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Thakur Virendra Singh Vs. Vimal Kumar

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Court : Supreme Court of India

Decided On : Sep-08-1976

Reported in : AIR1976SC2169; (1977)1SCC718; [1977]1SCR525

Judge : H.R. Khanna,; Jaswant Singh and; N.L. Untwalia, JJ.

Acts : Representation of the People Act, 1951 - Sections 83(1), 86, 123(4) and 127-A; Code of Civil Procedure (CPC), 1908 - Sections 99

Appellant : Thakur Virendra Singh

Respondent : Vimal Kumar

Judgement :

Jaswant Singh, J.

1. This appeal under Section 116A of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') is directed against the judgment and order dated April 26, 1974, of Indore Bench of the High Court of Madhya Pradesh whereby the election of the appellant to the Madhya Pradesh Legislative Assembly from Khachrod Assembly Constituency No. 247 at the genera elections of 1972 has been set aside under Section 100(1)(b) of the Act on the election petition filed by Vimal Kumar Choudhury respondent herein, who was an elector in the said constituency.

2. Pursuant to the notifications issued under Section 30 of the Ac) calling upon the aforesaid constituency to elect a member to'the M.P, Legislative Assembly, nomination papers by the appellant and some others were filed on February 8, 1972. On scrutiny of the nomination papers held by the Returning Officer on February 9, 1972, nomination of 8 candidates was found valid. Out of the said 8 candidates, 3 withdrew their candidature with the result that only five candidates including the appellant who was set up by Bhartiya Jan Sangh and Rajendra Jain (P.W. 39) who was set up by the Indian National Congress contested the election. The poll took place on March 8 1972. On March 12, 1972, the appellant was declared elected as a result of counting of the polled votes which showed that he had secured 23,572 votes as against 22,327 secured by Rajendra Jain (P.W, 39), his nearest rival. On April 24, 1972, the respondent herein presented an election petition challenging the election of the appellant alleging commission by the latter of various acts of corrupt practices, The particulars of corrupt practices alleged to have been committed by the appellant were set out by the respondent in Paragraphs 13, 14 and 15 of his election petition. In paragraph 13 of the election petition, it was inter alia stated as under :-

(13). That the respondent has committed the corrupt practice of publication of false statement of fact in relation to the personal character and/or conduct of Shri Rajendra Jain (hereinafter referred to as the 'Congress Candidate') falling in the purview of Section 123(4) of the Act as per the facts and particulars mentioned hereinafter.

Leaflet

(13)(xi). That the Congress candidate is the follower of the Jainism wherein the eating of cow meat is absolutely prohibited. Shri Rajendra Kumar Jain does not eat meat at all. Amongst Hindus who form a majority of the voters in the Constituency, cow is regarded as a sacred animal and worshipped like God. Persons who eat cow meat are looked with hatred by the Hindus and are discarded from the society.

(13)(xii). That the respondent/Election Agent got printed and distributed a leaflet entitled :

Beware, understand the Congress Candidate.' (Leaflet is attached hereto and marked as Annexure 'A'). (13)(xiii). That the leaflet Annexure 'A' contains the following statement of facts which are false, which the respondent either believed to be false or did not believe to be true in relation to the personal character and/or conduct of the Congress Candidate, being the statement reasonably calculated to prejudice the prospects of Congress candidate's election :.What to speak of other things, Rujendra Jain went on tour to those countries where beef is prepared and served in Hotels and there he took beef even. Do you want to cast your vote in favour of a person who is atheist, who is a beef eater and is devoid of Dharma.... (13)(xiv) That the particulars regarding the date, place, time and name regarding the distributors of Annexure 'A' are given hereinbelow :-

Sr.	Date	Place	Name of	Time
Distribution	(a) 5.3.72	Khachrod	Rampartap s/o About (Shukarvariya Ramsukh	3.00 P. M.
		Chowk), in the Khachrod meeting of Jan Sangh at which the respondent and his election agent Shri Anirudda Heda were also present. (b)		
	6.3.72	Ram singh	9.00 A. M.	to R/o Ganesh 11-00 A. M.
		Chowk, Birlagram, Nadga.		

3. The election petition was vigorously contested by the appellant. In the course of the written statement filed by him, the appellant denied to have any concern with or knowledge of the aforesaid leaflet and averred that during the election time, he never saw any such leaflet; that it was only in the course of the election petition that he came to know of the leaflet and that he had no knowledge of the truth or falsity of the contents thereof. The appellant further averred that it was only after the defeat of Rajendra Jain that the story of the leaflet was maneuvered and manufactured for the purpose of the election petition. The appellant further averred that he did not do anything to prejudice the prospects of the election of Rajendra Jain.

4. On the pleadings of the parties, the learned Judge (to whom the election petition was assigned for trial and disposal by the Chief Justice of the High Court) framed a number of issues but it is only with the following issues with which we are

concerned in this appeal:-

4)(a). Whether the leaflet Annexure 'A' was published by or with the consent of the respondent by the persons and on the dates mentioned in para (13)(xiv) of the petition?

(b) If so, whether the said leaflet contained false statements in relation to the personal character and conduct of the congress candidate Rajendra Jain which the respondent did not believe to be true or believed to be false ?

5. On consideration of the evidence adduced by the parties during the course of the regular trial of the petition, the learned trial Judge allowed the election petition and set aside the election of the appellant under Section 100(1)(b) of the Act. The findings arrived at by the learned Judge in so far as they are relevant for the purpose of this appeal are as follows :-

Though the findings on most of the issues are against the petitioner yet it has been found that the pamphlet Ex. P-10 which was a false statement with regard to the personal conduct and character of the candidate Rajendra Jain was got printed by the respondent at the printing press of P.W.34 Ramprasad. The defence raised by the respondent with regard to this pamphlet has been found to be not established. It has been held that it was the respondent who himself by letter Ex.P-20 got this pamphlet printed in the printing press of P.W. 34 Ramprasad. The evidence given by the petitioner about its distribution by Ram Singh (P.W. 21) and Rampratap Dhakad (not examined) with the consent of the respondent has been disbelieved. However, it has been found as a fact that it was the respondent himself who got 2000 copies of this pamphlet printed and published. This is, therefore, a clear case where the respondent is guilty of getting this pamphlet printed and published against the congress party candidate Rajendra Jain. The respondent is, in the light of the aforesaid finding clearly guilty of committing the corrupt practice as mentioned in Sub-section (4) of Section 123 of the Representation of the People Act. When such a pamphlet is published by the returned candidate the only inference that can be drawn is that the publication was reasonably calculated to prejudice the prospects of the election of the other contesting candidate Rajendra Jain. Consequently under Section 100(1)(b) the election of the respondent is liable

to be declared void and set aside.

6. The trial Judge, however, left the parties to pay and bear their own costs of the petition. It is against this judgment and order that the present appeal has been preferred.

7. Mr. Hardy, who has taken great pains to present the case of the appellant has, in the first instance, attempted to lead us to the realm of hypertechnicalities. He has tried to pick up faults in the verification on the election petition and the affidavit accompanying the petition and has urged that the petition ought to have been dismissed by the High Court in limine under Section 86 of the Act in view of the fact that the verification and the affidavit did not contain sufficient particulars of the corrupt practices attributed to the appellant and did not at all give particulars of printing of the offending leaflet. He has further urged that the petition was also liable to be dismissed as the copy of the petition meant to be served on the appellant was not accompanied by a copy of annexure 'A' i.e. Exh. P-10. We find ourselves unable to accede to these contentions. The allegations of corrupt practice and particulars thereof as given in paragraph 13 of the election petition reproduced above are sufficiently clear and precise. The affidavit accompanying the petition in support of the allegations of corrupt practice and the particulars thereof also conform to the form prescribed for the purpose. The appellant had an easy access to the court record and could have no difficulty in gathering the necessary material to meet the case set up by the respondent by a reference to the leaflet (Exh. P-10) which formed an annexure to the election petition. It is also now well settled that failure to give particulars of printing of the pamphlet is not detrimental and cannot lead to the dismissal of the petition. (See Prabhu Narayan v. A.K. Srivastava) : [1975]3SCR552 . That apart, the petition could also not have been dismissed in view of Section 99 of the CPC which clearly says that a defect Which does not affect the merits of the case or the jurisdiction of the Court cannot invalidate the decision. The preliminary contentions of Mr. Hardy cannot, therefore, be sustained.

8. Continuing his arguments, Mr. Hardy, while fairly and rightly conceding that the contents of the aforesaid leaflet (Exh.P-10) do cast a reflection on the personal

conduct and character of Rajendra Jain (P.W. 39) and as such fall within the mischief of Section 123(4) of the Act, has vehemently assailed the aforesaid findings of the trial Judge with regard to the printing and publication of the leaflet (Exh. P-10) by the appellant. He has contended that the evidence adduced in the case does not at all establish that it was the appellant or his election agent or any one of his supporters who got the offending leaflet (Exh. P-10) printed or published or that the leaflet was distributed to the members of the public of Khachrod Constituency with the consent of the appellant or his election agent to prejudice the election prospects of Rajendra Jain (P.W.39).

9. In view of the concession made by Mr. Hardy that the contents of the aforesaid leaflet (Exh. P-10) do cast a reflection on the personal conduct and character of Rajendra Jain (P.W. 39) and as such would fall within the mischief of Section 123(4) of the Act, the only point that survives for decision in this appeal is whether the High Court was right in setting aside the election of the appellant on the ground of 'publication' by him or with his consent of the leaflet which according to the respondent contained false statement of facts as to the personal character and conduct of Rajendra Jain (P.W. 39) and was reasonably calculated to prejudice the prospects of the latter's election to the State Legislative Assembly in the general elections of 1972.

10. The first and foremost question which is required to be determined in this connection is whether it was the appellant who got the offending leaflet printed. It is necessary to go into the question of printing of the leaflet (Exh. P-10) as the finding in respect thereof is bound to have, as held by this Court in Prabhu Narayan's case (supra), an important bearing on the question of its distribution either by the appellant or with his consent and a discussion of the evidence regarding printing provides a satisfactory method of assuring oneself as to whether the distribution was made, as alleged, by the appellant or with his consent.

11. Now the proof regarding printing of the leaflet (Exh. P-10) consists of the evidence of Ramprasad (P.W.24) who is the Manager of Kamla Printing Press, Ujjain, which is owned by his wife. Mr. Hardy has stressed that the statement of Ramprasad is untrustworthy; that his conduct does not inspire confidence and that

his statement being that of an accomplice cannot be relied upon without independent corroboration. Though Mr. Hardy has leveled trenchant criticism against the evidence of Ramprasad (P.W. 24), we are not inclined to agree with him. There is nothing strange about the conduct or behavior of Ramprasad which may impel us to discard his testimony. Despite the searching cross-examination to which he was subjected, his credit has remained unshaken. The mere fact that he printed the offending leaflet cannot clothe him with the character of a guilty associate or partner in the crime of corrupt practice within the meaning of Section 123(4) of the Act, which consists in the publication by the candidate or his agent or by any other person with the consent of the candidate or his election agent, of any statement of fact which is false or 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 which is reasonably calculated to prejudice the prospects of that candidate's election. In the instant case, Ramprasad (P.W. 24) was neither the election agent of the appellant nor is there any allegation that he published the offending leaflet. Section 127A of the Act on which. Mr. Hardy has placed strong reliance in support of his contention that Ramprasad (P.W. 24) was in the position of an accomplice has no relevance. It has nothing to do with the offence in question. The omission on the part of Ramprasad to send to the concerned District Magistrate a copy each of the declaration and the printed material as required by Sub-section (2) of Section 127A of the Act may lay him open to prosecution for an offence under Sub-section (4) of Section 127A of the Act but would not make him an accomplice or render his statement untrustworthy. Ramprasad (P.W. 24) has affirmed that on February 22, 1972, Rajaram from Khachrod came to him and made inquiries from him regarding the printing charges of a leaflet, and that he turned up again on the following day with letter (Exh. P-20) from the appellant and told him that he had been sent by him. The witness has further deposed that Rajaram departed after handing over to him the letter (Exh. P-20), the draft or manuscript of the leaflet (Exh. P-21) which had to be printed and the printing charges amounting to Rs. 45/-. He has further stated that the charges were acknowledged by him the same day by means of a receipt of the even date; that on February 24, 1972, when he had completed the composition of draft of the leaflet, Anirudh Hada (R.W. 1), an advocate of Ujjain, came to him and after telling him that he was the

representative and worker of the appellant, went through the printed proof (Exh. P-23) of the leaflet (Exh. P-10) and advised him that the name of Rajaram Parmar appearing at one place on the first sheet and at two places on the second sheet in the proof should be removed and replaced by the words 'a citizen of Khachrod'. The witness has further stated that 2,000 copies of the leaflet were printed by him on February 25, 1972 and handed over to Rajaram. The statement of Ramprasad (P.W. 24) receives strong corroboration not only from the various documents viz. the draft (manuscript) (Exh. P-21), carbon copy of receipt (Exh. P-22), proof (Exh. P-23) of the offending leaflet, carbon copy of the bill (Exh. P-24), entry (Exh. P-25) in his cash book dated February 24, 1972 regarding the payment of the printing charges of Rs. 45/- and entry (Exh. P-26) in his Order Book Register in respect of the leaflet produced by him but also from the letter (Exh. P-20) which admittedly bears the signatures of the appellant and contents whereof are in the handwriting of his brother, Surendra Singh. The letter runs as follows :-

23.2.72

Shri Ramprasadji,

Kamala Press,

Ujjain.

Please print 2000 pamphlets of the matter which I have sent through Rajaram. I need this pamphlet early. Hence print it within a day or two. I am sending Rs. 45/- with Rajaram, which please accept. The proof will be seen by Hadaji, who will come to you.

Sd/- Kunwar Virendrasingh,

Member, Legislative

Assembly, M.P.

Constituency Khachrod,

District Ujjain.

12. The above letter, it would be seen, contains intrinsic evidence which goes a long way to support the testimony of Ramprasad (P.W. 24). It clearly establishes (i) its own despatch to the witness by the appellant through Rajaram; (ii) the despatch to the witness by the appellant through Rajaram of the draft or manuscript of the matter to be printed, (iii) the placing of the order by the appellant for printing of 2,000 copies of the manuscript (Exh. P. 21) in the form of leaflets; (iv) the remittance by the appellant through Rajaram of Rs. 45/- to defray the printing charges; and (v) the advice by the appellant to the witness that the proof would be seen by Mr. Anirudh Hada. Although Mr. Hardy has tried hard to persuade us to hold that the letter could not have been written by or at the instance of the appellant, we are not inclined to agree with him. There is nothing unusual in the contents of the letter being in the hand of Surendra Singh in view of the statement of Chander Singh (R.W. 25) ' (corroborated as it is by the clear admission of the appellant himself that the relations between the two brothers i.e. Surendra Singh and the appellant remained cordial from the time of the wedding of the appellant's daughter which took place in August, 1967 to nearly four months after the general elections of 1972 and that in the said; general elections, Surendra Singh worked with the appellant and also accompanied him sometimes.

13. That Ramprasad's (P.W. 24's) statement possesses a ring of truth and he was not trumped up by any of the arch enemies of the appellant including Surendra Singh and Rajendra Jain (P.W. 39) as Mr. Hardy would have us believe is manifest from another telling circumstance viz. the significant omission on the Part of the appellant to contradict Ramprasad (P.W. 24) by examining Rajaram who was no other than his own polling agent as is evident from Exhibit P-30 which admittedly bears the signatures of the appellant. It can, therefore, be safely presumed that Rajaram was not prepared to support the appellant by refuting the statement of Ramprasad (P.W. 24).

14. The assertion of the appellant that he deputed his brother, Surendra Singh alongwith Chander Singh (R.W. 25) to go to Ranasan in the State of Gujarat to bring his jeep from his relative, Thakur Harish Chander Singh, who was not returning the same despite several demands made from him through letters and telegrams; that while so deputing his brother he handed over to him six blank

official letter heads which were used by him as a Member of the State Legislative Assembly after putting his signatures and affixing the rubber stamp of his designation thereon so that they might be utilized for making reports/complaints to the Police or other officials of the Transport Department in case his relative refused to return his jeep and that Surendra Singh misused one of the aforesaid letter heads and fabricated Exh. P-20 as his relations with him became strained over the demand for division of the landed property which, was got mutated by his father during his lifetime in the name of Surendra Singh's son is nothing but a tissue of lies woven to escape the grave consequences of addressing the letter (Exh. P-20) to Ramprasad (P.W. 24). The contents of the letter (Exh. P-20) being, therefore, in the hand of Surendra Singh is not a circumstance which can reasonably arouse suspicion regarding its genuineness. On the contrary, it is consistent with the normal course of human conduct. It may well be that the appellant being otherwise busy, dictated the contents of the letter (Exh. P-20) to his brother, Surendra Singh and thereafter put his own signature thereon.

15. It cannot also be overlooked that the appellant has been shifting his stand from time to time with regard to the aforesaid blank sheets to suit his own convenience. Whereas at one place in the complaint (Exh. P-33) filed by him on July 31,1973, in the Court of Magistrate 1st Class, Khachrod, he averred that he delivered those forms to Chand Singh Raghubanshi, and Berulal, Driver, at another place in the same complaint, he made a veiled averment to the effect that the letter heads were handed over by him to his brother, Surendra Singh. The plea taken by the appellant that he gave six blank letter heads with his signatures thereon to his brother, Surendra Singh, is also falsified by the First Information Report (Exh. R-79) made by him to the station House Officer, Police Station, Chhatripura, Indore, on September 26, 1973 wherein he appears to have stated that Surendra Singh sold his Fiat car No. MPO. 1241 by forging his signatures on a document. If the appellant had in fact handed over six blank letter heads with his signatures thereon to Surendra Singh, as asserted by him, the latter could have easily used one of those letter heads.

16. It is also worthy of note that whereas at the foot of the complaint (Exh. P-33), the appellant cited Chand Singh, s/o Saman Singh Raghubanshi, resident of Mosi

Gate, Khachrod as his witness, in the instant election petition he has produced Chander Singh, s/o Chandrabhansingh of Khachrod as his witness in proof of the handing over of the aforesaid six letter heads bearing his signatures to Surendra Singh. It is also difficult to believe that the appellant would hand over half a dozen blank letter heads bearing his signatures to his brother, Surendra Singh specially when his wife, according to his own admission in the report (Exh. R-84) dated July 26, 1973 accompanied his brother to Ranasan. All these circumstances furnish a proof positive of the falsity of the statement of the appellant in regard to the circumstances in which letter (Exh. P.20) came into existence.

17. The foregoing discussion leaves no room for doubt that it was the appellant who got the offending leaflet printed at the Kamla Printing Press, Ujjain.

18. This takes us to the crucial question of the distribution of the offending leaflet by the appellant or his election agent or by some other person with the consent either of the appellant or his election agent.

19. Though the appellant and his election agent, Anirudh Hada, advocate (R.W. 1) have asserted that they had no connection with the distribution of the leaflet and the learned counsel for the appellant has also sought to make capital out of the High Court's observation at one place that the distribution of the, leaflet was not by the appellant or with his consent and at another place that the appellant himself was responsible for the publication of the leaflet (which according to the decision of this Court in Prabhu Narayan's case (supra) means distribution of the printed material). We shall show by reference to the unimpeachable direct and circumstantial evidence which the High Court has failed to consider in its proper perspective that the only conclusion which could reasonably have been arrived at was that the distribution of the leaflet (which has not been disbelieved by the High Court to have been made) was by and with the consent of the appellant or his election agent.

20. As already stated the respondent had alleged in the election petition that the leaflet was distributed on two different dates and at two different places in his constituency-(1) on March 5, 1972 at Shukravariya Bazar, Khachrod at the meeting of Jan Sangh at which the appellant and his election agent, Anirudh

Hada, Advocate were seated on the dais and (ii) on March 6, 1972 at Nagda. The distribution of the leaflet on March 5, 1972 is alleged to have been made by Rampratap and on March 6, 1972 by Ram Singh (P.W. 21). We propose to discuss the evidence with regard to these two distributions separately.

21. That a public meeting was organised and held on the afternoon of March 5, 1972 by the Jan Sangh Party in Shukravariya Bazar Khachrod, at which the Rajmata of Gwalior, the appellant and his election agent, Anirudh Hada, advocate (R.W. 1) were seated on the (sic) and which was addressed by the Rajmata of Gwalior admits of no doubt as the same is admitted by both the appellant and his election agent, Anirudh Hada, (R. W. 1) as also by the appellant's witness, Ramdas (R.W 24). It is only the distribution of the leaflet (Exh. P-10) at this meeting which is denied by them. The denial cannot, however, be sustained in view of clear and convincing evidence of Badrilal (P.W. 15), Nanalal (P.W. 27) Khursheed Ahmed (P.W. 35) and Shaitanmal Sisodia (P.W. 38). All these witnesses have categorically stated that at the aforesaid meeting at which besides others the Rajmata of Gwalior, the appellant and his election agent, Anirudh Hada (R.W. 1) were seated on the dais, they saw leaflet (Exh. P-10) which appeared to have been issued in the name of a Nagrik of Khachrod being distributed to the persons who had assembled to attend the meeting by Rampratap Dhaked of Khachrod. The witnesses have further stated that in the aforesaid leaflet (Exh. P-10), it was inter alia written that Rajendra Jain 'while touring abroad had taken cow meat.' If the appellant or Anirudh Hada had nothing to do with the distribution of the leaflet, there was nothing to stop them from restraining Rampratap from distributing the same or admonishing him for doing so. It is no doubt true that the respondent has not been able to produce Rampratap in proof of his allegation but it cannot be lost sight of that the former did summon the latter as his witness but he did not appear despite service. In the course of the statement made by him as his own witness, the respondent has explained that on Rampratap's omission to appear before the Court as his witness despite service, he contacted the latter to enquire about the reason for his non-appearance and was told by the latter that he could not attend the Court since his brother was married to the niece of Vardiram (R.W. 30) and his appearing as a witness in the Court would strain his relations with Vardiram. Tn the course of his statement, Vardiram (R.W. 30'), who is a

staunch worker of Jan Sangh and who appears to have worked for Jan Sangh and addressed public meetings in support of its candidates during the last general elections had to admit that his real nephew was engaged to the daughter of Rampratap. It is also significant that though Rampratap was also summoned as a witness by the appellant, the latter gave him up/on December 12, 1973. It is, therefore, crystal clear that the non-appearance of Rampratap as a witness for the respondent was entirely due to his anxiety to maintain cordial relations with Vardiram. The totality of the evidence adduced in the case, therefore, leaves no room for doubt that the distribution of the leaflet (Exh. P--10) at the meeting of the Jan Sangh Party held on the afternoon of March 5, 1972 in Shukravariya Bazar, Khachrod, was with the consent of the appellant or his election agent, Anirudh Hada, advocate (R.W. 1). The distribution of the copies of the leaflet (Exh. P-10) at Nagda on March 6, 19,12 also stands proved by the direct evidence of Ram Singh (P.W. 21), Ajit Singh (P.W. 22), Shanker Singh (P.W. 23) and Jawahar Lal (P.W. 37).

22. Ram Singh (P.W. 21) who besides being an employee of the Gwalior Rayon Mills is a newspaper hawker has stated that during the last general elections, he worked for Thakur Virendrasingh who was a candidate of the Jan Sangh party. He has further stated that two days before the date of voting, he distributed free of cost about 300 copies of leaflet (Exh. P-10) in which it was stated that Rajendra Jain was a meat eater, that he eats flesh and that the voters should know him. The witness has unequivocally stated that it was the appellant who gave him the leaflets and asked him to distribute the same and told him that his remuneration for this job would be duly paid to him and that subsequently, Rs. 4/- were paid to him as remuneration for distributing the leaflets by the President of Nagda Nagar Jan Sangh Party. Although it has been emphasized by Mr. Hardy that the statement of Ram Singh (P.W. 21) cannot be relied upon as he is a staunch worker of the Congress organisation and is also a member of the Indian National Trade Union Congress which is a subsidiary institution of the Indian National Congress, it cannot be ignored that the Indian National Congress and the Indian National Trade Union Congress did not see eye to eye with each other in the matter of choice of the candidates for election during the last general elections. This is evident from the statement of appellant's own witness, Vishnu Singh (R.W.

2) who has deposed that the Indian National Trade Union Congress supported Maheshchandra Lala who was an independent candidate.

23. The statement of Ram Singh (P.W. 21) receives ample corroboration from the evidence of Shanker Singh (P.W. 23) and Jawahar Lal (P.W. 37) (who is a non-Congressman). These witnesses have clearly stated that one or two days before the date of voting, Ram Singh (P.W. 21) who is also a newspaper hawker distributed copies of leaflet (Exh. P-10) without any charge in Nagda in which it was inter alia mentioned that Rajendra Jain was a cow meat eater and during his trip abroad he stayed at the places where cow meat was served. Ajit Singh (P.W. 22) has also affirmed that about two days before the date of polling when he had gone to Nagda Mandi for shopping, he came across a leaflet wherein it was mentioned that 'while Rajendra Jain was abroad, he stayed in hotels where cow meat was served and that he being a Jain, stayed in such hotels.' Even if the testimony of Ram Singh (P.W. 21) which has been disbelieved by the High Court is excluded from consideration, even then there are some unimpeachable and telling pieces of circumstantial evidence to establish the distribution of the leaflet (Exh. P-10) by the appellant or with his consent which cannot be easily ignored. These circumstances are-(i) it was the appellant who as already observed caused the election leaflet (Exh. P-10) to be printed by Ramprasadi (P.W. 24) at the Kamla Printing Press, Ujjain; (ii) in the normal course of human conduct, no one gets any material printed without a purpose and in the instant case, the purpose manifestly was to malign the conduct and character of Rajendra Jain by distribution of the leaflet (Exh. P-10) amongst the inhabitants of Khachrod Constituency, (iii) the selection of time and place for distribution of the leaflet (Exh. P-10) which openly denounced Rajendra Jain and cast aspersions on his personal character and conduct and appealed, to the electorate not to vote for him. The offending leaflet was got distributed at a largely attended election meeting held at Khachrod i canvass support for the appellant where both the appellant and his election agent were present and at other places in Nagda which were frequented by the voters of Khachrod Constituency at a time when the tempo of the election campaign was at its climax, and (iv) the omission on the part of the appellant to prove that the leaflet (Exh. P-10) emanated from a source which had no connection with the appellant or his election agent.

24. Not only is the distribution of the offending leaflet proved to have been made by the appellant or his election agent or with their consent} but it has also been proved by the unrebutted testimony of Rajendra Jain that the leaflet contained false statement of facts calculated to injure his personal conduct and character with a view to prejudice the prospects of hte election.

25. In the result, the appeal fails and is hereby dismissed with costs.

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