W. 2/1), (2) bill of a loudspeaker dealer in the name of Charan Dass for Rs. 101/50p. (Ext. P.W. 24/1), and (3) a receipt in Hindi dated March 6, 1972 for Rs. 41/50p. for hire of loudspeakers, signed by one Shadi Lal Shad, a worker of the Jan Sangh Party. F G H

As stated already, it is difficult to find any order or method in the entries recorded in this note book though the fact that it belonged to the respondent's son might appear to lend some authenticity to the document. Respondent Charan Dass (R.W.15) and his election agent Gian Chand (R.W.14) both however deny that any such note-book was maintained by them or that they had asked Duni Chand or Raghbir Chand to make the entries therein. It is also not clear, how the notebook found its way to the petitioner. Punnu Ram, Joint Secretary of the Kaithal Unit of the Jan Sangh Party, who is said to

A have handed over the note-book to Mohan Bahadur was examined by the respondent (R.W.13). Punnu Ram denies having made over any note-book to Mohan Bahadur whom he says he did not know. His evidence is that he saw the note-book for the first time in Court.

Punnu Ram admits that he worked for the first respondent at the
B election on behalf of his Party. The witness proves a document (Ext.R.W.13/1) containing a statement signed by Shadi Lal Shad that he had "got prepared" 470 small flags and 1000 stencils for the total cost of Rs. 38.80p. This document contains the signature of Punnu Ram who appears to have verified the correctness of its
C contents. In his deposition Punnu Ram explains that the Jan Sangh "had got the flags and the election symbol of respondent No. 1 prepared as the party was supporting respondent No. 1". The witness adds that the Jan Sangh spent a total amount of Rs. 400/- or Rs. 500/- on the election of the first respondent. This part of Punnu Ram's evidence is relevant to the other aspect of the case, namely, who
D really paid for the two jeeps if it was found that they had been employed for the respondent's election campaign.

Raghbir Chand who claims to have made some of the entries in the note-book was examined as a Court Witness. His evidence is that Janardan Singh who was his friend and a member of the Jan
E Sangh had asked him to make certain entries in the note-book. He says that the first column of page 260 and the whole of page 261 of the notebook were in his handwriting. The two jeeps, 1116 and 6424, are mentioned in the first column of page 260 with the word 'Delhi' in Urdu written against them. According to Raghbir Chand these pages
F were blank when the note-book was brought to him by Janardan Singh. Raghbir Chand says that he did not know why Janardan Singh wanted him to write in the note-book and that he obliged his friend without asking any questions. The writings on pages 260 and 261 appear to be in opposite directions, which is one example of the lack of order and method in maintaining the note-book. Raghbir Chand's explana-
G tion is that after he had finished what he was asked to write on page 260 and closed the note-book, Janardan Singh thought of getting some more entries made by him and opened the note-book at page 261 upside down, and Raghbir Chand copied on the page as he found it whatever Janardan Singh dictated to him.

H Janardan Singh who claims to be a worker of the Jan Sangh was also examined as a Court witness. According to him Pawan Kumar, Joint Secretary of the Jan Sangh at Panipat, came to see him towards the end of March, 1972 and left with him the note-book (Ext. PW. 8/5) and a *Parcha* containing certain figures in English and wanted him to get these figures which were all numerals, copied into the note-book. The witness did not ask him why, and as a worker of the Jan Sangh proceeded to "obey his orders". He says that he and Raghbir Chand had "blind faith" in each other, and at his request Raghbir Chand copied the figures from the *Parcha* on pages 260 and 261 of the note-book. These pages however contain certain names of places and persons and also other words; according to Raghbir

Chand these also were in his handwriting, but Janardan Singh maintains that the *Parcha* from which Raghbir Chand had copied did not contain any such names or words. Janardan Singh's evidence is that later Pawan Kumar collected the note-book from him.

At the conclusion of Janardan Singh's deposition, the learned Judge appears to have recorded a note of his impression that "throughout his statement, this witness has been displaying nervousness, and prevarificating and avoiding to give straightforward answers to the questions put to him".

Duni Chand's version is that what he had written in the note-book was at the instance of Rattan Lal, President of Ward No. 8, Kaithal Jan Sangh Party. Duni Chand says that Rattan Lal expressed displeasure at the respondent failing to honour his promise to join the Jan Sangh legislature party, if elected, and enquired of Duni Chand if he could produce any evidence which would go against the respondent in the election dispute, then pending in the High Court. Duni Chand made over to Rattan Lal the receipt, Ext. P.W.5/1, given by Puran Chand for Rs. 3500/- paid towards the hire of the jeeps 1116 and 6424. Five or six days thereafter, Rattan Lal again came to see Duni Chand with a diary and a note-book. Duni Chand's evidence is that he copied on the different pages of the note-book whatever Rattan Lal read out from the diary. This was about a month after the election. Duni Chand says that when the note-book was brought to him, it contained all the other writings that are now there. Duni Chand's evidence is that he did not question Rattan Lal in what way the note-book would be used against the respondent but wrote to his dictation on such pages of the note-book and in such order as he was told. According to Duni Chand, Rattan Lal took away the diary and the note-book after the writing was done.

Certain entries in the note-book apparently corroborate the oral evidence as to some payments made towards the hire of the two jeeps but it does not record all the payments claimed to have been made. For instance, P.W.6 Surja Ram, driver of jeep No. 1116, stated that he had signed in a note book on March 12, in acknowledgement of the receipt of Rs. 740/-, being the balance of the amount due on account of the two jeeps. There is however nothing in the note-book to support this statement. Assuming Surja Ram's evidence to be true, one would have expected to find his signature in the note-book.

Pawan Kumar, Provincial Secretary, Haryana Jan Sangh, was the first witness to be examined on behalf of the petitioner. He disclaims all knowledge of the *Parcha* or the note-book which, according to him, he saw for the first time in court. His evidence adds to the mystery surrounding the note-book. The witness states that the first respondent was in fact a Jan Sangh candidate but was allowed to contest as an independent as a matter of election strategy. He adds that he went to Kaithal on March 14, 1972 and requested the respondent to declare that he would join the Jan Sangh legislature party.

A The respondent is said to have replied that he would think over the matter and then inform the witness. The respondent, it is alleged, was thereafter asked on the telephone on March 16, to attend the Working Committee meeting of the State Jan Sangh at Karnal to be held the next day. Though the respondent's reply on the telephone was that he would attend the meeting, he did not ultimately do so. B About two days after the meeting, the witness went again to the respondent for an answer but still the respondent did not give any definite reply. The witness also states that 4 or 5 days after the result of the election was declared, the respondent came to Jan Sangh office to have the return of election expenses prepared in consultation with the witness and the President of the State Jan Sangh Party. C The witness proves the notice. Ex. P.W. 1/3, issued on March 25, 1972 asking the first respondent to show cause within one week of the receipt of the notice why he should not be expelled from the party because of his failure to join the Jan Sangh legislature party in breach of his previous assurance.

D

Pawan Kumar goes on to say that in the course of his visits to Kaithal to supervise the election campaign in support of the respondent, he used to find Duni Chand sitting in the respondent's election office and alloting duties to the different vehicles and also making payments E in that connection. It is also the evidence of this witness that though the first respondent was really a Jan Sangh candidate, the Party did not incur any expenditure on his election. According to him even the expenses of the public meeting arranged by Jan Sangh in support of the respondent at Kaithal on March 4, 1972 were met by the respondent himself.

F

The evidence of Pawan Kumar does not seem to be altogether consistent and some of his statements also appear to contradict what certain other witnesses have said. Pawan Kumar has stated that 4 or 5 days after the result of the election was declared he met the G respondent when the latter came to the Jan Sangh office to have his return of election expenses prepared. The result of election was declared on March 13, 1972. On March 14, the witness claims to have seen the respondent at Kaithal to request him to declare that he would join the Jan Sangh legislature party. On March 16, he requested the respondent on telephone to attend the meeting of the Party to be H held the next day. On March 17, the meeting was held but the respondent did not attend. On March 19, the witness again went to Kaithal to have a discussion with the respondent and on March 25, the show-cause notice was issued. From the above list of dates which appear from Pawan Kumar's own evidence it is difficult to reconcile his other statement that about 4 or 5 day after the respondent was declared elected, the respondent came to the Jan Sangh office to have the return of election expenses prepared in consultation with the witness and the President of the Jan Singh Party. Pawan Kumar had also stated that there was no telephone in the office of the Jan Sangh Party at Kaithal. This is contradicted by P.W.18 B. L. Khanija, Accounts Officer, Telephones, South Division, Ambala. His evidence

based on his office record is that the Secretary, Bhartiya Jan Sangh, Kaithal, was the subscriber of the Kaithal Telephone No. 497 from February 16, 1972 to March 15, 1972. This was, P.W.18 added, a casual connection and was installed in the house of Rattan Lal. P.W.18 further stated that at the time of installation of the telephone Rs. 180 were charged as advance rent, Rs. 30 as installation charges and Rs. 1000 as adjustable security, and that after adjusting the outstanding bills against the security deposit of Rs. 1000, the balance was refunded to the subscriber. The total expenses incurred by the subscriber of this telephone came to Rs. 385. The original application dated February 4, 1972 for installation of this casual telephone connection was also produced in Court, an English translation of (Ext.P.W.18/3) reads as follows :

"Bhartiya Jan Sangh,
Kaithal Mandal.

Kaithal, dated the 4th February, 1972.

To,

The S.D.O.
Telephones,
Karnal.

Subject :—New connection for the office of Bhartiya Jan Sangh.

It is submitted that a telephone connection is required for the office of Bhartiya Jan Sangh at Kaithal for one and half month. Kindly get the same installed.

Yours faithfully,
Sd/- Amar Nath, M.C.
Bhartiya Jan Sangh,
Kaithal"

Pawan Kumar's assertion that Jan Sangh did not spend any money on the respondent's election is belied not only by R.W.13 Punnu Ram but also by another witness who deposed for the petitioner. It is P.W. 24 Inderjit. He is an employee of a shop at Kaithal that lends loudspeakers on hire. P.W. 24 states that one Raj Kumar, whom he described as a supporter of the Jan Sangh, came to his shop to hire loudspeakers on March 4, 1972 and he paid charges a few days thereafter. This witness proves the receipt, Ext. P.W.24/1, for Rs. 101/50p. given by him. The receipt appears to have been made out in the name of the respondent, Charan Dass. The witness states that though the receipt was in the name of Charan Dass he never came to the shop for the loudspeakers and the hiring charge was paid by Raj Kumar. P.W. 24 adds that he had written the name of Charan Dass on the receipt at the instance of Raj Kumar.

The inconsistent statements of Pawan Kumar and the contradictions between his evidence and that of P.W.24 Inderjit who also was a witness for the petitioner, to say nothing about the evidence of

A Punnu Ram, though he too was a member of the Jan Sangh, suggests that either Pawan Kumar had no knowledge of at least some of the facts he was talking about or that some of his statements were deliberately false.

On the evidence discussed above the findings recorded by the B High Court may be summarised as follows :—

1. Duni Chand went to Delhi on or about February 17, 1972 and hired the two jeeps in question at the rate of Rs. 130 per day for each jeep with effect from February 18, 1972. Duni Chand had C paid Brij Mohan Rs. 2000 towards the hire of the two jeeps and a further sum of Rs. 3500 to Puran Chand (P.W. 5) on March 4, 1972 at Kaithal. Altogether Duni Chand spent Rs. 6240 for the two jeeps. Both the jeeps were used in the respondent's election campaign from February 18 to March 11, 1972 under the charge and direction of Duni Chand.

D

2. The note-book, Ext. P.W.8/5, belonged to the respondent's son Anil Kumar Gupta and the notes on Civics that this book contains were in his handwriting. The other entries in the note-book relating to matters concerning the election of the respondent were made partly by Duni Chand and partly by Raghbir Chand. The note-book E is not a document maintained in the regular course of business and contains certain haphazard entries which cannot be used for foisting liability on any one without definite and clear proof of the genuineness and correctness of these entries. The witnesses who proved some of the entries in the note-book, Duni Chand and Raghbir Chand, have both denied that the entries are genuine. However, their evidence that F the entries were fabricated about a month after the election and in the circumstances stated by them is not believable. The fact that the evidence of these two witnesses was false in this regard does not necessarily prove the correctness or genuineness of these entries. Another circumstance which makes the note-book suspect is the fact G that the numbers of the various jeeps mentioned in the note-book are recorded therein in the same sequence in which they appear in the petitioner's diary. She claims to have noted in her diary the numbers of the jeeps working for the respondent several months before the note-book was made available to her. This is difficult to explain away as coincidental.

H

Having found that the two jeeps had been hired by Duni Chand to be used in the respondent's election campaign, and were in fact so used, the question that the High Court set for itself to answer was, whether on these findings it could be said that the first respondent incurred or authorised the expenditure of Rs. 6240 spent on account of these two jeeps. There was some dispute before us as to whether the allegation of authorisation could arise on the issue as framed. It was contended on behalf of the respondent that reading issue No. 14, which is the relevant issue, carefully in the light of the statements made in the various sub-paragraphs of paragraph 14 of the election petition, it would appear that it raised only the question whether the

respondent himself incurred the expenditure. However, it seems to us that before the High Court the parties proceeded on the footing that the issue covered both the allegations and the scope of the enquiry cannot be limited at this stage. A

The High Court answered the question in the negative on the following reasons. All the witnesses deposing for the pettioner said that the payments in respect of the jeeps were made by Duni Chand. Of course there are entries in the note-book, Ext. P.W. 8/5, which suggest that part of the expenditure incurred on account of the two jeeps was paid by the respondent's brother Arjan Das, and also that some amount was taken from the respondent himself. But the High Court found that the note-book which does not appear to have been kept in the regular course of business was not a reliable document in the absence of independent evidence proving the correctness of the entries therein. The High Court was further of the view that from the fact that the respondent used these jeeps once or twice, it did not necessarily follow that he paid for their hire, it being well-known that candidates at an election very often use their supporters' vehicles. There is no evidence of the respondent incurring or any direct evidence of his authorising the expenditure incurred for the jeeps. The respondent did not produce his account of election expenses, his case being that the papers containing the accounts were destroyed by him after the return of election expenses was prepared. It was argued on behalf of the petitioner, relying on the case of *D. P. Mishra* v. *Kamal Narain & Anr.*,(1) that from the aforesaid fact an adverse inference should be drawn against the respondent and it must be held that the expenditure was really incurred by the respondent himself. The High Court pointed out that in *D. P. Mishra's* case the worker of the returned candidate who was supposed to have incurred the expenditure in question in that case was not examined, and this circumstance considered along with the fact that the returned candidate had not chosen to produce his accounts proved the case against him. In the instant case, however, Duni Chand who made the payments was examined but he denied that the respondent authorised him to make these payments. This part of Duni Chand's evidence was accepted by the High Court though he was not considered a straightforward witness and a substantial part of his evidence was disbelieved. The decision in *D. P. Mishra's* case (supra) indeed turns on facts somewhat different from the facts of this case. The High Court has found that there is also no reliable circumstantial evidence in this case to connect the respondent with the expenditure incurred by Duni Chand. B C D E F G H

It now seems settled that the findings of fact recorded by the High Court should not be disturbed in an appeal under section 116-A of the Act unless there was some serious error in these findings. It appears from the record of this case that the learned Judge of the High Court recorded his impression about the demeanour of the witnesses whenever he thought necessary. The findings based solely on the demeanour of the witnesses cannot be reversed in appeal, but

(1) [1971] 1.S.C.R. 9.

A the conclusions of fact reached upon a consideration of the probabilities can be tested to see if they contain any serious error. We find no reason to disturb any of the findings of fact recorded by the High Court summarized above. These findings appear to be justified on the evidence which we have discussed. We agree with the High Court's views on the credibility of the witnesses. We also agree
B that the note-book is not a reliable document in the absence of independent evidence to prove the genuineness of the entries therein. What we have to decide is, whether the High Court was right in its conclusion from these findings that the first respondent did not authorise Duni Chand to spend any amount on the hiring of the two jeeps
C in question. The allegation that Duni Chand was in-charge of the transport arrangements for the respondent if true, would be a circumstance which, taken with other circumstances, might indicate that it was the respondent's money that Duni Chand was authorised to spend. If the note-book is left out of consideration, as it must be, the other evidence on record does not appear to us to be sufficient
D to prove this allegation.

It is well established that a charge of corrupt practice is quasi-criminal in nature and must be proved beyond reasonable doubt.
E There is no direct evidence that the respondent himself paid for the two jeeps. The question is whether it is possible to infer from the circumstances discussed above that Duni Chand was authorised by the respondent to spent the said amount of Rs. 6240 for these vehicles. In the case of *Samant N. Balkrishna & Anr.* v. *George Fernandez & Ors.*[1] this Court held that the circumstantial evidence
F led to prove corrupt practice must exclude every hypothesis except that of guilt. What are the circumstances here from which one could infer that Duni Chand was authorised by the respondent ? It is alleged that Duni Chand was in-charge of the transport arrangement for the respondent's election. That Duni Chand worked for the respondent at the election is proved. It has also been found that he
G hired the two jeeps and used them for the respondent's election campaign. It may also be said that the letter, Ext. P. W. 3/1, suggests that Duni Chand used to operate at times from the respondent's election office. But from these circumstances only, would the inference be justified that the respondent put Duni Chand incharge of his transport arrangements ? The High Court has taken the view, which we
H endorse, that at an election people work for a candidate prompted by various motives even if they are not employed by the candidate to work for him. The story that Duni Chand along with six or seven other persons formed a group to support the respondent has been disbelieved, and rightly. But, even then, it is difficult to say with certainly that it was the respondent who engaged Duni Chand to be incharge of the vehicles used in his election campaign. There is no direct evidence that the respondent put Duni Chand in funds and one hardly expects to find such evidence in a case like this. We have found that the note-book is not a reliable document. It is therefore

(1) [1969] 3 S.C. R. 603 at 637.

not possible to rely on the entries in the note-book which seem to suggest that a part of the money paid for the two jeeps was taken from the respondent. The High Court did not believe that the note-book was entirely fabricated but felt it was unwise to rely upon it. The mystery of the note-book has not been solved, but the unsolved mystery cannot be used as proof to bring home the charge against the respondent. Whose money it was then that Duni Chand spent ? It is not believable that Duni Chand spent his money, but the only alternative is not that it was the respondent's money which he authorised Duni Chand to spend. It has been found that the Jan Sangh incurred some expenditure on the respondent's election campaign in spite of the denial of Pawan Kumar that the Party did not spend anything. We do not find it possible to accept the statement of Punnu Ram, Joint Secretary of the Kaithal Unit of the Jan Sangh Party, that the total amount spent by the Party on the respondent's election was between Rs. 400 and Rs. 500. Apparently, the High Court also did not rely on this part of Punnu Ram's evidence. It is not necessary however to investigate what amount exactly came from which source. It is clear that the respondent's election campaign received financial assistance from other sources, which makes it difficult to reach the conclusion that none but the first respondent himself spent the amount in question. We do not know what our conclusion would have been had the case fell to be decided on the probabilities only, but is not possible to say that it has been proved beyond reasonable doubt that Duni Chand paid for the jeeps from the money he received from the respondent and the respondent authorised the expenditure. Counsel for the appellant said that it would be hardly possible ever to get hold of such evidence in an election dispute. That may be so, but this is how the law stands. We agree with the High Court that the allegation of corrupt practice against the respondent has not been proved beyond reasonable doubt.

A B C D E F

The appeal is dismissed; considering all the circumstances of the case, we make no order as to costs.

V.P.S. *Appeal dismissed.*