D. VENKATA REDDY

v.

R. SULTAN & OTHERS

February 24, 1976

[P. K. GOSWAMI AND S. MURTAZA FAZAL ALI, JJ.]

Representation of the People Act (43 *of* 1951), *ss.* 81 *and* 86(5)—*Application for amendment of petition for giving material particulars—To what extent may be allowed—Amendment allowed in violation of s.* 86(5) *without objection—If could be challenged in appeal to Supreme Court.*

Election petition—Approach of court to evidence regarding corrupt practices—Tainted and interested evidence—Necessity for corroboration—Attitude of court to poll verdict—Material particulars and evidence, scope.

The respondent, who was a Muslim, was the Congress candidate for election to the State Legislative Assembly. He challenged the appellant's election, and the High Court allowed the election petition on three grounds (1) that the appellant committed a corrupt practice under s. 123(1), Representation of the People Act, 1951 in that he offered a bribe to the respondent to induce him not to contest the election; (2) that the appellant committed corrupt practice under s. 123(3A) in that he issued and *personally* distributed a pamphlet containing communal allegations with a view to create ill-feeling among the voters; and (3) that the appellant's *agents* distributed that pamphlet with the appellant's contest.

Allowing the appeal to this Court,

HELD : (1)(a) While it is necessary to protect the purity of elections by ensuring that the candidates do not secure the valuable votes of the people by undue influence, fraud, communal propaganda, bribery or other corrupt practices, the valuable verdict of the people at the polls must be given due respect and should not be disregarded or set at naught on vague, frivolous or fanciful allegations, or on evidence which is of a shaky or pre-varicating character. [450F-G, H]

(b) The onus lies heavily on the election-petitioner to make out a strong case for setting aside the election. He must, in order to succeed, plead all material particulars and prove them by clear and cogent evidence. [450G; 451K]

(c) The allegations of corrupt practice being in the nature of a quasicriminal charge, must be proved beyond reasonable doubt. When the election-petitioner seeks to prove the charge by purely partisan evidence of his workers, agents, supporters and friends, the court would have to approach the evidence with great care and caution, and would, as a matter of prudence, though not as a rule of law, require corroboration of such evidence from independent quarters, unless the court is fully satisfied that the evidence is so creditworthy and true, that no corroboration to lend further assurance is necessary. [451A-C]

(d) The attempt of the agents or supporters of the defeated candidate is always to get the election set aside by fair means or foul and the evidence of such witnesses, must, therefore, be regarded as highly interested and tainted evidence. [451C-D]

(e) When, the evidence led by the election-petitioner, even though consistent, is fraught with inherent improbabilities and replete with unnatural tendencies, the court may refuse to accept such evidence, because consistency alone is not the conclusive test of truth. It is, however, difficult to lay down any rule of universal application and each case will have to be decided on its own facts. [451D-E]

Bhanu Kumar Shastri v. *Mohan Lal Sukhadia & Ors.*, [1971] 1 S.C.C. 370; *Rahim Khan* v. *Khurshid Ahmed & Ors.*, [1974] 2 S.C.C. 660; *Abdul Hussain Mir* v. *Shamsul Huda and another*, [1975] 4 S.C.C. 533 and *Ghasi Ram* v. *Dal Singh & Ors.* [1968] 3 S.C.R. 102, followed.

A (2) In the present case, the High Court correctly adumbrated the legal propositions but had not correctly applied them to the facts and evidence. It also applied different standards in appreciating the evidence. It readily accepted the evidence of two witnesses on one issue while rejecting as partisan and interested on another issue. [453A-D]

(3) The cumulative effect of the inherent improbabilities and the intrinsic infirmities of the evidence for the respondent, and the unnatural conduct B of the respondent and his witnesses, lead to the conclusion that the respondent had failed to prove the allegation of the offer of bribe. [465B-C]

(a) The respondent bore a serious animus against the appellant and yet it was alleged that the appellant offered him a bribe even though they were not well-acquainted with each other. [458G; 460D]

(b) The offer was alleged to have been made in the presence of two witnesses, in a crowded place, and pressed upon the respondent even though he C spurned it. The High Court is not right in its view that an offer could have been made as alleged, and that only for actual payment a secluded place could be chosen. [458F-H; 459B-C]

(c) The High Court is also not right in its view that because the appellant was at the Taluk Office when the respondent went there the appellant would have offered the bribe. On the contrary, the respondent, for that very reason, might have concocted the story of the offer of bribe. [457E-F]

D (d) The High Court failed to consider, (i) that while it is easy to make an allegation of offer of bribe, it is very difficult for the person against whom it is made to rebut it; [457G-H]

(ii) that the allegation was sought to be proved by the respondent, by the partisan and highly interested testimony of two witnesses and was sought to be corroborated by the equally interested testimony of two others to whom the incident was alleged to have been narrated shortly thereafter; and that the respondent had not examined any independent witness, even though such wit- E nesses were available; [457H-458A]

(iii) that the appellant would not have attempted to bribe the respondent, because, the respondent had the support of the Congress, and even if he withdrew, the Congress would have put up another candidate. [461B-C]

(iv) that the respondent had not complained about the bribe either to the local Congress committee or to the police; and [461F-G; 464D-E]

F (v) that there was no reference either to the corroborating witneses or to the narration of the incident of the offer of the bribe to those witnesses, in the petition. If it were true it is unlikely that the respondent would have omitted a reference to it. [464A-B]

(e) Further, the fact of repetition of the story of the offer of bribe to the two corroborating witnesses was a material particular or an additional fact pertaining to the averments in the petition and not a mere matter of evidence. Since it was not mentioned in the petition it has to be excluded from considera- G tion. [464B-C]

(f) As the alleged offer is an electoral offence of a quasi-criminal nature, the onus of proving it was initially on the respondent, but he failed to discharge the onus. [464G-H]

(g) If such a serious allegation is allowed to be proved against a successful candidate by partisan, interested and improbable evidence, without any independent corroboration, it would give an easy handle to the defeated candidates H to destroy the sanctity of the electoral process. [464A-465B]

(4) The respondent has not adduced any satisfactory evidence that the offending pamphlet was printed by the appellant or distributed by him *personally*, whereas, the appellant has, through his evidence, though of a

negative character, shown that the probabilities are that the appellant did not have it printed and that he did not distribute it. [491E-F] A

(a) Distribution of an objectionable pamphlet is a corrupt practice under s. 123(4) and the pamphlet in the present case, containing communal propaganda comes under s. 123(3A) as well. [471G-H; 474E-F]

(b) The allegation of publishing such an objectionable pamphlet is easy to make and difficult to rebut. The court must subject the tainted and interested evidence regarding its publication to the strictest scrutiny because it can be printed by the defeated candidate in any press with secrecy, circulated among his supporters and he can make them say that it was printed, published and circulated by the successful candidate. [471H-472B] B

Baburao Bagaji Karemoga and ors. v. *Govind & Ors.*, [1974] 3 S.C.R. 719, followed.

(c) The appellant had denied the printing or publication of the pamphlet and the respondent failed to discharge his initial onus of proving that the appellant printed and distributed it. [472D-E] C

(d) Since there were a considerable number of Muslim voters in the constituency, the appellant would not have taken the risk of offending them by circulating such a pamphlet. The respondent, on the other hand, had a strong motive to reverse the appellant's election by any possible means, and he had his own press. [472H; 474F-G, H]

(e) The High Court was wrong in its approach that since the pamphlet contained anti-Muslim propaganda it would not have been printed by the respondent. An unsuccessful candidate, motivated by the desire to unseat a successful candidate, would stood to any device to show that the successful candidate was guilt of a corrupt practice. [472G] D

(f) Merely because the respondent disclosed the name of the press where he got some other pamphlets printed, it could not be contended by him that he would have disclosed the name of the press which printed the offending pamphlet if he got it printed. The contents of the pamphlet were so offensive that the printer would not have taken the risk of disclosing the name of the press and expose it to legal action. [491B-C] E

(g) Most of the witnesses for the respondent who stated that the pamphlet was given to them before or during the election were of the turn coat type, that is, persons who claimed to have worked for the appellant but gave evidence for the respondent; and the others were in some way or the other totally interested in the respondent or connected with him. [479F]

Rahim Khan v. *Khurshid Ahmed and others*, [1974] 2 SCC 660, followed. F

(h) One witness gave evidence that he received the pamphlet from his wife during the election, but since she was not examined, the evidence was rightly rejected by the High Court. [490H-491A]

(i) The High Court held that the pamphlet was in existence before or during the election, applying the test that the pamphlet was produced by the witness who stated that it was given to him by the appellant. But that cannot be a safe criterion because, the respondent could have handed it over to the witness before he gave evidence. Further, the probabilities are that it was not then in existence. [471C-E] G

(*i*) Respectable witness of the appellant gave evidence that no such pamphlet was circulated, for then they would have known about it. Also, considering its provocative language, it is unlikely that the Government officials posted to prevent any communal propaganda by the candidates would have failed to notice it. [473B; 474G-H]

(*ii*) Further, the respondent would not have failed to give in the petition or in the material particulars furnished by him later, the names of the persons from whom he came to know about the pamphlet. The respondent collected materials for filing the election petition soon after the appellant was declared H

A elected and more than a month before filing it. In spite of such a full and complete opportunity before filing the petition, and later when the appellant applied for further particulars regarding the distribution of the pamphlet, the respondent merely gave the names of certain villages and the dates on which the pamphlet was alleged to have been distributed; but he did not mention the name of a single person to whom the pamphlet had been distributed by the appellant *personally*, even though, according to the evidence led by the respondent, he was in possession of such damaging evidence against the appellant. [470B-471B; 475A-B; 490C-E]

B

(*iii*) The respondent had made several complaints to the police about various matters but did not complain about the pamphlet either to the police or the local Congress committee. If his silence was due to legal advice, as contended, he should have given the explanation in the petition or examined the lawyer who gave such an advice. [487E-F; 490E-F]

(5) (a) Section 81 of the Representation of the People Act, 1951, provides that the election petition shall be filed within 45 days from the date of the C election of the returned candidate. Therefore, any allegation of corrupt practice which is not made in the election petition filed within the time allowed by the statute cannot be allowed by way of an amendment under s. 86(5) because, that would amount to extending the period of limitation peremptorily fixed by the Act. The ambit of s. 86(5) is extremely narrow. It requires three essential conditions which are the *sine qua non* to be fulfilled before an amendment could be allowed, namely (i) that the amendment seeks merely to *amplify* the particulars, of a corrupt practice; (ii) that the corrupt practice, whose particulars are to be given, must have D been *previously alleged* in the election petition itself, and (iii) that the amendment is, in the opinion of the court necessary for ensuring a fair and effective trial of the petition. The power of amendment or amplification is thus restricted only to amplify the material particulars of any corrupt practice *which had been previously alleged in the election petition*, and the court has no power to allow an amendment by permitting the election petitioner to amplify the material particulars of a corrupt practice *which was not specifically pleaded in the petition;* for, that would amount to introducing a new corrupt practice after E the expiry of the period of limitation—a result which was never envisaged by the statute. [466H; 467B-C, E-H]

Samant N. Balakrishna etc. v. *George Fernandez & ors. etc.*, [1969] 3 S.C.R. 603, followed.

(b) In the present case, reading the averments in election petition as a whole, however broadly or liberally they are construed, the irresistible inference is that the respondent had laid special stress on the fact of distribution of the pamphlet by the appellant *alone*. Wherever the averment of distribution of the F pamphlet is made in the petition, it is stated that it was done by the appellant. There is absolutely no averment that the pamphlet was distributed by the agents, workers or supporters or friends of the appellant. Hence, it could not be contended by the respondent that the averments include not merely distribution by the appellant, but also by his agents and workers. Since there was no pleading at all by the respondent that the pamphlet was distributed by his agents, etc., particulars supplied by the respondent in his application for amendment of his petition on the point of distribution by agents, etc., must be completely dis G regarded. The court also has no jurisdiction to allow such particulars to be given with respect to the fact that the pamphlets were distributed by the agents and supporters of the appellant. Therefore, the amendment, in respect of the third ground on which the judgment of the High Court was based, should not have been allowed, the particulars mentioned by the respondent on this item must be disregarded, the evidence given by him should be excluded from consideration, and the finding of the High Court should be set aside. [468H-469D, E-F]

H (c) The attention of the High Court was not drawn by the appellant to this aspect, but, as it is a pure question of law and amounts to violation of the statutory mandate in s. 86(5), this Court can decide on the correctness of the order of the High Court, allowing particulars regarding distribution of pamphlet by the agents etc., of the appellant. [469D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1170 of 1973. A

(From the judgment and order dated the 25-4-1973 of the Andhra Pradesh High Court in Election Petition No. 4 of 1972)

P. Basi Reddy, C. Sadasiva Reddy, G. Narayana Rao and *Mrs. Vimala Markendeyuu,* for the appellant.

B. Shiv Shankar, A. V. Rangam, Miss A. Subhashini and *K. Venkata Ramiah,* for the respodents. B

The Judgment of the Court was delivered by

FAZAL ALI, J.—This is an appeal under s. 116A of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') by Venkata Reddy who was Respondent No. 1 in the election petition C filed before the High Court of Andhra Pradesh. The appeal arises out of the general elections held to the Andhra Pradesh Legislative Assembly in March 1972 from Gooty Assembly constituency. The appellant Venkata Reddy, T. Papa Sab and R. Sultan (the election petitioner before the High Court) applied for Congress ticket for the Gooty Assembly Constituency seat. The District Congress Committee, Anantapur recommended the names of R. Sultan, Papa Sab and D Ramachandra Goud but did not recommend the name of the appellant. The Andhra Pradesh Provincial Congress Committee, however, recommended the name of R. Sultan the first respondent alone. This recommendation appears to have been accepted by the All India Congress Committee which gave the Congress ticket to the first respondent R. Sultan on February 1, 1972 as a result thereof the other candidates, namely, the appellant Venkata Reddy, T. Papa Sab and E Venkata Subbayya decided to contest the election as independent candidates, whereas Venkata Naidu got the Congress (O) ticket. The polling to the aforesaid constituency was held on March 8, 1972 and counting was done on March 12, 1972 on which date the result was also declared. The appellant was declared elected having secured 19,974 votes polled in the constituency. Respondent No. 1 R. Sultan lost by a narrow margin of 471 votes having polled 19,503 F votes. The other respondents were accordingly defeated and we are not at all concerned with their cases.

Respondent No. 1 R. Sultan filed an election petition before the Andhra Pradesh High Court on April 20, 1972 which was assigned to Sriramulu, J., who tried the election petition. For the sake of convenience we shall refer to Venkata Reddy as the appellant G and R. Sultan who was the election petitioner before the High Court as the contesting respondent. The contesting respondent sought to challenge the election of the appellant on various grounds and alleged that the appellant had indulged in a large number of corrupt practices as envisaged by s. 123 of the Act, namely, bribery, corruption, communal propaganda, impersonation of voters, excessive expenses, improper rejection and reception of ballot papers etc. The H contesting respondent also filed an application before the Trial Judge that as number of irregularities were committed in the rejection and acceptance of the ballot papers, the Court should allow scrutiny.

A and recounting of the votes. The Court, after considering the evidence of the parties on this point, eventually allowed the application, but ultimately it held that even if there was any irregularity it had not caused any material change in the election. The petition was resisted by the appellant who emphatically denied all the allegations made by the contesting respondent and submitted that the elections were free and fair and that the appellant had not indulged in any B corrupt practice at all. The appellant further pleaded that all the allegations made by the contesting respondent were figment of his imagination and were totally untrue. On the question of corrupt practices, particularly the distribution of objectionable pamphlets, as the contesting respondent had not given full and material particulars in his election petition, the appellant filed an application on July 7, 1972 praying that the Court may direct the contesting respondent C to file better particulars by way of amendment. The Court directed the contesting respondent to supply fresh particulars and accordingly the contesting respondent filed his application for amendment by incorporating material particulars on August 29, 1972. On the pleadings of the parties the High Court framed as many as 35 issues in the present case. After taking the evidence of the parties the Court decided all the issues against the contesting respondent except D issues Nos. 7, 26 and 27 which were decided in favour of the contesting respondent. In view of the findings given by the learned Judge the election of the appellant was set aside, but the learned Judge refused to grant the relief to the contesting respondent for being declared as duly elected to the seat in question. It is against this decision that the appellant has come up to this Court in appeal.

E Mr. P. Basi Reddy learned counsel for the appellant has assailed before us the findings of the High Court on issues Nos. 7, 26 and 27 as these were the only issues which affected the appellant. Mr. B. Shiv Sankar, learned counsel for the contesting respondent has endeavoured to support the judgment of the High Court by submitting that the findings arrived at by the High Court were based on a correct and proper appreciation of the evidence and the facts and F circumstances of the record. In a democracy such as ours, the purity and sanctity of elections, the sacrosanct and sacred nature of the electoral process must be preserved and maintained. The valuable verdict of the people at the polls must be given due respect and candour and should not be disregarded or set at naught on vague, indefinite, frivolous or fanciful allegations or on evidence which is of a shaky or prevaricating character. It is well settled that the G onus lies heavily on the election petitioner to make out a strong case for setting aside an election. In our country election is a fairly costly and expensive venture and the Representation of the People Act has provided sufficient safeguards to make the elections fair and free. In these circumstances, therefore, election results cannot be lightly brushed aside in election disputes. At the same time it is necessary to protect the purity and sobriety of the elections by ensuring that H the candidates do not secure the valuable votes of the people by undue influence, fraud, communal propaganda, bribery or other corrupt practices as laid down in the Act.

Another principle that is equally well settled is that the election petitioner in order to succeed must plead all material particulars and prove them by clear and cogent evidence. The allegations of corrupt practices being in the nature of a quasi-criminal charge the same must be proved beyond any shadow of doubt. Where the election petitioner seeks to prove the charge by purely partisan evidence consisting of his workers, agents, supporters and friends, the Court would have to approach the evidence with great care and caution, scrutiny and circumspection, and would, as a matter of prudence though not as a rule of law, require corroboration of such evidence from independent quarters, unless the Court is fully satisfied that the evidence is so credit-worthy and true, spotless and blemishless, cogent and consistent, that no corroboration to lend further assurance is necessary. It has to be borne in mind that the attempt of the agents or supporters of the defeated candidate is always to get the election set aside by means fair or foul and the evidence of such witnesses, therefore, must be regarded as highly interested and tainted evidence which should be acted upon only if the Court is satisfied that the evidence is true and does not suffer from any infirmity. Where, however, the evidence led by the election petitioner even though consistent is fraught with inherent improbabilities and replete with unnatural tendencies, the Court may refuse to accept such evidence, because consistency alone is not the conclusive test of truth. Judicial experience shows that sometimes even a tutored or parrot-like evidence can be consistent and free from discrepancies and yet not worthy of credence. It is, however, difficult to lay down a rule of universal application because each case will have to be decided on its own facts, but in appreciating the evidence the broad features mentioned above must be borne in mind and have been emphasised by this Court in a large catena of decisions—a few of them may be referred to here.

A B C D E

In *Bhanu Kumar Shastri* v. *Mohan Lal Sukhadia and others,*(1) this Court observed as follows :

> "Allegation of corrupt practice is a charge of criminal nature. The provisions in the Representation of the People Act are intended to preserve the purity of the election, but at the same time these provisions should not be subverted for the impure purposes of maligning candidates who happen to be in the Government on the eve of the election,
>
> x x x
>
> The Court is always vigilant to watch not only the conduct of the candidates and to protect their character from being defamed but also to see that the character and conduct of the public is not corroded by corrupt motive or evil purposes of candidates. The genuine and *bona fide* aims and aspirations of candidates have to be protected on the one hand and *mala fide* abuse and arrogance of power will have to be censured on the other."

F G H

(1) [1971] 1 S.C.C. 370.

A Similarly in *Rahim Khan* v. *Khurshid Ahmed & Ors.*(1) Krishna Iyer, J., speaking for the Court most lucidly and aptly observed as follows :

> "An election once held is not to be treated in a light-hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions
B on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare
C void an election which has already been held unless clear and cogent testimony compelling the court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has
D been concluded."

To the same effect is the decision of this Court in *Abdul Hussain Mir* v. *Shamsul Huda and Another*(2) where this Court observed as follows :

> "Even so, certain basic legal guidelines cannot be lost sight of while adjudging an election dispute. The verdict
E at the polls wears a protective mantle in a democratic polity. The Court will vacate such ballot count return only on proof beyond reasonable doubt of corrupt practices. Charges, such as have been imputed here, are viewed as quasi-criminal, carrying other penalties from losing a seat, and strong testimony is needed to subvert a Returning Officer's declaration. x x x x x
>
F When elections are challenged on grounds with a criminal taint, the benefit of doubt in testimonial matters belongs to the returned candidate.

Similarly in *Ghasi Ram* v. *Dal Singh & others*(3) while emphasizing the standard of proof in an election case for a corrupt practice of bribery, Hidayatullah, J., as he then was, speaking for the Court observed thus :

G

> "In *Anjaneya Reddy* v. *Gangi Reddy and others*—21 E.L.R. 247—it was held that the proof required to establish a corrupt practice must be almost of the character required to establish a criminal charge.
>
> In our opinion the law requires that a corrupt practice involving bribery must be fully established. The
H evidence must show clearly that the promise or gift directly or

(1) [1974] 2 S.C.C. 660. (2) [1975] 4 S.C.C. 533.

(3) [1968] 3 S.C.R. 102.

indirectly was made to an elector to vote or refrain from voting at an election." A

We have gone through the judgment of the High Court, particularly on issue Nos. 7, 26 and 27 and find that although in his prelude to the discussion on issue No. 7 the learned Judge has referred to the various authorities and has correctly adumbrated the legal propositions he does not appear to have applied the principles enunciated in the decisions correctly to the facts or the evidence covered by this issue. It also appears that the learned Judge has applied two different standards in appreciating the evidence with respect to issues Nos. 7, 26 & 27 and other issues on which he has given findings against the contesting respondent. For instance, while he has refused to accept the evidence of a partisan or an interested witness being staunch supporters of the contesting respondent on other issues, particularly issue No. 8, he has, while dealing with the evidence of the witnesses on issue No. 7 which suffers from the self-same infirmity, readily accepted their evidence without even noticing the deep interest that these witnesses had in supporting or bolstering up the case of the contesting respondent. We shall, however, refer to this aspect of the matter after we have dealt with the evidence led by the parties on these issues. B C D

In the light of the principles enunciated by us we shall now proceed to discuss and examine the findings of the High Court on issue No. 7 and the evidence led thereon by the parties. Issue No. 7 was cast by the Trial Judge thus :

> "Did the 1st respondent (the appellant) commit a corrupt practice under s. 123(1) of the Representation of the People Act by making an offer to pay Rs. 25,000/- to the petitioner and trying to induce him not to contest the election ?" E

To begin with we would like to refer to the pleadings of the contesting respondent in order to show the exact material particulars averred in the election petition itself. The allegation which is the subject-matter of issue No. 7 is to be found in paragraph-12 of the election petition appearing at p. 23 of the Paper Book (Vol. I). R. Sultan the contesting respondent had alleged that he had applied for a Congress ticket for Gooty Assembly constituency and was ultimately granted the said ticket by the Central Election Committee, Delhi on February 1, 1972. Although the D.C.C. ad-hoc Congress Committee, Anantapur, had recommended the name of the contesting respondent and others, the Provincial Congress Committee recommended the name of the contesting respondent alone which was finally accepted by the Central Election Committee at Delhi. After having been given the Congress ticket the contesting respondent returned to Hyderabad on February 2, 1972 and a day later he was contacted on telephone by Mustafa of Guntakal one of his supporters and had a talk with him regarding the filing of his nomination paper. The contesting respondent told Mustafa that he would be reaching Gooty on February 4, 1972, for filing his nomination papers for the Gooty Assembly constituency and that Mustafa also should reach Gooty on the morning of February 4, 1972. We might pause for a little while F G H

A here and notice two important averments. In the first place it was the definite case of the contesting respondent that his visit to Gooty on February 4, 1972, was for the purpose of filing his nomination papers, but it appears from the evidence that he did not file his nomination on this date but some time later. Secondly during his talk with Mustafa on the telephone the contesting respondent *did not* ask him to bring P.W. 29 Nabi Saheb and P.W. 33 Chinna Bhemanna
B with him to Gooty. Resuming the thread of averments in the election petition, the further facts are that the contesting respondent reached Gooty on February 4, 1972 at about 10-00 A.M. and proceeded to Bharat Sewak Samaj—hereafter referred to as 'B.S.S.'—Building which is sometimes described as an office and sometimes as a Guest House in the evidence. P.Ws. 29 and 33 and some others were waiting for the contesting respondent at the B.S.S. Building. The
C contesting respondent then, along with P.Ws. 29 and 33 went to Taluk office for obtaining a copy of the voters list for the Gooty Assembly constituency and reached the Taluk office at about 11-00 A.M. While he was returning from the Taluk office the appellant met the contesting respondent and wished him and after talking for some time he made an offer of Rs. 25,000/- to be paid to the contesting respondent if he agreed to withdraw from the election and
D help the appellant. This offer is said to have been made in the presence of P.Ws. 29 and 33. Even after the contesting respondent refused the offer he was again persuaded by the appellant to consider the same and on his final refusal the appellant threatened that the contesting respondent was bound to face defeat in the elections. It was also alleged that the appellant took the refusal of the offer as a challenge and spent money lavishly to win the election. The last
E part of the averment which forms the subject-matter of issue No. 8 and certain other issues has not been accepted by the High Court. These are the only particulars mentioned in the petition with respect to the offer of bribe which is the subject-matter of issue No. 7. In the course of the evidence, however, a new fact was sought to be introduced by the contesting respondent, namely, that P.Ws. 29 & 33 returned to the B.S.S. Building after the contestng respondent refused
F the offer of the appellant and then the two witnesses P.Ws. 29 & 33 narrated the entire incident to P.W. 34 Mustafa and P.W. 22 Ramachandraiah and others. This fact was introduced in order to lend corroboration to the evidence of the contesting respondent and that of P.Ws. 29 and 32. But as this was undoubtedly a material particular or an additional fact pertaining to the averments in paragraph-12 of the election petition and the same not having been mentioned
G has to be completely excluded from consideration. We shall, however, dilate on this matter when we deal with the evidence led by the contesting respondent on this point.

In short, therefore, the story regarding the offer of bribery and the occasion for it may be conveniently divided into three stages :

Stage No. I.

H This stage starts with the decision of the Central Election Committee, Delhi, in giving the Congress ticket to the contesting respondent and as consequence thereof his arrival at Hyderabad on February 2, 1972. On reaching Hyderabad the contesting respondent

who is P.W. 16 received a telephone call from Mustafa who was asked to go to Gooty on February 4, 1972 in order to meet the contesting respondent. Accordingly the contesting respondent reached Gooty on February 4, 1972 and accompanied by P.Ws. 29 and 33 left for the Taluk office. This is the end of the drama enacted in Stage No. I. The facts are proved by P.W. 16 the contesting respondent himself, by Mustafa P.W. 34 and by P.Ws. 29 and 33. It may be mentioned here that all the witnesses examined to prove the facts covered by this stage are interested witnesses who are staunch supporters of the contesting respondent and there appears to be a serious discrepancy in the evidence led on this point. It appears from the evidence that when the contesting respondent reached B.S.S. Building apart from P.Ws. 29 and 33, P.Ws. 34 and 22 were also present. P.Ws. 34 and 22 however did not accompany the contesting respondent to the Taluk Office. P.W. 22 Ramachandraiah says that he did not go to the Taluk office because of ill health and P.W. 34 Mustafa says that he did not go as he had some work at the Railway Station. It may also be noticed that in paragraph-12 of the election petition where the material particulars are given by the contesting respondent, while it is clearly mentioned that when the contesting respondent reached Gooty P.Ws. 29 & 33 were there, the name of P.W. 22 is not specifically mentioned as being present at Gooty. It would appear from the evidence of P.W. 22 that he was a great friend and supporter of the contesting respondent and even the learned Judge has commented on the deep interest which P.W. 22 had shown in order to support the case of the contesting respondent. It is, therefore, difficult to believe that if P.W. 22 would have been present at the B.S.S. Building how could the contesting respondent have omitted to mention the name of his most confident friend and supporter in paragraph-12 of his election petition. This taken together with the fact that P.W. 22 had given a lame excuse for not having accompanied the contesting respondent to the Taluk office clearly throws a considerable amount of suspicion on the presence of P.W. 22 at Gooty on February 4, 1972. Similarly, while P.W. 34 Mustafa gives a specific reason why he had not accompanied the contesting respondent to the Taluk office, namely, that he had some work at the Railway Station, which is also deposed to by P.W. 16 himself, yet this fact which was within the knowledge of the contesting respondent at that very time is not mentioned in the election petition. Another important circumstance that has to be noticed is that whereas in the election petition it is the definite case of the contesting respondent that he had to go to Gooty on February 4, 1972 for filing his nomination papers, the evidence shows that he did not file the nomination papers at all on that date but he merely applied for the voters list of the constituency. This is important, because, while it may have been relevant for P.Ws. 29 & 33 to accompany the contesting respondent to the Taluk Office if it was the question of his filing nomination papers, their presence at the Taluk office was not at all necessary if the contesting respondent had merely to take a copy of the voters list which could have been done by him alone.

P.W. 16 the contesting respondent has no doubt proved the facts mentioned above. Similarly P.W. 34 has supported the contesting

A respondent regarding his having a talk with the contesting respondent on the telephone and his being asked to go to Gooty on February 4, 1972. P.Ws. 29 and 33 have also said that they were asked by P.W. 34 Mustafa to accompany him to Gooty in order to meet the contesting respondent. Thus so far as the facts in stage No. I are concerned, whether they are true or not, they do not appear to be very relevant for the purpose of issue No. 7.

B *Stage No. II*

This brings us to stage No. 2 which is the bulwark and the bedrock of the case of the contesting respondent regarding the offer of bribe said to have been made by the appellant to him. So far as this stage is concerned the only evidence that the contesting respondent has given consists of the testimony of P.Ws. 29 and 33 apart from C his own evidence. We would first deal with the evidence of P.Ws. 29 and 33 before coming to the evidence of the contesting respondent himself. P.W. 29 Nabi Saheb appears to be one of the most interested witnesses and a great friend and supporter of the contesting respondent. He admits at p. 498 of the Paper Book (Vol. III) that both the witness and Mustafa P.W. 34 worked for the contesting respondent during the recent general elections. He then says that Mus- D tafa approached him on February 3, 1972 and requested him and P.W. 33 Chinna Bhemanna to accompany him to Gooty. The witness further admits that the contesting respondent R. Sultan and he had been friends for the last ten years. A suggestion was given by the appellant that his younger brother Khaja Hussain was godown keeper of the B.S.S. at Guntakal and he was arrested on the charge of selling E goods and that the contesting respondent Sultan had helped him. The witness admits at p. 501 of the Paper Book (Vol. III) that the police had no doubt arrested his younger brother who was a Godown Keeper of the B.S.S. and he further admits that the case was later shown out. He, however, denied the suggestion that Sultan helped his brother. It is, however, admitted by Sultan P.W. 16 at p. 307 of the Paper Book (Vol. II) that he was the Secretary of the B.S.S. and was, F therefore, obviously in a position to help the brother of the witness. In these circumstances, therefore, to begin with, the Court has to approach the evidence of this witness with great care and caution because he was not only a close friend of the contesting respondent, but was also his supporter and worker and he was interested in giving evidence which may result in the election of the appellant being set aside. He states that when the contesting respondent decided to go to the G Taluk office on February 4, 1972, P.W. 34 Mustafa did not accompany the party because he had some work at the Railway Station with the result that P.W. 33 and the witness only accompanied the contesting respondent. The witness further stated that he accompanied the contesting respondent to the Taluk office but P.W. 33 Ramachandraiah stayed behind as he was not keeping good health. Thereafter when the contesting respondent came out of the Taluk office the party H went towards the place where the car was parked when on the way the appellant met them and greeted the contesting respondent. There the appellant is said to have offered Rs. 25,000/- if the contesting respondent agreed not to contest the election. Sultan laughed and

spurned the offer. The witness as also P.W. 33 Chinna Bheemanna told the appellant that Sultan the contesting respondent did not require the money, when the appellant repeated the offer which was again refused. Thereafter the party returned to the B.S.S. Building where P.W. 22 Ramachandraiah and P.W. 34 Mustafa and others were waiting in the office of the B.S.S. Both the witness and P.W. 33 narrated the incident relating to the offer of bribe to Mustafa P.W. 34 and Ramachandraiah P.W. 22. A B

P.W. 33 Chinna Bheemanna who is the other witness has narrated more or less the same facts regarding their reaching the B.S.S. Building at Gooty, their accompanying the contesting respondent to the Taluk office, the offer of bribe made by the appellant and the narration of the facts to P.Ws. 22 and 34. P.W. 16 the contesting respondent had also deposed to these facts. C

The learned Judge has accepted the evidence of these witnesses because he thought that there was no major discrepancy in the testimony of these witnesses. Further more, the learned Judge, has, on a consideration of the evidence of P.Ws. 23, 38, 39 and 41, held that both the contesting respondent and the appellant were present at Taluk office on February 4, 1972 near about 12 Noon and from their presence he appears to have presumed that the offer of bribe must have been made. We are, however, unable to agree with this somewhat unusual process of reasoning. The mere fact that the contesting respondent and the appellant happened to be present at the Taluk office on February 4, 1972, at about the same time does not necessarily lead to the inference that the appellant must have made the offer of bribe which is quite a different fact and has to be proved separately and independently. Indeed if one has to wander in the domain of conjectures, then it can be equally said of the contesting respondent that the presence of the appellant at the same day and time at the Taluk office furnished him an occasion to concoct and bolster up a case of the alleged offer of bribe by the appellant to the contesting respondent and in order to prove this allegation the contesting respondent had no difficulty by enlisting the support not of any independent witness but his own stooges hirelings or friends and supporters. While, therefore, we agree with the finding of the learned Judge that the appellant and the contesting respondent were no doubt present at the Taluk office on February 4, 1972 it by no means follow that the story of the offer of bribe is true on this ground alone. In fact the learned counsel for the appellant also has not disputed the fact that the contesting respondent or the appellant were actually present in the Taluk office on February 4, 1972 at the relevant time— a fact which is proved by independent witnesses and documentary evidence. What the learned Judge has overlooked is the fact that while it is very easy to make an allegation of an offer of bribe, it is very difficult for the person against whom the allegation is made to rebut the same. The learned Judge also failed to consider that the actual offer alleged to have been made by the appellant to the contesting respondent has been proved only by the partisan and highly interested testimony of P.Ws. 29 and 33 which was sought to be corroborated by equally interested testimony of P.Ws. 22 and 34, and no attempt was made to examine any independent witness even D E F G H

A though the evidence was that at the B.S.S. Building, apart from P.Ws. 22 and 34 other persons were also present. So far as P.W. 29 is concerned we have shown that he is a thoroughly interested witness being a close friend of the contesting respondent. P.W. 33 Chinna Bheemanna is also a partisan witness. He admits that he was a worker of Sultan during the last elections. He further admits at p. 536 of the Paper Book (Vol. III) that he tried to procure the B evidence of one Sunkanna for the contesting respondent in this respect. The witness deposed thus :

> "Sultan asked Sunkanna to come and give evidence in this case. Yesterday when I was coming here I approached Sunkanna. But at that time he was not in his house. Then I sent another person to Sunkanna asking him to come to Hyderabad to give evidence."

C This shows the extent to which the witness could go in order to support the case of the contesting respondent. The witness further admits that he was a member of the B.S.S. and therefore a colleague of Sultan. It seems to us that the evidence of P.Ws. 16, 29 and 33 regarding the offer of bribe in the circumstances mentioned by them is inherently improbable. In the first place it would appear from the topography of the spot where the talk between the contesting res- D pondent and the appellant took place that the place was a crowded one and was situated in the heart of the Taluk office surrounded by the District Munsif Court. According to P.W. 16 apart from the District Munsif's Court there were four other offices in that compound and that there was a crowd near the District Munsif's Court. He also admits that there was a canteen in between the Taluk office and the District Munsif's court where people were sitting. Similarly E P.W. 29 has admitted that the canteen was situated only at a distance of 10 to 15 yards from the place where the talk regarding the offer of bribe took place and that the District Munsif's Court was at some distance from the canteen. He also admits that the litigant public sit under the trees near the Munsif's Court. The distance between the Munsif's Court and the place where Sultan's car was parked would be about 30 to 40 yards. In view of these surroundings it is F most unlikely that the appellant would make an offer of bribe to the contesting respondent in such an open and crowded place where he could be exposed by Sultan at any time. The offer of bribe was undoubtedly a criminal act and the Munsif's Court being near at hand the appellant would have faced a grave risk in making such an offer. Further more, it appears that the appellant was not fully acquainted with Sultan the contesting respondent though he may have seen him G once or twice. No one makes an offer of bribe to strangers without knowing their reaction. Further more, it is impossible to believe that even if the offer of the bribe is made it would be made in the presence of the witnesses who were accompanying Sultan so that the person who makes the offer of bribe would be a party to the creation of clear evidence against him. It is absolutely against the normal and prudent human conduct to make such an offer at a crowded place in H the presence of the two witnesses who were known to be the supporters of the contesting respondent and persist in making the offer in spite of the blunt refusal of the same by the contesting respondent. On the other hand the natural conduct of the appellant would have

been to take the contesting respondent to a secluded spot where he would not be seen or heard by any body and then make the offer. In fact P.W. 16 clearly suggests that the appellant had taken him aside but he says that the other witnesses did not part with his company and also came there and yet the appellant did not object to their presence. We find it difficult to believe that the offer of bribe would be made by the appellant in these circumstances. The learned Judge, however, has tried to draw an artificial distinction between an offer of bribe and a payment of actual bribe. He seems to think that whereas an offer of bribe could be made in a crowded place in the presence of the witnesses as no money was to be passed, yet when actual payment of bribe was to be made it should have been done in a secluded place. This reasoning of the learned Judge is not at all intelligible to us. Under the provisions of s. 123(1)(A) of the Act an offer of bribe or payment of actual bribe are both electoral offences amounting to corrupt practices which are to be visited with similar consequences. The offences of an *offer* of bribe or of actual payment of bribe were of the same nature and it cannot be said that one is a lesser crime and the other is a graver one. Neither the criminal law nor the election statute seek to draw any distinction between an offer of bribe or actual payment of bribe. In these circumstances, therefore, whether it is an offer of bribe or it is a payment of actual bribe, normal human conduct requires that if a person intends to commit such an offence he would not do so in a crowded place but would try to find out a secluded spot so that complete secrecy is maintained.

Another important circumstance that makes the story put forward by the witness regarding the offer of bribe absolutely incredible is the absence of any genesis or occasion for the presence of the witnesses at the Taluk office or for that matter for accompanying the contesting respondent Sultan to the Taluk Office. To begin with we have already indicated that in paragraph-12 of the election petition the main purpose of the visit of the contesting respondent Sultan to the Taluk office was to file his nomination papers. Indeed if this was the purpose of his visit one could have understood the significance of Sultan's asking his supporters accompanying him to the Taluk office because the filing of nomination papers is one of the most important and momentous steps in the electoral process. From the evidence of the witnesses as also that of Sultan the contesting respondent it is clear that Sultan did not at all go to the Taluk Office for the purpose of filing his nomination papers but had only applied for a copy of the voters list : For this purpose the presence of P.Ws. 29 and 33 was not at all necessary. Even P.W. 29 says at p. 502 of the Paper Book (Vol. III) that Sultan had told the witness that he was going to the Taluk Office to purchase the voters list. Further more, even though the witnesses accompanied Sultan they do not appear to have given him any worthwhile assistance. Both P.Ws. 29 and 33 categorically state that they did nothing at all at the Taluk Office except sitting in the verandah. P.W. 29 states as follows :

> "We sat in the front verandah of the Taluk Office along with Sultan. With whom Sultan spoke and what he did in the Taluk Office, I do not know."

A It would, therefore, be clear from the evidence of this witness that except for sitting in the verandah there was absolutely no occasion for their presence at the Taluk Office, nor there was any earthly reason why Sultan should have taken them to the Taluk Office except for the fact that he wanted them to witness the offer of bribe. This, however, could not be possible, because there was nothing to show that Sultan knew before hand that he would meet the appellant B at the Taluk Office and that the appellant would make an offer of bribe to him. This circumstance, therefore, which is in some variance from the allegation made in the pleadings smacks of a concoction and throws a good deal of doubt on the presence of these two witnesses at the Taluk Office. We have already indicated that both P.Ws. 29 and 33 are thoroughly interested witnesses. P.W. 33 apart from being a worker of Sultan is a member of the B.S.S. of which the C contesting respondent Sultan is the Secretary.

The only other witness so far as the facts in Stage No. II are concerned is P.W. 16 the contesting respondent himself. P.W 16 is the most interested witness who also bears serious animus against the appellant. It would appear from his evidence that the appellant held, at the instance of one K. Suryanarayana Reddi, filed a complaint D against the contesting respondent for cheating and that the contesting respondent had filed a petition in the High Court for quashing the investigation in pursuance of the complaint. He further stated that he had also filed a criminal complaint against Suryanarayana Reddi in the Magistrate's Court at Gooty and P.Ws. 22 and 29 had been cited as witnesses in that case. Apart from the animus, it would also appear that P.Ws. 22 & 29 are stock witnesses of the contesting E respondent to be utilised wherever and whenever necessary. Further more, P.W. 16 narrates an incident at the Travellers Bungalow at Anantapur which happened before the general elections of 1972 in the presence of Challa Subbarayudu, where again the appellant seems to have requested him not to contest the elections. This fact is not mentioned in the election petition at all and it seems to us that it has been concocted for the first time in the evidence of P.W. 16 in F order to give credence to his version that the appellant had made an offer of bribe.

Another inherent improbability in the version given by P.W. 16 and P.Ws. 29 & 33 regarding the offer of bribe is that the appellant himself was aspiring for the Congress ticket and was therefore fully conscious and aware of the influence that the Congress party wielded G and the resources it possessed. He was also aware that the contesting respondent Sultan was a Congress nominee having been granted the Congress ticket by the Central Election Committee and he had, therefore, the support of such a big party behind him. Would he, under these circumstances, ever dare to think of making an offer of bribe and that too at a crowded place in the presence of the witnesses, of all persons to the contesting respondent and persist in that offer H even after the same was refused by the contesting respondent. These two circumstances appear to introduce an element of intrinsic infirmity in the evidence led by the contesting respondent on this point and the story appears to us to be too good to be true.

Another important circumstance that makes the story of the contesting respondent on this point improbable and untrue is the fact that the appellant should have made an offer of bribe as early as February 4, 1972. According to the evidence the last date for filing nomination papers was February 8, 1972 and for withdrawal was February 11, 1972. If the appellant had succeeded in persuading the contesting respondent to accept his offer and withdraw from the contest, even then that would not have served the purpose of the appellant because with the resourcefulness that the Congress party possessed it could have set up any other nominee immediately who would have filed the nomination papers by February 8. In these circumstances if the appellant was really bent upon seeing that no Congress candidate entered the field he would have made the offer of bribe, if any, either on February 7, 1972 or February 8, 1972, so that no chance was given to any party to sponsor any other candidate.

Lastly the conduct of the contesting respondent is a clear pointer to the incredibility of the version propounded by him and his witnesses on this point. Assuming that the version given by the contesting respondent is true, then it was a very serious matter so far as the prestige of the Congress party was concerned. By offering bribe to a Congress nominee the appellant had sought to throw a challenge to the party itself. In his election petition P.W. 16 has also mentioned the fact that the appellant had thrown a challenge on his refusal that he would be defeated. It would appear from the evidence of P.W. 22 at p. 428 of the Paper Book (Vol. III) that after returning from the Taluk Office and having lunch, the witness, Sultan and Mustafa went to Anantapur. It would appear from paragraph-12 of the election petition that the District Congress Committee office is situated at Anantapur. P.W. 29 also states at p. 500 of the Paper Book (Vol. III) that P.W. 22, Mustafa P.W. 34 and Sultan left for Anantapur. P.W. 34 Mustafa also states at P. 548 of the Paper Book (Vol. III) that when the incident about the offer of bribe by the appellant was narrated to him he said that it was monstrous to sell away the Congress ticket. Indeed if this was the feeling of P.W. 16 and his supporters, then it is impossible to believe that had the offer been made by the appellant at Gooty either Sultan or his supporters would not make a complaint of this serious incident to any of the office bearers of the District Congress Committee at Anantapur, particularly when they went to Anantapur soon after the incident from Gooty. The fact that no such report or information was sent to the District Congress Committee at Anantapur, or any where else, throws a mountain of cloud of suspicion and doubt on the version put forward by the contesting respondent. The learned Judge has noticed some of the improbabilities mentioned above but not all of them and seems to have brushed them aside on trivial grounds and has readily accepted the evidence of the P. Ws merely because there was no major discrepancy in the evidence of the witnesses. In our opinion, the approach made by the learned Judge was not correct. If the broad probabilities and the unusual conduct of the contesting respondent and the witnesses rendered the version presented by them unbelievable or doubtful, then the Court could not refuse to take notice of such

A circumstances. For these reasons, therefore, we find ourselves unable to agree with the learned Judge that the offer of bribe at Gutty Taluk Office as alleged by P.W. 16 and P.Ws. 29 & 33 was made by the appellant to P.W. 16. We therefore disbelieve the facts sought to be proved by the contesting respondent in Stage No. II.

This bring us to the last scene of the drama, namely Stage No. III. B According to the contesting respondent, after the offer made by the appellant to the contesting respondent was refused by him in the Taluk Office, the contesting respondent along with P.Ws 29 and 33 returned to the B.S.S. Building at Gooty. On return to the B.S.S. Building they found P.Ws. 22 Ramachandraiah and P.W. 34 Mustafa there. According to P.Ws 29 and 33 the witnesses were laughing and when they were asked by P.Ws. 22 & 34 they narrated the entire C incident which had happened at the Taluk Office. According to P.W. 16, however, when he arrived at the B.S.S. Office after his visit to the Taluk Office P.Ws 22 and 34 asked him as to what is the news, and instead of replying to them P.Ws 29 & 33 narrated the incident which happened at the Taluk Office, namely, the offer of the bribe. P.Ws 29 & 33 have, however, given a slightly different version. But what is most extraordinary in this incident is that D whereas in ordinary circumstances we would have expected Sultan the contesting respondent himself who was the hero of the whole show and to whom the offer of the bribe had been made by the appellant to narrate the facts to his friends P.Ws. 22 and 34, but instead of that Sultan remained absolutely silent and P.Ws. 29 & 33 were assigned the role of doing the talking. This conduct of the contesting respondent is not at all understandable. Again there does not appear to be any E good reason why P.W. 22 Ramachandraiah and P.W. 34 Mustafa were left behind and not taken to the Taluk Office. According to P.W. 22 he did not go because of ill health. This appears to us to be a figment of his imagination. If P.W. 22 in spite of his ill health could come all the way from his house to the B.S.S. office and waited there right from morning until the afternoon, there was no reason why he should not have accompanied the contesting respondent F to the Taluk Office. P.W. 34 gives a lame excuse that he had some work at the Railway station and, therefore, he could not accompany the party to the Taluk Office. It seems to us that as the allegation regarding the offer of bribe was a totally untrue one and no independent witnesses would have been prepared to support this version, the contesting respondent hit upon a plan to prove this allegation through his supporters and friends by making two of them to overhear G the alleged offer of bribe and the other two namely P.Ws. 22 & 34 to remain at the B.S.S. Office to hear the narration of the said offer and thereby produce a corroborative evidence. Otherwise we do not see any earthly reason why P.W. 34 Mustafa who was playing a leading part in the drama enacted on February 4, 1972 and who was responsible for getting the programme from the contesting respondent and collecting his other friends at Gooty should not have accompanied H the contesting respondent to the Taluk Office in order to help him in getting the forms and stayed away on the lame excuse that he had some work at the Railway Station. It appears to us that according

to the evidence of P.W. 16 as also the averments made by him in the election petition P.W. 34 Mustafa was taking a very prominent part in the affairs of the contesting respondent on his return to Hyderabad. It was he who telephoned the contesting respondent, brought his companions to Gooty, stayed at Gooty and accompanied the contesting respondent and others to Anantapur, and yet he did not accompany the contesting respondent to the Taluk Office. It seems to us that P.Ws. 22 & 34 were deliberately made to stay at the B.S.S. Office so as to corroborate the story put forward by P.Ws. 16, 29 and 33 being persons to whom the story was immediately narrated. Apart from this there does not appear to be any object for keeping these two persons at the B.S.S. office.

Finally the evidence shows that apart from P. Ws. 22 & 34 there were other persons present at the B.S.S. Office but none of them has been examined to support the version given by P.Ws. 22 & 34. These two witnesses were close friends and supporters of P.W. 16 and their evidence would not inspire any confidence. So far as P.W. 22 is concerned he admits that he worked for the election of Sultan at Gooty and supported the Congress party. He further admits that he toured various villages with Sultan. He was also the counting agent of Sultan having been appointed by him as per Ext. A-18. He was also an employee of the B.S.S. and had been appointed by Sultan. Sultan was the Managing Director of Brim Stone Rubber Products Ltd. The witness was a partner of the firm which had the sole agency for the products of the aforesaid firm. Apart from that the witness admitted that he was a staunch supporter of the Congress. Even the learned Judge has clearly observed that this witness was keenly interested in the future of Sultan and in this connection, while dealing with issue No. 8, the learned Judge observed as follows :

> "Because of the great enthusiasm shown by this witness (P.W. 22) in the witness-box while giving evidence on behalf of the petitioner, which is still fresh in my mind, I am unable to accept the evidence of this witness as disinterested evidence."

The learned Judge, however, appears to have readily believed the evidence of this witness on issue No. 7 forgetting the scathing remarks which he himself had made on the demeanour of this witness with regard to the issue No. 8.

Similarly P.W. 34 Mustafa is also an equally interested witness and admits that he worked for the Congress and he had been a friend of Sultan for ten years. He also admits that he had worked for Sultan even in the 1962 elections. In these circumstances, we are unable to place any reliance on the evidence of this witness.

In fact if the evidence of P.Ws. 16, 29 & 33 is disbeileve do the question of the offer of bribe, then the evidence of P.Ws. 32 & 34 also falls automatically, because if there was no offer of bribe there was nothing to be narrated to these witnesses. Finally, the most important ground on which the evidence of these two witnesses has to be completely excluded is the fact that P.Ws. 29 & 33 narrated the incident

A to these two witnesses which is undoubtedly a very material particular and it is conspicuous by its complete absence in paragraph-12 of the election petition where the facts on which issue No. 7 was framed have been pleaded. The facts deposed to by P.Ws. 22 and 34 are not merely a matter of evidence but a very important material particular which seeks to corroborate the interested evidence of P.Ws. 16, 29 & 33 and it is difficult to believe that had this been true the contesting respondent would not have cared to mention this fact in his petition. In this connection it may be interesting to note that P.W. 16 has admitted in his evidence at p. 303 of the Paper Book (Vol. II) that on 15th or 16th of March, 1972 the Returning Officer had suggested to the contesting respondent to file an election petition if he was defeated and since then the witness was making enquiries to collect material for filing an election petition. If this was really so and the contesting respondent was careful enough to gather the materials long before he filed his election petition, it is difficult to comprehend that he would make no mention of this important fact in his petition.

Lastly the contesting respondent states in his evidence at p. 304 of the Paper Book (Vol. II) that in respect of the threats said to have been administered by the appellant on 5th or 6th of March, 1972, he had drawn the attention of the police-officer and had contacted the Deputy Superintendent of Police of Guntakal. Indeed if the contesting respondent was so vigilant would he not have drawn the attention of any police officer of Gooty to the offer of bribe made by the appellant or the threats or challenge thrown by him to the contesting respondent?

In view of the improbabilities and the compelling circumstances mentioned above, we are clearly of the opinion that the contesting respondent has not been able to prove his allegation regarding the offer of bribe made by the appellant to the contesting respondent at the Taluk Office as alleged by him beyond any shadow of doubt. The learned Judge has observed that as against the evidence produced by the contesting respondent there is a bare denial by the appellant. The learned Judge seems to have laid stress on the words that the appellant alone has denied the allegation and seems to suggest that he has not examined any witnesses in support of the denial. The learned Judge failed to appreciate that according to P.Ws. 16, 29 & 33 there was no one else at the time when the appellant had made the offer of bribe to the contesting respondent excepting four persons, namely, P.W. 16 Sultan, P.W. 29 Nabi Saheb, P.W. 33 Chinna Bheemanna and the appellant. The three persons deposed in support of the story of the contesting respondent and the appellant was, therefore, left alone who denied the story completely. It could not be expected of the appellant to concoct or procure witnesses when there could be none. As the offer of bribe was an electoral offence amounting to a corrupt practice which partakes of a quasi-criminal nature, the onus was initially on the contesting respondent to prove this fact. As the contesting respondent has failed to prove this fact, he must fail.

Indeed if such serious and momentous allegations made against successful candidate are allowed to be proved by interested and partisan evidence as in the present case without any corroboration and where

the evidence adduced is highly improbable and unworthy of credence, it would give an easy handle to any defeated candidate to unseat a duly elected candidate by collecting evidence of his friends and supporters which will undoubtedly destroy the very sanctity and purity of the electoral process. Thus in view of the cumulative effect of the compelling circumstances, the inherent improbabilities the intrinsic infirmities and the unnatural human conduct disclosed by the evidence produced by the contesting respondent leads us to the inescapable conclusion that the contesting respondent has failed to prove the allegation of the offer of bribe which is the subject-matter of issue No. 7 beyond any shadow of doubt. Therefore issue No. 7 is decided against the contesting respondent and the finding of the learned Judge in favour of the contesting respondent on issue No. 7 is set aside.

This bring us now to the discussion of issues Nos. 26 & 27, the only other issues which remain to be decided in the present appeal. Issues Nos. 26 and 27 may be extracted thus :

> (26) "Whether the 1st respondent (the appellant) committed a corrupt practice under section 123 (3-A) of the Representation of the People Act by issuing a pamphlet dated 20-2-1972 to create ill-feelings among the voters on religious grounds and if so, has it materially affected the result of the election of the petitioner as stated in para 39 of the Election Petition ?"
>
> (27) "Whether the said persons distributed the pamphlet with the consent of the 1st respondent (the appellant) ?"

The facts comprising issues Nos. 26 & 27 are mentioned in paragraph-39 of the election petition and relate to two separate and independent allegations—(1) the distribution of objectionable pamphlets of the nature of Ext. A-1, which contained communal propaganda and sought to persuade the voters to vote on purely communal grounds, personally by the appellant to various persons in various villages; and (2) the distribution of such pamphlets by the workers and agents of the appellant with his consent to a number of persons belonging to a large number of villages. It would, therefore, be seen that the two types of allegations are essentially different and cannot be said to form one composite allegation. We have adverted to this aspect of the matter because Mr. Basi Reddy for the appellant has vehemently contended before us that no foundation has been laid by the contesting respondent in his election petition regarding the distribution of the pamphlets by the workers and agents of the appellant as indicated in item (2) supra. It was further contended that this matter does not merely constitute a material particular of a specific fact which should have been mentioned in the petition but is a separate item of fact itself and as there is no allegation to this effect in the election petition the same should be excluded from consideration and the evidence given by the contesting respondent on this point must be completely ignored. The learned counsel for the contesting respondent, however, sought to repel this argument on the ground that a broad construction of the petition filed by the contesting respondent would

A clearly show that sufficient foundation has been laid in the petition for these allegations which were later amplified by giving the material particulars after the application for amendment of the petition was made by the contesting respondent before the High Court. In these circumstances we would like to dispose of the contention of the parties on this point before proceeding to the merits of issues Nos. 26 & 27.

B In paragraph-39 of the election petition, as it stood before the amendment, the contesting respondent alleged that the appellant had issued a pamphlet dated February 20, 1972 in furtherance of his election prospects and the pamphlet issued was distributed among the voters throughout the Gooty Assembly constituency which caused ill-feelings among the voters on religious grounds. It was further alleged that by distributing the pamphlet the appellant indulged in creating C hatred and ill-feelings among the voters in the constituency and therefore committed corrupt practice. In order to understand the import of the allegations made in paragraph-39 of the petition it may be necessary to extract the relevant part of it thus :

> "39. The petitioner states that *Ist respondent (the appellant) issued a pamphlet* dated 20-2-72 for the furtherD ance of his election prospects and the pamphlet issued *and distributed among the voters* throughout the Gooty Assembly Constituency has caused lot of set back and it created ill-feelings among the voters on religious grounds. He criticised the Muslim voters on religious and communal lines. * * * The petitioner received several complaints in the village that the pamphlet issued and distributed by 1st respondent has caused feelings of enmity, hatred between Hindus and Muslims and this has created disharmony among the voters. * * * The pamphlet issued and *distributed by the Ist respondent* is herewith enclosed as annexure No. 5."

F We have underlined the portions on which we propose to lay particular emphasis. It would be seen from the perusal of the allegations made in paragraph-39 extracted above that there is absolutely no averment that the pamphlet issued by the appellant was distributed by the agents, workers or supporters or friends of the appellant. The only fact averred in paragraph-39 of the petition is that the pamphlet in question was distributed by the appellant alone. This fact is clearly evident from the portions extracted and underlined by us. In these G circumstances it was rightly contended by the learned counsel for the appellant that there was no pleading at all by the contesting respondent that the pamphlet was distributed by his agents, workers or supporters and therefore the particulars supplied by the contesting respondent in his application for amendment on this point must be completely disregarded. In order to appreciate this contention it may be necessary to examine the concerned provisions of the Act. Section H 81 of the Act clearly provides that the election petition shall be filed within forty-five days from the date of election of the returned candidate and runs thus :

"81. (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates or their election are different, the later of those two dates."

It is obvious, therefore, that any allegation of corrupt practice which is not made in the election petition filed within the time allowed by the statute cannot be allowed by way of an amendment under s. 86(5) of the Act, because that would amount to extending the period of limitation peremptorily fixed by the Act. Power of amendment of the election petition as contained in s. 86(5) of the Act is clearly confined to allowing the particulars of any corrupt practice *which has been set out and clearly alleged and specified in the election petition.* Sub-section (5) of s. 86 of the Act runs thus :

"The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition".

It would be seen that the ambit of this statutory provision is extremely narrow so that the power of amendment or amplification is restricted only to amplify the material particulars of any corrupt practice which had been previously alleged in the election petition. In other words, the sub-section requires three essential conditions to be fulfilled before an amendment could be allowed—(1) that the amendment seeks merely to amplify the particulars of a corrupt practice; (2) that the corrupt practice whose particulars are to be given must have been previously alleged in the election petition itself; and (3) that the amendment is, in the opinion of the Court, necessary for ensuring a fair and effective trial of the petition. Thus the three conditions mentioned above are the *sine qua non* for the exercise of the power by the court under sub-s. (5) of s. 86 of the Act. It is, therefore, manifest that the Court has no power to allow the amendment by permitting the election petitioner to amplify a material particular of a corrupt practice which is not specifically pleaded in the election petition itself for that would amount to introducing a new corrupt practice after the expiry of the period of limitation—a result which was never envisaged or contemplated by the statute. This matter fell for determination of this Court in *Samant N. Balakrishna etc. v. George Fernandez and others etc.*,(1) where Hidayatullah, C.J., speaking for the Court observed as follows :-

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

A "The power of amendment is given in respect of particulars but there is a prohibition against an amendment which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. One alleges the corrupt practice in the material facts and they must show a complete cause of action. If a petitioner has omitted to allege a corrupt practice he cannot be permitted to give particulars of the corrupt practice. * * *
* In the scheme of election law they are separate corrupt practices which cannot be said to grow out of the material facts related to another person. Publication of false statements by an agent is one cause of action, publication of false statements by the candidate is quite a different cause of action. Such a cause of action must be alleged in the material facts before particulars may be given. One cannot under the cover of particulars of one corrupt practice give particulars of a new corrupt practice. They constitute different causes of action.

Since a single corrupt practice committed by the candidate, by his election agent or by another person with the consent of the candidate or his election agent is fatal to the election, the case must be specifically pleaded and strictly proved. If it has not been pleaded as part of the material facts, particulars of such corrupt practice cannot be supplied later on. * * * *

If the material facts of the corrupt practice are stated more or better particulars of the charge may be given later but where the material facts themselves are missing it is impossible to think that the charge has been made or can be later amplified. This is tantamount to the making of a fresh petition."

In our opinion the facts of the present case and the nature of the averment contained in the election petition filed by the contesting respondent is clearly covered by the ratio of the decision cited above. It may be pertinent to note that in this case also the question is whether publication of false statements was by the candidate himself or by his agents and since what has been pleaded is only the distribution of the pamphlet by the appellant/candidate alone and not by his agents or workers with his consent, the Court had no jurisdiction to allow particulars to be given with respect to the fact that the pamphlet was distributed by the agents and supporters of the appellant to various persons in various villages as given in the schedule. The learned counsel for the contesting respondent conceded the central weakness in this part of the case but he tried to persuade us to hold that the words "pamphlet issued and distributed among the voters throughout the Gooty Assembly Constituency" tend to include not merely the distribution of the pamphlet by the appellant himself but also by his agents and workers. We are, however, unable to agree with this contention because reading the averments contained in paragraph-39 as a whole, however broadly or liberally the same may be construed, the irresistible

inference is that the contesting respondent has laid special stress on the fact of distribution of the pamphlet by the appellant alone. At least at three places underlined by us in the extracted portion of the pleadings of the contesting respondent he has over-emphasized the fact that the distribution of the pamphlet was made by the appellant himself. Wherever the averment of distribution of the pamphlet is made in the election petition it is said that the same was done by the 1st respondent before the High Court, namely the appellant. In these circumstances, therefore, we are not in a position to agree with the interpretation sought to be placed by Mr. Shiv Shankar learned counsel for the contesting respondent on the pleadings of the contesting respondent which in fact is not borne out by the allegations mentioned in paragraph-39 as extracted above. The learned counsel for the contesting respondent with fairness and ingenuity did not pursue the matter further and submitted that if his contention regarding the wider interpretation which he sought to put is not accepted, then he would concede that the amendment in respect of issue No. 27 should not have been allowed and the particulars mentioned by the contesting respondent on this item must be disregarded and the evidence given by the contesting respondent should be excluded from consideration. It appears, however, that as the attention of the learned Judge does not appear to have been drawn to this aspect of the matter he allowed the amendment as also the evidence on issue No. 27 and also proceeded to give his finding thereon. As, however, this is a pure question of law and amounts to violation of the statutory mandate contained in s. 86 (5) of the Act, this Court has to give effect to the violation of the statutory provision. For those reasons, therefore, we hold that there is no pleading by the contesting respondent that the pamphlet was distributed by the agents or workers of the appellant with his consent to various persons. The order of the High Court, therefore, along with the particulars given by the contesting respondent in item 1A in the schedule to the application for amendment is set aside and the said amendment is deleted from the election petition. As a legal consequence thereof the evidence given by the contesting respondent on issue No. 27 has to be excluded from consideration and the finding of the learned Judge on issue No. 27 is hereby set aside and issue No. 27 is deleted. This disposes of the finding of the High Court so far as issue No. 27 is concerned.

Before dealing with the facts comprising issue No. 26 it may be necessary to mention a few circumstances which may be extremely relevant for examining the probative value of the case of the contesting respondent on this issue. The election petition was filed before the High Court on April 20, 1972 i.e. about a month and a few days after the results of the election were announced. The contesting respondent has clearly admitted in his evidence at p. 303 of the Paper Book (Vol. II) that as far back as March 15, 1972 he had started making enquiries and collecting materials for filing the election petition. The witness stated thus :

> "All this talk metween Ravindra Choudhary and myself took place at about 3-00 P.M. at the Gutti Bus-Stand on 15th or 16th of March 1972. It was on the very day when the

A Returning Officer suggested to me on phone to file an Election Petition that that idea entered into my mind to file an Election Petition in case I was defeated. Since then I was making enquiries to get material for filing an election petition. Whenever I used to get any information regarding the elections, I used to go to those places to make enquiry."

B To begin with, therefore, the contesting respondent had started making full and frantic preparations for filing election petition a month before he filed the same. In these circumstances it can be safely presumed that before filing the election petition the contesting respondent must have collected all the materials which enabled him to give the necessary details and material particulars of the corrupt practices which he sought to allege against the appellant and which formed the C bedrock of his case. Against this background therefore we should have expected the contesting respondent to mention not only the corrupt practices committed by the appellant but also to give various particulars thereof without taking recourse to the necessity of having to amplify the particulars by virtue of an amendment and that too when reminded of the same by the appellant himself. So far as the allegations in paragraph-39 are concerned it would appear that prior D to the amendment no particulars or details of distribution of the pamphlet had been mentioned by the contesting respondent at all. All that was said was that the appellant had distributed the pamphlet of a communal nature in order to incite communal feelings between the Hindus and the Muslims. It was not stated to whom the pamphlets were distributed by the appellant and on what dates were the pamphlets distributed by the appellant, to the villagers. Neither the names of E the villages nor of the persons to whom they were distributed were mentioned. In fact when we deal with the evidence on this point it would appear that before filing the election petition the contesting respondent had been fully apprised of the fact that the pamphlets had been distributed to various persons in various villages and yet he failed to give any further particulars in the election petition. Continuing the F historical background of the election petition the position is that two days after the election petition was filed the High Court closed for vacation on April 22, 1972 and re-opened on June 10, 1972. Even after the re-opening no attempt was made by the contesting respondent to file an application for amendment nor to amplify the material particulars of the corrupt practices which he alleged in paragraph-39 of the petition. Strangely enough it was the appellant who filed an applica- G tion on July 27, 1972, i.e. after about a month and a half later, wherein he prayed to the Court that the contesting respondent may be directed to file better particulars of the corrupt practice alleged by him. Even after the contesting respondent was reminded by the appellant through his application the contesting respondent took full one month to file his application for amendment which was subsequently allowed by the Court. By virtue of the amendment the only particulars that H the contesting respondent gave were the names of the villages given in a schedule where the appellant distributed the pamphlet and the dates on which the pamphlet was distributed. In spite of having been given a full and complete opportunity to disclose the essential details

and the material particulars of the distribution of the pamphlet by the appellant, the contesting respondent did not mention the name of a single person to whom the pamphlet had been distributed by the appellant, whereas the evidence led by him shows that some of the individuals to whom the pamphlet is alleged to have been given by the appellant had actually informed the contesting respondent of this fact well before the election petition was filed and quite a few months before the amendment was asked for. This belated conduct on the part of the contesting respondent speaks volumes against the credibility of the material particulars which appear to have been given by him through the amendment.

The learned Judge in approaching the veracity of the witnesses produced by the contesting respondent on this point has attached great importance to those witnesses who have themselves produced the pamphlet Ext. A-1 and seems to be of the opinion that but for the evidence of such witnesses, the evidence of other witnesses who generally spoke about the pamphlet having been given to them by the appellant should not be accepted. We are, however, of the opinion, that the approach made by the learned Judge on this aspect of the matter is not legally sound. The basic fact which had to be determined was whether the pamphlet was in existence before or during the elections, because there was no dispute that the pamphlet was undoubtedly printed somewhere. If the test applied by the learned Judge was that the pamphlet should be produced by the witnesses to whom the same was given it would be very easy for the contesting respondent to hand over the pamphlet to the witnesses before they came to depose before the Court and ask them to produce the same in the Court. This sort of a computerised approach cannot be a safe criterion for determining the truth of the allegation that the pamphlet was actually distributed by the appellant to the witnesses concerned.

Before going to the evidence, we would like to discuss the law on the subject. Distribution of an objectionable pamphlet is undoubtedly a corrupt practice within the meaning of sub-s. (4) of s. 123 of the Act which runs thus :

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

In fact on the allegations of the contesting respondent, publication of the pamphlet containing communal propaganda would also attract sub-s. (3A) of s. 123 of the Act. The allegation of publishing an objectionable pamphlet is indeed very easy to make but very difficult to rebut. At the same time it puts the Court on the strictest possible scrutiny because objectionable pamphlet can be printed by any body in any Press with utmost secrecy and if a corrupt practice can be sought to

A be proved merely by publication of a pamphlet then it will amount to giving a free licence to any defeated candidate to get an objectionable pamphlet published and circulated to his supporters and to make them say that such pamphlet was printed or published or circulated by the successful candidate. In these circumstances, therefore, the Court frowns on the evidence regarding the publication of the pamphlet which comes from tainted or interested sources. In *Baburao Bagaji Kare-*
B *more and others* v. *Govind & others*(1) this Court laid down certain tests to judge the evidence regarding the publication or distribution of objectionable pamphlet and observed as follows :

> "It appears to us that when an election of a successful candidate is challenged, particularly on ground of corrupt practice, it is not unknown that attempts are made to manu-
C facture or bring into being subsequent to the declaration of the result, documents or other material, which could be used for unseating a successful candidate. At any rate, when any impugned document is hotly contested on that ground and it is the case of the respondent that it was brought into existence subsequently, the onus on the petitioner who challenges the election on that ground is all the more heavy."

D In the instant case the appellant has emphatically denied the publication of the pamphlet of the nature of Ext. A-1 or the distribution of the same to any body. Thus both the publication of the pamphlet and distribution thereof appears to be hotly contested by the appellant in this case. In these circumstances, therefore, it was the bounden duty of the contesting respondent on whom lay the initial
E onus to prove that the pamphlet was published and distributed by the appellant. There is absolutely no direct evidence to prove that the pamphlet concerned was in fact published, printed or caused to be published or printed through any agency of the appellant. On the other hand there is evidence to show that the contesting respondent has a press of his own and the possibility that he might himself have got the pamphlet printed with a view to set at naught the election of the
F appellant cannot be reasonably excluded. The High Court seems to think that as the pamphlet contained communal propaganda and incited the Hindus against the Muslims the same could not be printed by the contesting respondent who was a Muslim himself. This argument fails to consider that if an unsuccessful candidate, whatever be his caste or creed, files an election petition with the avowed object of unseating the successful candidate he generally stoops to all devices in
G order to show that the successful candidate was guilty of such corrupt practices which may lead the Court to unseat him. If an unsuccessful candidate is motivated by this consideration, the religion or caste to which he belongs is wholly irrelevant for the purpose which is sought to be achieved. We do not mean to suggest for a moment that the pamphlet in question *was in fact* printed or published by the contesting respondent but if the contesting respondent wanted to print such a
H pamphlet there was nothing to stop him from doing that since he had a press of his own and as he was the owner of the press the matter

(1)[1947] 3 C.C. 719.

could have been kept absolutely secret. On the other hand there is no evidence to show that the appellant owned any press at all.

The dominant fact in such a case which had to be proved was whether the pamphlet *had come into existence* either before or during the elections. Unless we believe the evidence of the witnesses produced by the contesting respondent on this point *in toto* it will be difficult to hold that the pamphlet was published or distributed by the appellant. The appellant has produced respectable witnesses to show that if such an objectionable pamphlet as Ext. A-1 had been published and circulated, the witnesses would have known about it. In other words, the appellant sought to prove the negative aspect of the existence of the pamphlet and that is all that he could have done. The learned Judge appears to have brushed aside the evidence of these witnesses merely on the ground that their evidence does not exclude the possibility of there being a pamphlet like Ext. A-1 which was not brought to their notice. Indeed if this artificial approach is made to the evidence of such a nature, then it would be asking the successful candidate to prove the impossible. We shall, however, advert to this aspect of the matter when we deal with the evidence produced by the appellant on this point.

With this preface we shall now proceed to consider the evidence produced by the contesting respondent in proof of issue No. 26. By virtue of the application for amendment filed by the contesting respondent and allowed by the Court a schedule has been annexed giving the names of the villages and the dates of distribution of the pamphlet which mentions as many as 26 villages but at the trial the contesting respondent had adduced evidence only to show that the pamphlet was distributed by the appellant to various persons on various dates at four places, namely, Gooty, Yadiki, Gundala and Guntakal. There were some other villages mentioned where the workers of the appellant are alleged to have distributed the pamphlet but that has to be ignored in view of our finding on issue No. 27. The evidence adduced by the parties on this question may be reduced in the form of the following chart. In this chart the witnesses examined by the petitioner/contesting respondent are for short referred to as "P.Ws." and the witnesses examined by the appellant as "R.Ws.".

Name of Village	Date	Persons to whom pamphlet distributed	Evidence of witnesses
Gooty	27-2-72	P.Ws 21 & 22	By P. Ws 21 & 22 R.Ws. 2, 14, 15, 22 and 24.
Yadiki	28-2-72	P.Ws. 27, 28, 35, 37 and 40	By P.Ws. 27, 28, 35, 37 & 40 R.Ws 11, 12, 13,16, 17 & 32
Gundala	5-3-72	P.Ws 1, 2, 3, 4, and 8.	By P.Ws. 1–4 & 8 R.Ws. 1 & 32
Guntakal	22-2-72	P.Ws. 24, 25, 33 & 36	By P.Ws. 24, 25 33 & 36 R.Ws. 3, 5, 7, 8, 9, 10, 25, 27, 28 & 30

A Before taking up the evidence of the parties led on the allegations regarding the distribution of pamphlet by the appellant personally it may be necessary to set out a few important principles in the light of which the evidence has to be appreciated. In the first place it may be necessary to extract the relevant portions of the pamphlet itself to show the offensive and objectionable nature of the same with a view to find out whether a person like the appellant could go to the extent B of publishing such a clumsy pamphlet, which runs thus :

> "Everywhere Muslims are given importance by the congress and the Congress is ruining the future of Hindus. In every election Muslims always vote for a Muslim candidate. When that is the case, what is there wrong if all Hindus vote for me who is a Hindu candidate ? Muslims have com- C mitted many atrocities and still the Congress is giving importance to the Muslims. For example, Mr. Baraktullah Khan is made Chief Minister in Rajasthan and Mr. Mohd. Ismail who is not well known in Andhra Pradesh is made the President of the Congress in the State. * * *
>
> In Hyderabad Muslims are given too much importance. D The said Ismail in order to give representation and importance to his Muslim religion, has given in our State nearly 20 seats to Muslims. This is an act of axe to the Hindus. Is it not atrocities of Pakistan, horrible incidents of Bangla Desh, murders of Navakhali an insult to the Hindu race and religion for ever ?"

E A perusal of the recitals of the pamphlet would clearly reveal the fact that it is couched in a most offensive language which is bound not only to hurt and injure the sentiments of the Muslims of the constituency but has also the effect of inciting one community towards another on purely communal grounds. The allegations made in the pamphlet are sufficient to alienate not only the sympathy of the F Muslim community completely but also of a large number of Hindus who have a secular outlook which is the very fundamental feature of our Constitutional set-up. In the first place the evidence led by both the parties clearly disclosed that there was a considerable section of Muslim population whose votes could not have been ignored or overlooked by any candidate who really wanted to succeed. The first premise to start with, therefore, is whether the appellant could have G taken the risk of offending the entire Muslim community and a sizable section of the Hindus also by publishing and circulating the pamphlet in question. Secondly, the language of the pamphlet is so strong and conspicuous that it is difficult to believe that the Government officers who were posted on duty in order to prevent any communal propaganda by the candidates would have missed or failed to notice the pamphlet Ext. A-1 if in fact it was published and widely circulated in H many villages. Thirdly, we must not forget that the appellant had been declared elected and by succeeding in the election there was a strong and compelling motive on the part of the unsuccessful candidate to reverse the election of the appellant by any possible means.

Finally, if the pamphlet like Ext. A-1 was really distributed and circulated and the contesting respondent had come to know about the same, it is not at all probable to believe that he would have failed to give the names of the persons from whom he got the knowledge of the pamphlet in the material particulars which he has set out in support of his allegations in paragraph-39 of the election petition. It is against the background of these admitted facts that we now come to the evidence led by the parties.

So far as the village Gooty is concerned the contesting respondent has examined only two witnesses to prove that the pamphlet Ext. A-1 was distributed by the appellant personally. These two witnesses are P.Ws. 21 & 22. The evidence of P.W. 21 need not detain us because the learned Judge has disbelieved the evidence of this witness and has observed as follows :

> "In my opinion, the evidence of Kulleyappa (P.W. 21) is not trustworthy. I do not, therefore, consider it proper to rely upon the evidence of this witness. I, accordingly reject it."

After having gone through the evidence of this witness, we find ourselves in complete agreement with the opinion of the learned Judge as disclosed above. The only other witness who remains is P.W. 22, who, as we have already pointed out while dealing with the allegation of bribery, is the most interested witness and a staunch supporter of the contesting respondent. Even the learned Judge has commented adversely on the interested nature of the evidence of this witness as indicated by us in our judgment while dealing with issue No. 7. It would appear that P.W. 22 was not only a supporter of the Congress and of the contesting respondent but was also employed by Sultan in the B.S.S. He acted as the counting agent of Sultan and was a partner in a firm which was the sole agent on Brim Stone Rubber Products a company belonging to Sultan. The learned Judge while dealing with the evidence of this witness even on this point has clearly observed that he was prepared to fill in all the missing links in the case put forward by the contesting respondent. In this connection the learned Judge observed as follows :

> "This witness has, no doubt, tried to plug in the loopholes, or come to the aid of the petitioner, Sultan, whenever there was none to offer the missing links in the evidence adduced on behalf of the petitioner. Y. Ramachandraiah was also a business partner and an employee of the B.S.S. (Bharat Sevak Samaj). Those facts, in my opinion, show that he is an interested witness."

Having made these comments, the learned Judge has still accepted the evidence of this witness. This would have been sufficient to dislodge the evidence of this witness completely. But even on its intrinsic merits the evidence of this witness does not inspire confidence. To begin with, the witness admits that the appellant had come to his house at 8 A.M. on Sunday February 27, 1972 and requested him to help the appellant. In the first place it is difficult to believe that the

A appellant would of all persons try to enlist the help of P.W. 22 knowing fully well that he was an old friend and a staunch supporter and a close and intimate friend of the contesting respondent. P.W. 22 narrates a most interesting and incredible story. According to him when the appellant went to him and asked for his support the witness refused and despite his refusal the appellant was foolish enough to give him the pamphlet Ext. A-1 although the witness told him clearly B that he was supporting the Congress and that he was an important person of Gooty and, therefore, it was not good for him to ask for the witness's support. Thereafter the appellant is said to have made a communal appeal to the witness more or less on the same lines as mentioned in the pamphlet. Thereafter the witness gave a sermon to the appellant and advised him not to seek votes on the basis of religion and caste. Even after all this happened, the appellant is said to C have given the pamphlet to the witness. This story appears to us to be wholly improbable and against normal human conduct. Thus, in these circumstances the appellant would not have handed over the best evidence against him to his enemies, namely the pamphlet, knowing fully well that he was a staunch supporter of the contesting respondent. Lastly the witness states thus :

D

> "On that evening I went to Guntakal, met Sultan and narrated to him what all had transpired between Venkatareddy and myself. I also showed to Sultan the pamphlet that was given to me by Venkatareddy. I read the pamphlet carefully and I gave that pamphlet to Sultan."

Indeed if what witness stated was true and the contesting respondent E was apprised of the entire story on the evening of February 27, 1972 i.e. about two months before the election petition was filed, would he have failed to mention the name of P.W. 22 and the story revealed by him in the allegations made in paragraph-39 of the petition regarding the distribution of the pamphlet ? Even if he had failed to do that, would the contesting respondent not have at least mentioned the name of the witness as also the details narrated by him in the material particulars in F support of the allegations in paragraph-39 which were inserted by virtue of the application for amendment ? All these facts are completely absent from the averments made in paragraph-39 either before or after the amendment. All this shows that the witness has deposed to a cock and bull story which cannot be believed for a moment. For these reasons, therefore, we are not at all impressed with the evidence of P.W. 22 and we reject the same. P.W. 21 having been disbelieved by the Court G below and P.W. 22 by us there is absolutely no evidence left to prove the allegation that the pamphlet Ext. A-1 was distributed by the appellant personally in the village Gooty. Thus the contesting respondent initially failed to discharge the onus which lay on him to prove the distribution of the pamphlet by the appellant to P.Ws. 21 and 22.

In the above view of the matter it may not have been necessary to H deal with the evidence led by the appellant which is more or less of a negative character. Nevertheless we would only refer to the evidence of four respectable witnesses who have been examined by the appellant which throws a flood of light on the question.

R.W. 2 was a sub-Inspector of Police at Gooty and states that he had accompanied the procession taken out by the appellant. He categorically states that no pamphlet like Ext. A-1 was distributed. The witness had made arrangements for the procession and it is obvious that if any pamphlet like Ext. A-1 had been distributed, the same would have come to his notice. The witness further deposes that many pamphlets were distributed by various contesting candidates and all the pamphlets coming to his notice were sent to the Superintendent of Police. The learned Judge has commented on the fact that the witness did not keep an account of the pamphlets distributed nor were the same called for from the office of the Superintendent of Police to whom they were forwarded. When the witness has categorically stated that no pamphlet like Ext. A-1 ever came to his notice, though he would have come to know of the same because he was making all the arrangements in the procession and was in charge of the election duty, that fact itself lends indirect support to the case of the appellant that no such pamphlet was ever distributed. We do not mean to suggest that the evidence of this witness is conclusive but it is an important circumstantial evidence to support the case of the appellant particularly when the contesting respondent has not adduced satisfactory evidence to prove his plea.

R.W. 15 is a certified clerk of Shri Kona Venkata Reddy, Advocate of Gooty and was a worker of the appellant. This witness states that a procession was taken out at Gooty in which the appellant had merely asked the public to vote for the Cycle symbol and that the witness along with others had taken part in the procession. The witness denied that any pamphlet like Ext. A-1 was distributed to any body in the procession. He has been subjected to a searching cross-examination but nothing of much importance has been elicited. It is true that the witness has denied the knowledge of other pamphlets like A-70 to A-78 but that by itself is not sufficient to throw out his evidence.

The next witness is R.W. 22 who is an Advocate practising at Gooty since 1921. He appears to be a respectable witness and does not bear any animus against the contesting respondent. He has, however, frankly admitted that he was working for the appellant and had participated in the procession which was taken out at Gooty. The witness categorically states that the pamphlet like Ext. A-1 was not distributed either during the procession or later on or at any time. Although the witness was no doubt a supporter of the appellant, but being an Advocate he is a respectable witness and there must be strong reasons to reject his evidence. In cross-examination nothing much of importance has been elicited. The witness denied the suggestion that he was in any way related to the appellant.

The last witness on this point is R.W. 24 who was a Special Branch Headconstable with headquarters at Gooty. According to him Gooty Police Circle was within his jurisdiction. The witness has categorically stated that his duty was to cover political activities, agitations, movements and secret enquiries. The witness further emphasised the fact that it was his duty to collect any pamphlets which related to political matters or contained objectionable language and pass on the same to his superior officers. The witness was shown Ext. A-1 and he has categorically stated that no such pamphlet ever came to his notice either

during the election or afterwards, nor did any pamphlet distributed in Gooty by any candidate come to his notice. This witness is undoubtedly an independent one and was not at all interested in any particular candidate. The only comment against this witness was that he has not produced the daily reports about the existence of the pamphlet. It is obvious that if no such pamphlet came to his notice there was no occasion for mentioning the same in his report. The other comment made by the learned Judge was that although he had forwarded the pamphlets to his superior officers, no attempt was made by the appellant to call for the record from the superior officers. That fact would not by itself falsify the evidence of this witness. We have already observed that the language of the pamphlet was so offensive and hurting that if such a pamphlet would have been in circulation, it would be impossible to believe that an officer like R.W. 24 who was deputed expressly for the purpose of finding out such pamphlets would not have been able to notice the same or would have missed the pamphlet if the same was distributed in Gooty. This circumstance, therefore, lends support to the case of the appellant that no such pamphlet was ever distributed by the appellant in Gooty and reinforces the case of the appellant particularly when we have seen that the two witnesses examined by the contesting respondent in support of his case have been disbelieved as unworthy of credence.

This brings us to the other limb of the corrupt practice alleged by the contesting respondent regarding distribution of the pamphlet by the appellant in village Yadiki. The evidence led by the contesting respondent is a composite one consisting of the witnesses who speak not only about distribution of the pamphlet by the appellant alone but also by his workers. We have already indicated above that due to want of proper pleadings the allegations about the pamphlet having been distributed by the appellant through his workers, agents, supporters and friends has to be completely excluded from consideration. In these circumstances we would only confine our assessment to that part of the evidence led by the parties which relates to the question of distribution of the pamphlet by the appellant personally.

The contesting respondent has examined P.Ws. 27, 28, 35 and 37 to prove—(1) that a procession was taken out by the appellant in Yadiki on February 28, 1972; and (2) that the appellant personally distributed the pamphlet to various persons in the course of the procession. So far as the appellant is concerned he has denied that he ever took out any procession in Yadiki on February 28, 1972. It was further narrated that February 28, 1972 being Monday was a "Shandy Day" on which the village market fair was held and it was, therefore, not possible to take out a procession on that day. Appellant's further case was that he had merely gone from house to house in the village in order to solicit votes for him. This is undoubtedly permissible under the election law. In view of the unsatisfactory nature of the evidence led by the contesting respondent on this point, it is not necessary for us to enter into an arena of controversy regarding the question whether or not the appellant took out a procession. Assuming that he did, the sole question is whether the appellant personally distributed any pamphlet to any body at Yadiki on February

28, 1972 as alleged by the contesting respondent. The evidence of PWs. 27 & 28 is almost identical because both of them alleged to be paid workers of the appellant had participated in the procession and saw the appellant distributing the pamphlet. The appellant however, seriously disputed the fact that these witnesses had ever been hired or engaged by him for doing his election work. On the question of the issue relating to the expenses incurred by the appellant, the learned Judge clearly found that it was not proved that P.Ws. 27 & 28 had been appointed by the appellant. Even, while considering the evidence of these two witnesses on this point, the learned Judge observed thus :

> "Since there were discrepancies in the matter of talking of the terms and the place where they were talked over, and the person before whom such terms were talked over, I held that it was unsafe to include the salaries of those persons in the return of election expenses filed by Venkatareddy, i.e. Ext. A-98. Though P.W. 27 and P.W. 28 did not prove that they were appointed by the 1st respondent, D. Vankatareddy, for the purposes of writing on the walls of various villages on behalf of respondent No. 1."

The learned Judge, however, chose to act on the evidence of these witnesses because according to him P.Ws. 35 & 37 had corroborated the evidence of these witnesses. We will deal with the evidence of P. Ws. 35 & 37 a little later, but the fact remains that as the appellant has emphatically denied having ever appointed these witnesses as his workers, and the Judge having himself held that this fact was not proved, it was not open to the learned Judge to have still speculated that they might have been the workers of the appellant. Thus there can be only two possibilities : either these two witnesses were not employed by the appellant at all in which case there would be absolutely no occasion for their presence in the procession, which according to them was only in their capacity of being workers of the appellant. If this is so then the entire evidence of these witnesses falls to the ground. Assuming, however, that they worked for the appellant, then their evidence appears to be of a turn-coat type which is interested and tained and cannot be acted upon without corroboration. While commenting upon the credibility of a turn-coat witness this Court in *Rahim Khan* v. *Khurshil Ahmed and others*(1) observed as follows :

> "But more curious is the turn-coat type of witnesses who claimed to be and often were the polling agents or workers of the appellant till the election was over, but, in the post-election period when the Respondent No. 1's party had formed a Government, quietly shifted their loyalty and gave evidence in proof of the averments in the petition. It is conceivable that these persons who had collaborated with the appellant in the malpractices alleged were possessed of the urge to unburden their bosoms of the truth of their own evil-doing and hurried into the witness box to swear veraciously to what took place actually. But the

(1) [1974]2 S.C.C. 660.

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> more probable explanation would be that these swivel-chair witnesses with India-rubber consciences came under the influence of Respondent No. 1 for invisible consideration and spoke dubiously in support of their present patron."

Moreover it seems to us that even on its intrinsic merits the evidence of these two witnesses does not inspire confidence. They have only B in a general way stated that they had participated in the procession and that the pamphlet Ext. A-1 was distributed by the appellant and a number of other persons. They did not give any details as to whom the pamphlets were distributed and at what place. So far as P.W. 27 is concerned he admits that he is an illiterate person and identifies the pamphlet only by colour and by alphabets. This is, however, a very unconvincing identification and it is not safe to act on the same. C P. W. 27 further admits that 8 or 10 days after the election Sultan had come over to the house of Radhakrishna who had sent for both the P.Ws. 27 & 28 and they were asked to give evidence regarding the work they had done for the appellant. The witness further stated that he accepted the offer and wrote down something on the paper. He also admits that Radhakrishna had helped Sultan the contesting respondent in the elections. It is, therefore, clear that both P.Ws. 27 D & 28 were procured by P.W. 35 Radhakrishna who was a supporter of the contesting respondent in the election. The witness (P.W. 27) had voluntarily worked for the appellant and appears to have readily accepted the offer of the contesting respondent to depose for him against the appellant without having any sense of decorum or decency and appears to have transferred his loyalty to the contesting respondent. In these circumstances, the evidence of P.W. 27 is not worthy E of credence. The evidence of P.W. 28 also suffers from the same infirmity as that of P.W. 27. Apart from that the evidence of P.W. 28 does not appear to be reliable, because he admits that he was brought to Hyderabad for giving evidence and stayed there for 10 days. He further admits that Sultan the contesting respondent was meeting his expenses. In these circumstances, therefore, it is clear that the witness was fully tutored and then brought to give evidence F for the contesting respondent. In these circumstances we do not choose to place any reliance on the evidence of P.Ws. 27 & 28.

The next witness on the point is P.W. 35 who is undoubtedly an interested witness inasmuch he is a supporter of Sultan who had worked for him in the election and was also his polling and counting agent. This witness states that a procession was taken out by the appellant at Yadiki on February 28, 1972 which was headed by G drummers followed by a band set. He says in a general manner that the appellant and his workers were distributing the pamphlets. He identifies Ext. A-1 as a pamphlet given to him. But in cross-examination at P. 561 of the Paper Book (Vol. III) he clearly admits that the pamphlet was given to him by a worker of the appellant Venkata. Reddy and *not by Venkata Reddy himself.* As the evidence regarding distribution of the pamphlet by the workers has to be excluded H from consideration his evidence clearly shows that the appellant himself did not give any pamphlet to him. Thus his evidence does not appear to be of any assistance to the contesting respondent and we fail to understand how the learned Judge has read the

statement of this witness as corroborating the evidence of P.Ws. 27 and 28 which is the sole ground on which the evidence of this witness has been accepted by the learned Judge. It seems to us that the learned Judge has completely overlooked the important admission made by P.W. 35 in his evidence which shatters the case of the contesting respondent regarding distribution of the pamphlet by the appellant to this witness.

The last witness on the point is P.W. 37. He is also an interested witness and bears an animus against the appellant inasmuch as he is said to have filed a complaint against the appellant who is alleged to have beaten him during the election. It appears that the police did not register any case on the basis of his complaint and according to the witness the matter is still pending in revision. The witness further deposes that he knew the appellant since about 20 to 25 years although he gives his age as only 28 years. This demonstrates the utter falsity of his statement. He further admits that he was working for Sultan and that the appellant Venkata Reddy saw him working for Sultan even prior to the date when the procession was taken out at Yadiki. According to the witness, the pamphlet was given to him by the appellant. It is difficult to believe that the appellant after having known that the witness was working for Sultan would have given such an offensive pamphlet to him and create adverse evidence against him. Lastly, the witness admits at pp. 577-578 of the Paper Book (Vol. III) that five or six days after the procession was taken out by the appellant Sultan had come to Yadiki and he had told Sultan about the incident. Thus, according to the witness, Sultan came to know about the distribution of the pamphlet Ext. A-1 to the witness near about the end of Fabruary and yet it is astounding that he did not make any mention of this fact either in paragraph-39 of his petition or even in the material particulars which he gave by virtue of the amendment. We have already indicated that the evidence discloses that Sultan was informed long before he filed the election petition that the pamphlet was distributed by the appellant to the named persons who were known to the appellant and yet this fact was not mentioned in the particulars given by the contesting respondent. This conduct clearly shows that the entire story is purely a figment of imagination of the contesting respondent and his supporters and has been bolstered upto unseat the appellant. For these reasons, therefore, we are not in a position to place implicit reliance on the testimony of this witness also. It would thus appear that even in Yadiki the contesting respondent could not get hold of any independent witness to prove the distribution of the pamphlet by the appellant. According to the P.Ws. Yadiki is a big village and if a procession was taken out by the appellant there must have been a large number of persons present in the procession and it is impossible to believe that the appellant could not get hold of a single person who was in any way unconnected with him to prove that the pamphlet like Ext. A-1 was distributed to any such person. Both on the charge of the offer of bribe as also on the charge of distribution of objectionable pamphlet the contesting respondent has chosen to examine only those witnesses who are in some way or the other totally interested in the contesting respondent or connected with him. Thus the evidence of the witnesses referred to above does not satis-

A factorily prove that the appellant had distributed the pamphlet Ext. A-1 to any body in Yadiki on February 28, 1972 as alleged by the contesting respondent. The contesting respondent has, therefore, failed to prove this part of his case. In view of this finding it is not necessary to go to the evidence produced by the appellant. Nevertheless R. Ws. 11, 16 and 17 have deposed on oath that no procession was taken out in Yadiki and that no pamphlet like Ext. A-1 was ever B distributed by the appellant. Even if we ignore the evidence of these witnesses, as the contesting respondent has not proved his allegation on this part of the case he must fail.

We will now deal with the allegation of the contesting respondent regarding distribution of the pamphlet by the appellant in village Gundala on March 5, 1972. On this point the contesting respondent C relies on the evidence of P.Ws. 1, 2, 3, 4 and 7. Here also the evidence of these witnesses is a composite one seeking to prove the distribution of the pamphlet not only by the appellant but also by his workers, and we have got to ignore that part of the evidence which relates to the distribution of the pamphlet by the workers of the appellant. To begin with, the evidence of P.Ws. 1 and 3 has been disbelieved by the learned Judge having regard to other items regard- D ing payment of the bribe by the appellant to these witnesses and the Judge has held that they were in the nature of accomplices. In this connection the learned Judge has observed, at pp. 1319-1320 of the Paper Book (Vol. VI) as follows :

> "Since P.Ws. 1 and 3 also say that they had actively helped Venkatareddy in the distribution of the offensive pamphlets, and thus they helped the 1st respondent in com- E mitting a corrupt practice under section 123(3) and Section 123(3-A) of the Representation of the People Act, even in regard to this corrupt practice, P.Ws. 1 and 3 can either be equated to "accomplices" or regarded as person who actively helped Venkatareddy in the commission of a corrupt practice. Their evidence, even in this behalf, requires corroboration in material particulars by independent testi- F mony."

Indeed if this is the character and tenor of these witnesses it would be difficult to place any reliance on the evidence of these witnesses on any point. Further more, according to the evidence of these two witnesses they had actively helped the appellant in the election and now they are coming forward against the appellant and in favour of G the contesting respondent in order to unseat the appellant. Their evidence is also of a turn-coat type and therefore tainted. In these circumstances no reliance can be placed on the evidence of such witnesses. However, even on merits they do not appear to be reliable witnesses. P.W.1 states that he belongs to Gundala and then ten days prior to the polling the contesting respondent Sultan had contacted him in the village and asked him and others to cast their votes in his favour. The witness and others assured the contesting H respondent that they had always been voting for the Congress and they will, therefore, vote for him. After the contesting respondent had left the village the appellant Venkata Reddy came

to the village in a jeep and he asked the witness and other persons to vote for him. But the witness and other persons explained to the appellant that on earlier occasions all of them had voted for the Congress and so this time too they will do the same. Thereupon the appellant is said to have made an appeal on communal grounds saying that the Congress is always in the habit of giving tickets to the Muslims and not to Hindus and tried to wean them away from the Congress fold. There was thus an exchange of words between the witness and others and ultimately the appellant paid some money to the witness. This allegation has been disbelieved by the learned Judge. Therefore, to start with the very genesis on the basis of which the witness has deposed disappears, and there was no occasion for the appellant to have given any pamphlet to the witness. The witness proceeds to state that after the exchange of these talks, the appellant gave the pamphlet to the witness and he took the pamphlets to village Ammenapalli and gave the pamphlets to the voters of that village. We are, however, not concerned here with the distribution of the pamphlets by the workers of the appellant. The witness identifies the pamphlet Ext. A-1 as the one having been given to him. According to the witness the appellant had gone to him ten days before the polling and the witness states thus at p. 125 of the Paper Book (Vol. II) :

> "It was for the first time that I came to know Venkata Reddi on the day when he visited our village *i.e.,* ten days prior to the polling date."

This would mean that the appellant had contacted the witness on or about February 20, 1972. But the definite case made out by the contesting respondent in his petition is that so far as the village Gundala is concerned the pamphlet was distributed by the appellant on March 5, 1972 i.e. only four days before the polling. In these circumstances, therefore the evidence of this witness is falsified by the particulars given by the contesting respondent in his petition and on this ground alone his evidence has to be rejected as being contrary to the pleadings. Further more, it appears that the witness is a staunch supporter of the Congress and on his own showing he had been voting for the Congress in all the elections. The witness admits at p. 134 of the Paper Book (Vol. II) that in the previous election also the witness had worked for the Congress. In these circumstances, therefore, the evidence of this witness does not appear to be creditworthy.

The next witness on the point is P.W. 2 who states that the contesting respondent Sultan had visited the locality and had asked him to vote for him. Thereafter the appellant came to his village and was accompanied by P.W. 1. The witness states that the appellant Venkata Reddy asked him to vote for the Swatantra Party. This knocks the bottom out of the evidence of this witness because it is nobody's case that the appellant was the candidate sponsored by the Swatantra Party and it is the admitted case that the appellant was an independent candidate. This also reveals the falsity of the story narrated by the witness. The witness then states that after having asked the witness to vote for the Swatantra Party the appellant gave

A him a paper which contained the cycle symbol. On seeing Ext. A-1 the witness identified it as the same paper which was given to him. The witness further admits that he is illiterate and it is, therefore, not understandable how he identified the pamphlet Ext. A-1. The witness did not show that paper to any body on that day and later on he showed it and got it read over to him and thereafter he decided to vote for the appellant as the Muslims were bad people. In fact
B in an unguarded moment he has said that he decided to vote for the Congress and then changed his statement as appears from the endorsement made by the Court. In cross-examination the witness admits that ten days after the elections were over, Sultan had come to his village and asked him why he did not vote for the Congress. Thereupon the witness told him that the appellant Venkata Reddy had distributed the pamphlet and asked him to vote for him. The witness
C further categorically states that he showed the pamphlet given to him by the appellant to Sultan and he was asked by Sultan to preserve the pamphlet so that it may be used in the Court as and when necessary. According to the witness this event took place only ten days after the election i.e. some time in the middle of March 1972 and well before the election petition was filed. Indeed if what the witness says was absolutely true, then Sultan had come in possession
D of the most damaging evidence against the appellant long before the petition was filed and yet he did not choose to mention this fact either in his petition before amendment or after. Even the pamphlet was not produced along with the documents as being the pamphlet shown to him by the witness but the appellant rest contented by asking the witness to keep the pamphlet with him. It is not at all understandable or intelligible as to why the pamphlet was not produced by the
E witness when he came to the witness-box for his examination-in-chief and it was left only to the question to be put by the Court after lunch break when the pamphlet was produced. Could the contesting respondent, having known these facts, take the risk that if the Court did not ask any question then the pamphlet would not be produced by the witness at all? All this, therefore, shows that the evidence of this witness is untrue and is a frame-up in order to support the
F allegation made by the contesting respondent against the appellant.

This brings us to the evidence of P.W. 3. The learned Judge has also seriously commented on the credibility of this witness, so far as other allegations were concerned, and therefore to begin with the evidence of this witness is tainted. Further more, the evidence of this witness is of a turn-coat type because he is said to have worked for the appellant and after the election he deposed for the contesting
G respondent. P.W. 3 also gives almost a similar story as P.W. 1 regarding the communal appeal said to have been made by the appellant. He also states that the appellant paid him Rs. 500/- for working and helping him in the election. This allegation has been disbelieved by the learned Judge. Another factor which impairs the credit of this witness is his admission that at the time of the polling he was instrumental in getting the false votes cast. In this connec-
H tion the witness states at p. 149 of the Paper Book (Vol. II) thus :

> "Boya Nagamma and Venkatappa were residents of my village. They were dead before the polling date. The

votes were cast in their names. Myself and P.W. 1 got the votes cast in their names. Votes were cast in the names of persons who were not present on the polling date. Myself and P.W. 1 got such votes cast in the names of the villagers who were absent from the village on the polling date."

It would thus appear that the witness was of such low morals and characterless as he went to the extent of getting votes cast in the names of persons who were already dead or who were not at all present at the polling booths. It is difficult to place any reliance on the evidence of a witness of such character. For these reasons therefore we are not in a position to place any faith on this witness.

According to P.W. 4 Sultan had come to his village in order to solicit votes in his favour and he was accompanied by P.Ws. 1 & 3 and P.W. 22. In the presence of these witnesses Sultan asked the witness to vote in favour of the Congress and he assured Sultan that all the villagers had decided to vote for the Congress. It would thus be seen that when Sultan had gone to the witness's residence P.Ws. 1 & 3 who had been the workers of the appellant had accompanied the adversary of the appellant even at that time. Thereafter according to the witness when Venkata Reddy came to him and asked him to vote for him. and here also the P.Ws. 1 & 3 had accompanied the appellant. This shows the unreliable character of P.Ws. 1 & 3. The witness again narrates the same story that the appellant made a communal appeal to the witness and asked him on ground of religion to vote for him. Thereafter the appellant give him the pamphlet. It might be mentioned here that no case has been set out by the contesting respondent either in his petition or in the particulars given by him that the appellant had made any oral appeal of a communal nature to any person either before or after distributing the pamphlet Ext. A-1. In these circumstances the evidence of P.Ws. 1 to 4 on the point that the appellant had made an oral appeal cannot be accepted as being contrary to the pleadings and thus the most integral part of the evidence of these witnesses falls to the ground. According to P.W. 4 the pamphlet was given by the appellant to the witness and thereafter he left. We find it very difficult to believe that if the appellant was really serious in getting the votes of these persons he would just hand over the pamphlet and go away without trying to explain the purpose and the contents of the pamphlet, particularly when he knew that P.W. 5 and others had their inclination towards the Congress. In the first place if he knew that P.W. 4 and other villagers had their inclination towards the Congress and had decided to vote for the Congress, he would not risk giving the pamphlets to such persons at all. and even if he did, it is difficult to believe that he will distribute the pamphlets in such a casual and cavalier manner. Finally P.W. 4, just like other witnesses, also states that ten days after the elections were over, Sultan had come to his village and he was informed by the witness about the distribution of the offensive pamphlet and the oral appeal made on communal grounds made by the appellant and yet we do not find the name of any of these witnesses including P.W. 4 in the petition as being the persons to whom the pamphlets were distributed. This appears to be a very substantial ground on which the evidence of these witnesses should

A be rejected, because it proved the intrinsic falsity of the evidence. There does not appear to be any earthly reason why, after having been informed by P.Ws. 1 to 4 and others whose case has been discussed above, the contesting respondent would not mention these facts in his election petition when the same came to his knowledge well before filing of his election petition. The learned Judge appears to have completely overlooked this aspect of the matter which in-
B troduces an intrinsic infirmity in the evidence of the witnesses. For these reasons we reject the evidence of P.W. 4.

The last witness on the point is P.W. 8. His evidence is almost identical with that of P.W. 4. According to the witness the contesting respondent Sultan came to the village ten days prior to the date of polling. That would be near about February 28, 1972 and asked the
C witness to vote for the Congress. The witness assured the contesting respondent that he would vote for the Congress. Three days prior to the date of polling the appellant came to the village accompanied by P.Ws. 1 & 3 and the witness informed him that they had decided to vote for the Congress. Thereupon the appellant again made a communal appeal to them, gave him a pamphlet and walked away. Thus the evidence of this witness also suffers from the very
D same infirmities which we have pointed out in respect of P.W. 4. At p. 231 of the Paper Book (Vol. II) the witness contradicts himself and states that the appellant merely gave him a pamphlet and asked him to vote for him. He did not say anything more. Thus the story of an oral appeal is given a complete go-by in the later part of his evidence. It is impossible to believe that the appellant would try to procure the vote of the witness knowing fully well that he had decid-
E ed to vote for the Congress and quietly parted from the witness after giving him the most damaging evidence against him. For these reasons, therefore, we are not in a position to place any reliance on the evidence of P.W. 8.

This is all the evidence that the contesting respondent has led in proof of the fact that the appellant had personally distributed the
F pamphlets in the village Gundala on March 5, 1972. After careful consideration of the evidence produced by the contesting respondent we are clearly of the opinion that the evidence is not worthy of credence and the contesting respondent has failed to prove by clear and cogent evidence that the pamphlets were distributed by the appellant personally to any person in Gundala or for that matter to P. Ws. 1, 2, 3, 4 and 8. In view of our finding that the evidence led by the contesting respondent on this point is unsatisfactory, it is not neces-
G sary for us to refer to the evidence given in rebuttal by the appellant which is necessarily of a negative nature.

The last limb of the case comprises the alleged distribution of the pamphlet Ext. A-1 by the appellant to persons in village Guntakal on February 22, 1972. P.W. 24 is Thirupathi Rao a registered medical practitioner Guntakal. To start with the witness admits that he wor-
H ked for the Congress. The witness goes on to state that the appellant had come to his dispensary and had asked for his support, but P.W. 24 told him that he belonged to the Congress, and therefore he could not help others. Thereafter the appellant is said to have given him the pam-

phlet Ext. A-1 and the witness pointed out that the pamphlet was very offensive. Thereupon the appellant is said to have made some sort of a communal appeal to the witness and having left the pamphlet with him walked away. The witness has categorically stated that after the oral communal appeal was made by the appellant, the witness told him that he saw no difference of religion, caste, creed and that he could not support him. It is impossible to believe that the appellant knowing full well that the witness was an educated person and a Doctor practising at Guntakal and not a mere illiterate voter would make any communal appeal to him, much less when he was told in plain terms by the witness that he was a Congress worker. In these circumstances, would the appellant still have given the pamphlet to this witness and created an unimpeachable evidence against him. There is no doubt that the witness is not an independent witness but is an interested one, because not only he was a Congress worker but also acted as a counting agent for Sultan as he admitted in his evidence. Further more, the oral appeal said to have been made by the appellant is not at all mentioned in the election petition. Apart from being a Congress worker he held an important position in the Congress party being the Vice-President of the Town Congress Committee right from 1967. The witness further admitted that being the Vice-President of the Town Congress Committee he was an important member of the Congress party at Guntakal. The witness further states that when Sultan came to Guntakal he showed the pamphlet to him and this happened even before the date of the polling. In fact he showed the pamphlet to Sultan five or six days before the date of the polling. It surpasses our imagination that if an important congressman like P.W. 24 would have informed Sultan four or five days before the polling that an offensive pamphlet like Ext. A-1 was given to him by the appellant, the contesting respondent would take it lying down and would refrain from taking any action in the matter. We have already pointed out that Sultan was not of a quiet type of men but had made several complaints to the police officers and it is impossible to believe that if he had known from such an important source like P.W. 24 that an offensive pamphlet was being distributed during the election he would have taken no action against the appellant by moving the authorities concerned or in informing the police and the congress circles. Far from it he did not even mention this fact either in his election petition or in the particulars which he gave thereafter. We fail to understand how the contesting respondent could have failed to mention such an important incident in his pleadings at any stage. This clearly shows that the evidence of P.W. 24 is not correct. The appellant who appears to be a responsible man would not have been so foolish as to have left in the hands of P.W. 24 the pamphlet in question knowing full well his strong views in the matter. The witness further admitted that he was deposing to this point for the first time in the Court and he had not told this fact to any one else. How can we believe that P.W. 24 holding such an important post in the Congress organisation would have failed to draw the attention of the authorities in the Congress Party regarding the distribution of an offensive pamphlet by the appellant which may have seriously impaired the election prospects of the candidate of the Congress. For these reasons, therefore, we are not in a position to place any reliance on the evidence of this witness.

A The next witness is P.W. 25. This witness admits that he voted for the Congress candidate Sultan and supported his candidature during the election. According to him fifteen days prior to the date of polling he along with Sultan and others were moving in the ward canvassing for votes in favour of Sultan. Eight days prior to the date of polling, which would mean near about the 1st March the appellant Vankata Reddy along with others came to the house of the witness in a jeep and Ram-
B chandra Gaud who was supporter of the appellant told the witness to help Venkata Reddy. The witness, however, explained to them that he had always been supporting the Congress and stood committed to Sultan and therefore he could not support the appellant. Thereafter Ramchandra Gaud threatened the witness that he would destroy the partnership business in which he was a partner if he did not help the appellant. In view of the threat given by Ramchandra Gaud the witness decided to
C work for the appellant. Thereafter the appellant gave a bundle of pamphlets containing the cycle symbol to be distributed to various persons. That is how, according to the witness, the pamphlet came in his possession. In order to prove that he was a worker of the appellant he produced Ext. A-40 which is a polling agent form assigned by the appellant. To begin with this witness also appears to be of a turn-coat type and his evidence is tainted and cannot be accepted without any corrobo-
D ration. It is difficult to believe the story that it was because of duress that he agreed to work for the appellant because if that was so, then the partnership which is still continuing while the threat remains, the witness would not have dared to depose against the appellant in order to help Sultan and yet he has done it. The witness has clearly admitted that the partnership is still continuing and therefore the danger with which the witness was faced and which made him work for the appellant
E still continues and it is not understandable how the witness could suddenly change colours. Further more the witness admits at p. 474 of the Paper Book (Vol. III) that the appellant had given the pamphlet to the witness eight days prior to the date of polling which would mean near about February 28 or March 1, 1972, but according to the material particulars given by the contesting respondent in the election petition as amended the date of distribution of the pamphlet at Guntakal is men-
F tioned as February 22, 1972. Thus the evidence of this witness being contrary to the pleadings must be disregarded. In these circumstances, therefore we are not in a position to place any reliance on the evidence of this type.

This bring us to the evidence of P.W. 33. We have fully discussed the evidence of this witness on issue No. 7 on the allegation of bribery
G and have disbelieved him. We have also pointed out that P.W. 33 was a staunch supporter of the contesting respondent and appears to be an omnibus witness so as to support the contesting respondent on all points and supply the missing links. The witness states that P.W. 18 and Venkata Reddy the appellant went from house to house in the ward soliciting votes. Both these persons came to the house of the witness while he was standing in front of his house. Both of them distributed pamph-
H lets and went away. The witness being a staunch supporter of the contesting respondent it is most unlikely that the appellant would distribute the pamphlet of all persons, to him. Further more, the witness only deposed in a very general manner that both P.W. 18 and the appellant

gave the pamphlet to him. The witness admits that he had read the pamphlet and yet he states that he did not complain to the police that the pamphlet may lead to communal trouble, particulary when the pamphlet was distributed, according to the witness, about fourteen or fifteen days prior to the date of polling. The witness further admits that four or five days prior to the date of polling Sultan had come to Guntakal and the witness had informed him about the pamphlet and yet Sultan also did not mention this fact in the material particulars given in his election petition after the amendment. For these reasons therefore, we are satisfied that this witness has merely tried to oblige the contesting respondent being his intimate friend and staunch supporter.

The last witness on this point is P.W. 36 Abdul Jabbar. Having regard to the offensive contents of the pamphlet Ext. A-1 it is impossible to believe that the appellant, even as a person of ordinary prudence, would have distributed the pamphlet to a Muslim and a person who had also worked for Sultan. By distributing such a pamphlet to a Muslim he would not only hurt the feelings of such a Muslim but would alienate the entire sympathy of the Muslim community. Only a mad person can do a thing like that or take such a suicidal step. According to this witness, the appellant had come to Guntakal where the witness stayed, gave him the pamphlet and went away. Thus the very short and summary manner in which the appellant handed over the pamphlet and went away clearly shows that the story of the distribution of the pamphlet by the appellant is a complete myth. According to the witness he was illiterate and he showed the pamphlet to P.W. 24 Thirupati Rao who read it out to him. P.W. 24 does not say that P.W. 36 Abdul Jabbar had come to him with the pamphlet or that he had read out its contents and explained the same to the witness. It was suggested by Mr. Shiv Shankar for the contesting respondent that it is possible that the appellant may not have known that the witness was a Muslim. We are, however, unable to accept this contention because according to the witness he was an Ayurvedic Medical Practitioner and an important person in Guntakal. It is also difficult to believe that the appellant would distribute pamphlets indiscriminately without trying to find out whether the persons to whom the pamphlets were given were Muslims or not. P.W. 36 is also a staunch supporter of the contesting respondent. Thus the evidence of this witness does not appear to be worthy of credence.

Thus on a consideration of the evidence of the witnesses mentioned above, we are satisfied that the contesting respondent has not proved that any pamphlet was distributed by the appellant personally to P.Ws. 24, 25, 33 & 36 in Guntakal or to any other person for that matter. In view of our finding that the contesting respondent has failed to prove this part of the case it is not necessary to refer to the evidence led by the appellant which is of a negative character. Reference may be made to the evidence of R.W. 28 who is a Labour Leader and whose evidence shows that no such pamphlet was ever distributed by the appellant. The witness states that he is a senior stenographer attached to the D.M.O., Southern Railway and is also the Assistant General Secretary of one of the Unions of the Railway employees at Guntakal. The witness on being shown the pamphlet Ext. A-1 emphatically denied that any such pamphlet was given to him or was distributed by or on behalf of the appel-

A lant in the whole of the railway colony which consists of as many as 6000 to 8000 voters. Indeed if the appellant had distributed the pamphlets with a view to secure votes on communal grounds, he would not have missed to distribute the pamphlets to the voters in the Railway colony and if this was done the witness would have undoubtedly come to know about it. This is undoubtedly an intrinsic circumstance which supports the case of the appellant that no pamphlet of the type of Ext. A-1 was B ever distributed in Guntakal.

Apart from this, we may overemphasize even at the risk of repetition that there are two important infirmities appearing in the evidence led by the contesting respondent on the charge of distributing the pamphlet Ext. A-1 at various places which are sufficient to prove the falsity of the charge. In the first place the evidence of P. Ws. I to 4, 8, 22, 24, C 33 and other witnesses discussed above clearly discloses that the contesting respondent had come to know not only during the election but even a few days before polling that such a pamphlet like Ext. A-1 was in existence and was also shown to the contesting respondent by the witnesses mentioned above and he was also plainly told that this pamphlet was distributed by the appellant personally. In spite of this neither the contesting respondent mentioned these facts in his petition giving the D full details nor in the material particulars nor did he take any action against the appellant by reporting the matter about the pamphlet to the authorities concerned. He did not disclose this fact even to his own Congress organization although this was a matter which on his own showing ruined his election prospects and in all probability the Congress should have been informed about this fact. Mr. Shiv Shankar appearing for the contesting respondent realized the weight of this circumstance E which went to falsify the case of the contesting respondent and submitted that the inaction on the part of Sultan was due to the fact that he was advised by his lawyers not to take any action in the matter. Sultan has no doubt deposed to this effect in his evidence. Indeed if this was a fact then we should have expected that the contesting respondent should have given this explanation in his election petition or should have examined the lawyer who had given him such an advice. Secondly, F even if this explanation be accepted there does not appear to be any reason why the contesting respondent should not have mentioned the names of the persons who had told him that an offensive pamphlet had been distributed to them by the appellant, in his petition or in the material particulars when Sultan was definitely informed of those facts. These two infirmities, apart from other defects, are sufficient to dislodge the case of the contesting respondent on issue No. 26, and G lead us to the inevitable inference that these facts were not true and were clearly an after-thought and had been introduced for the first time in the evidence through the aid and support of purely partisan witnesses.

Lastly it was also urged by Mr. Shiv Shankar learned counsel for the contesting respondent that the evidence of P. W. 11 clearly shows that the pamphlet in question was in existence during the election. H The learned Judge has disbelieved the evidence of this witness as being based on hearsay. The witness alleges to have received the pamphlet from his wife who was not examined as a witness. Thus the very

source from which he is said to have got the pamphlet disappears and that being an integral part of his evidence we find it extremely unsafe to rely on the evidence of this witness and fully agree with the reasons given by the learned Judge for disbelieving this witness. A

Mr. Shiv Shankar learned counsel for the contesting respondent submitted that the evidence shows that pamphlets like Exts. A-70 to A-78 were undoubtedly printed by the contesting respondent and they contain the name of the Printing Press. He argued that if the contesting respondent would have printed the pamphlet Ext. A-1 then he would have mentioned the name of the Press. We cannot accept this argument because the pamphlet is so offensive in nature that any person who printed the same would never try to disclose publicly the name of the Press lest action in law may be taken against the Press. B C

It was then contended that the contesting respondent being a Muslim is not likely to say such offensive and communal things against his own community. This is also a matter of pure speculation. Various persons react to different circumstances in different ways and if a person is motivated or animated by a particular purpose he can go to any length to achieve his end. Therefore the mere fact that the contesting respondent belonged to the Muslim community cannot by itself exclude the possibility of his having circulated the pamphlet Ext. A-1 and printing it so as to use it as a powerful instrument against the appellant by putting the blame on him. The contesting respondent undoubtedly owns a Press and if he wanted to do such a thing there was nothing to prevent him from achieving his object. These are speculative matters and in the view we take of the evidence led by the parties in this case, it is not necessary for us to give a clear finding as to who printed the pamphlet in question. All that is necessary to be determined in view of the pleadings of the parties was whether the pamphlet in question was printed by the appellant or distributed by him personally. The contesting respondent has not adduced any satisfactory evidence on this point whereas the appellant has through his evidence which is of a negative character shown that the probabilities were that the appellant had not distributed this pamphlet Ext. A-1. D E F

On a careful consideration of the entire evidence and circumstances of the case, whether we apply the standard of proof by virtue of the benefit of doubt or that of preponderence of probabilities the conclusion is inescapable that the contesting respondent has failed to prove his allegations regarding the payment of bribe contained in issue No. 7 and the distribution of the pamphlet by the appellant personally comprised in issue No. 26. The learned Judge in accepting the case of the contesting respondent overlooked certain fundamental features, inherent improbabilities, intrinsic infirmities, the weak and interested nature of the evidence and other facts, which we have fully elaborated in our judgment. We, therefore, hold that the appellant Venkata Reddy was not guilty of any corrupt practices as alleged by the contesting respondent. In these circumstances we are not in a position to allow the judgment of the High Court to stand. G H

A The appeal is accordingly allowed and the order of the single Judge declaring the election of the appellant Venkata Reddy void and setting aside the same is hereby quashed. The appellant would be entitled to his costs throughout.

V.P.S. *Appeal allowed*

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