

(1962) 08 OHC CK 0020

In the Orissa High Court

Case No : Misc. Appeal No. 28 of 1962, (Election)

Sri Raj Raj Deb

APPELLANT

Vs

Sri Gangadhar Mohapatra and Others

RESPONDENT

Date of Decision : 03-08-1962

Acts Referred:

Penal Code, 1860 (IPC) — Section 171C, 171F, 508
Representation of the People Act, 1951 — Section 100, 123, 123(2), 123(3)

Citation : AIR 1964 Ori 1 : (1964) CriLJ 57

Hon'ble Judges : R.L. Narasimham, C.J; R.K. Das, J

Bench : Division Bench

Advocate : R. Patnaik, Jagadev Mohapatra and H. Patel, for the Appellant; R.N. Misra and B.M. Patnaik, for the Respondent

Final Decision : Allowed

Judgement

Narasimham, C.J.—This is an appeal from the decision of the Election Tribunal, Puri, declaring void the election of the appellant to the Orissa Legislative Assembly on the ground that he committed corrupt practices and further disqualifying him from standing as a candidate for election either to the Parliament or the State Legislative Assembly for a period of six years.

2. During the mid-term elections to the Orissa Legislative Assembly held on the 6th June, 1961, the appellant and three other candidates namely Sri Gangadhar Mohapatra (respondent No. 1 in this appeal and petitioner before the Tribunal) hereinafter referred to as the petitioner, Sri Biswanath Parida (respondent No. 2 in this appeal) and Sri Balakrushna Das (respondent No. 3 in this appeal) stood as candidates for Satyabadi constituency in the district of Puri. The results of the poll were declared by the Returning Officer on the 10th June 1961.

In the first counting the results of the poll were as declared as follows :

Gangadhar Mohapatra

9977

Sri Raja Raj Dev

10145

Biswanath Parida

4778

Balkrushna Das

3001

No. of invalid votes

1136

On recount the results were as follows:

Gangadhar Mohapatra

9977

Sri Raja Raj Dev

10145

Biswanath Parida

4778

Balkrushna Das

3001

No. of invalid votes

1136

The appellant was accordingly declared duly elected.

Sri Gangadhar Mohapatra (petitioner) thereupon filed an election petition challenging the election of the appellant mainly on the ground of corrupt practice committed by him and his agents. He further alleged that several voters of Bastapada who would have voted for him were prevented from exercising their franchise on account of an error of Judgment on the part of the Presiding Officer of two polling stations, namely Nuasansarpur and Jeepur. He further alleged that while counting votes the Returning Officer wrongly declared invalid several votes which were cast for him and also wrongly counted in favour of the appellant several votes which should have been declared invalid.

3. Thus the main questions that were canvassed before the Election Tribunal were :

(i) Were the voters of Bastapada prevented from exercising their franchise?

(ii) Was there any error of judgment on the part of the Returning Officer in

counting the votes for the petitioner or for the appellant?

(iii) Was the appellant guilty of commission of corrupt practices?

4. As regards the first two questions the learned Tribunal held that though Bastapada voters were prevented: from exercising franchise, the total number of votes lost to the petitioner on this account was only about 40 and that it did not materially affect the results of the election. Similarly on the question as to whether there was an error on the part of the Returning Officer in counting the votes the learned Tribunal held, after a personal scrutiny of the challenged ballot papers, that the total number of votes-which should not have been counted in favour of the appellant and which should have been declared invalid was only 45 and that the total number of votes which should have been counted in favour of the petitioner and deducted from the total votes counted for the appellant was 4. But even after making these deductions and additions the learned Tribunal held that the appellant had won by a clear majority, and hence refused to declare the election of the appellant void on these grounds, but he held the appellant guilty of corrupt practice and accordingly set aside his election and disqualified him. The appellant has preferred this appeal against this portion of the judgment of the Tribunal in which he was held guilty of corrupt practice.

The petitioner has also filed a cross-objection against that portion of the judgment of the Tribunal in which it was held that the failure of the Bastapada voters to exercise franchise and the wrong counting of votes of the Returning Officer did not materially affect the result of the election.

5. I may first deal with the appeal. The appellant is the younger brother of the present Raja of Puri. The Rajas of Puri have been associated with the management of the Temple of Lord Jagannath for several centuries and their premier position in Orissa is beyond question. It is admitted by the witnesses for both sides that the Raja of Puri is venerated as Chalantika Bishnu" (moveable Bishnu as distinct from the immovable deity inside the shrine) by a large majority of Oriyas. He was the Superintendent of the Temple for several decades and he is also the first sevak of Lord Jagannath. Even after coming into force of the Jagannath Temple Act of 1952 and the constitution of a committee to manage the affairs of the Temple the Raja of Puri's pre-eminent position is recognised by his being appointed as the ex-officio Chairman of the Committee.

In the report of the Special Officer appointed to enquire. and report about the rights of the various sebaks of Lord Jagannath the following passage occurs at p. 49:

"He (the Raja) is described in Madlapanji as the Adya Sebak or the foremost sebak with the duty of performing the Cherapahara or sweeping with golden broom-stick in the three cars during the Car festival. On other days like Chandan Snan Bedi, Dol Bedi, he has got some duties He has also the duty to Raj Niti before Lord Jagannath. The latter duty he can do whenever he will go to the Temple in the time when Lord Jagannath has Raj Besh. He is respected by the

people as Chalanti Bishnu because when he goes to the temple he is also served in a manner next only to Lord Jagannath."

On account of his special duties during the Car festival, namely the sweeping of the cars with golden broomstick (Chedapahara) the Raja is a well known figure throughout Orissa, because the Car festival is attended by several lakhs of pilgrims every year, and even the common villagers specially those near about Puri may be presumed to know him. Lord Jagannath is not only the national deity of Orissa but he also occupies a unique position throughout India. Hence as the Adya Sevak of the Lord as His moving representative, the Raja of Puri is Undoubtedly held in great veneration.

The petitioner alleged that the appellant taking advantage of his position as the younger brother of the Raja of Puri has systematically carried on election propaganda in his constituency of Satyabadi saying that he was himself Chalanti Bishnu that any vote cast for him would be a vote for Lord Jagannath and if the voters did not vote for him they would be subject to divine displeasure and spiritual censure. The petitioner also alleged that the appellant and his polling agents made systematic appeals to the villagers to cast their votes for him on the ground of his caste (Khandayat) and also used the religious symbols of Nila Ghakra of Lord Jagannath in support of the appellant's candidature. Some of the cards in which Nila Chakra of Lord Jagannath has been stamped on the reverse were also produced before the Election. Tribunal and it was alleged that these cards were distributed in the locality and that the illiterate villagers seeing the Nila-Chakra of Lord Jagannath respectfully bowed their heads and thereby an impression was created that a vote for the appellant was a vote for Lord Jagannath himself. It was further stated that an elephant with Ramanandi Tilak on the forehead and marks of Nila Chakra on the sides of the temple was taken in procession in several villages within the constituency of the appellant with a view to strengthen the aforesaid impression.

6. On behalf of the appellant however it was contended that these allegations were maliciously false and that the Raja of Puri kept himself completely aloof from the election campaign and that merely because the appellant happened to be the younger brother of the Raja of Puri the petitioner came up with these wild allegations with a view to get his election set aside.

7. Several procedural defects in the filing of the election petition by the petitioner were also pointed out, but as both parties have led evidence on this point I think it is unnecessary to discuss whether the corrupt practices alleged against the appellant were fully disclosed in the election petition and whether the appellant was prejudiced by the non-disclosure, if any, as required by Section 83(1)(b) of the Representation of the People Act, 1951.

8. The relative status and attainments of the appellant and the petitioner may now be noticed. Though the appellant is a scion of one of the most respected families of Orissa with an ancient lineage nevertheless he is a youth aged 28

years who, according to the petitioner himself had no public career to his credit. He stood as a candidate on behalf of Ganatantra Parishad mainly because one of the leaders of the Parishad, namely the Maharaja of Kalahandi is none else but his sister's husband. His educational attainments are also not high, he having passed only the Senior Cambridge Examination; he did not complete even the I. A. Course.

On the other hand the petitioner is one of the Senior Advocates of Puri Bar aged about 50 years and has several years of public and political life to his credit. He was Chairman of Puri Municipality for 7 1/2 years, he was Public Prosecutor and Government Pleader at Puri for three years and was also President of the District Congress Committee for more than two years. He was also a member of the Working Committee of the Pradesh Congress Committee. Since 1931 he has been playing a prominent part in the public and political life of Puri District and was also connected with a number of social and educational institutions. Satyabadi constituency is also very close to Puri town being only 12 miles away.

It is thus clear that both the contesting candidates are fairly influential in the locality, the appellant on account of his family connections and the petitioner on account of his past political and public life and he being a congress candidate. The very fact that the votes polled were almost equally divided shows how keen the contest was. It was not difficult for either party to cite any number of witnesses, either to support the allegation of corrupt practice or to deny it and hence the mere number of witnesses on either side should not be given too much importance.

On behalf of the petitioner more than 20 witnesses were examined to prove the corrupt practices that were alleged to have been committed by the appellant (see the evidence of P. Ws. 2, 3, 6, 7, 8, 9, 10, 11, 12, 18, 19, 21, 23, 24, 25, 27, 29, 33, 34, 35, 36, 37 and 40). On the side of the appellant though only one witness was examined (R. W. 3) to show that no such corrupt practices took place; the order-sheet shows that the appellant wanted to examine some more witnesses but the Court disallowed the same.

9. It should also be noticed that the appellant is extremely vulnerable to this type of attack. None could deny the fact that he is the younger brother of the Raja of Puri and that the family is held in high esteem and perhaps also with some amount of veneration. Hence, even if as a fact neither the appellant nor the agents carried on any propaganda based on the association of his family with the management of the temple of Lord Jagannath at Puri, nevertheless many voters of Satyabadi constituency (who live very close to Puri) may be inclined in the natural course to vote for him on account of his family position. In such circumstances it is very easy for the defeated rival candidate to bring a false charge of corrupt practice against the appellant alleging the use of the name of Lord Jagannath or the Nila Chakra for the purpose of attracting voters, and it will be difficult for the appellant to refute the charge as it is likely to be readily believed. Hence this aspect should be prominently kept in mind in judging the

truth or otherwise of the allegations brought by the rival candidate who is an experienced lawyer well versed in initiating and conducting cases.

10. The standard of proof required to establish the charge of corrupt practice against a candidate standing for elections is well settled. As pointed out in Halsbury's Laws of England, Third Edition, Vol. 14 page 288 (paragraph 513) before upsetting an election the Court ought to be satisfied beyond doubt that the election is void, This passage is based on the following passage in Warrington's case, Crozier v. Rylands, reported in (1869) 19 LT 812, where the learned Judge observed:

"I adhere to every word said by Willes J. in the Lichfield case, 1869-1 O. M. and H. 22, when he said that before a Judge upsets an election he ought to be satisfied beyond all manner of doubt that the election was thoroughly void."

In Harish Chandra Bajpai Vs. Triloki Singh, , their Lordships of the Supreme Court held that charges of corrupt practices were quasi-criminal in character. I may also refer to the following observations of the Election Tribunal in Shri Krishna v. Rajeshwar Singh 12 ELR 1 (Ele. Tri. Bareilly):

"Allegations about the commission of a corrupt practice like those enumerated in Sections 123 and 124 of the Act are however of a quasi-criminal nature and to prove those allegations almost the same standard of proof will be required as in a criminal case against an accused. Further the burden of proof -- which never shifts -- lies on the petitioner and in cases of doubt the benefit should go to the respondent, as it goes to the accused in a criminal case. As in the case of criminal charges the statement of an accomplice will need corroboration before it can be the basis of a finding in favour of any corrupt practice."

The aforesaid rule has been specifically emphasised mainly because of the serious and wide repercussions arising out of a finding of corrupt practice against a candidate. Not only does such a finding entail the setting aside of the election but it also entails the disqualification of the candidate for several years and in some instances exposes him to criminal prosecution also, under Chapter II of the Criminal Procedure Code. The standard of proof laid down in the aforesaid cases has been reiterated in Balwant Rai v. Bishen Saroop ELR (P&H) 101 and Lachhman Singh v. Harparkash ELR (P&H) 417 . In Inayatullah Khan Vs. Diwanchand Mahajan and Others, , the same principle was reiterated in the following terms :

"Reference was made before us to the decision of their Lordships of the Supreme Court that the trial by an election tribunal is in the nature of an accusation and quasi criminal. If the same test is applied, there could be no presumption of innocence and direct proof would be required before the persons charged are held to be responsible."

11. The corrupt practices alleged against the appellant may be divided in the two following categories : (i) those which amount to offences u/s 171F read with

Section 171C of the Indian Penal Code and Section 508 of the Indian Penal Code and (ii) those which do not amount to any offence under the Indian Penal Code.

In the first category will come those allegations relating to the conduct of the appellant and his agents in informing the voters that as he was Chalanti Vishnu ana as such a representative of Lord Jagannath himself, any person who did not vote for him would be a sinner against the Lord and the Hindu religion and that he would be committing sacrilege to the Deity. Such a propaganda would come within the scope of the second proviso to Sub-section (2) of Section 123 of the Representation of the People Act 1951. It would also amount to an election offence u/s 171F read with Section 171C of the Indian Penal Code and Section 508 of that Code (criminal intimidation).

The second category of corrupt practices however relates to the allegation that the appellant being himself a Khandayat, appealed to the voters to vote for him saying that he was the crowned jewel amongst them, and also that he used a religious symbol, namely Nila Chakra of Lord Jagannath (Ex. 2) and asked the voters to vote for him as he was the moving representative of Lord Jagannath. The use of an elephant with the Rama-nandi Tilak on the forehead and with Nila Chakra painted on both sides of its temple would all come within the scope of Sub-section (3) of Section 123 of the Representation I of the People Act. This would not be an offence under the Indian Penal Code.

12. To prove the corrupt practice falling under the first category the petitioner relied on the evidence of P. Ws. 3, 7, 10, 11, 13, 18, 21, 23, 29, 33, 35, 36 and 40. Of these P. Ws. 3, 7, 10, 23 and 33 had worked as the appellant's polling agents while the canvassing was going on. P. W. 36 was a supervising agent on behalf of the appellant in the election campaign. But all these persons deserted the appellant and went over to the side of the petitioner and deposed on his behalf and stated on oath that they persuaded the voters to vote for the appellant saying that otherwise they would be sinners against Lord Jagannath and would be committing sacrilege. Some of them have gone even to the length of saying (see P. W. 3) that the propaganda was that anyone who did not cast a vote for the appellant would be branded as a Dharma Drohi. It is thus clear that on their own evidence, these witnesses were accomplices to the commission of offences under Sections 171F read with Section 171C of the Indian Penal Code and Section 508 of the Code by the appellant. Their evidence should not therefore be accepted without adequate corroboration.

It is true that the remaining witnesses namely P. ws. 11, 13, 18, 21, 35 and 40 cannot be said to be accomplices but they are also not entirely disinterested. P. W. 11 of his own admission is a propagandist on behalf of the Congress candidate (petitioner). P. W. 13 does not impress me with his respectability. He admitted that when he was the manager of Sakhigopal Temple on behalf of the Endowment Committee there was theft of sugar from the temple in connection with which he was arrested by the appellant and sent up for trial. He has however added that he was "honourably acquitted" but as the judgment of

acquittal is not on record it is difficult to say whether the acquittal was honourable or for any other reason.

P. W. 18 is a contractor under the Block Development scheme. He admitted that at the time of his giving evidence Govt. was being run by the Congress Party to which the petitioner belongs. He cannot be said to be entirely disinterested. P. W. 21 poses to be a respectable witness but he admitted that when election propaganda was being carried on on behalf of the appellant by P. W. 3 he also went round with him on one day. There is no special reason why he should have gone round with a propagandist if he was entirely disinterested? P. W. 29 says that he did not speak about this type of propaganda to anyone till his deposition before the Tribunal on 30-1-62. This is very improbable indeed. P. Ws. 35 and 50 though denying that they were Congressmen admitted that they were wearing Khaddar. Though it does not necessarily follow that a person wearing Khaddar is a sympathiser with the Congress, nevertheless considering the influence of the petitioner in the locality and the case with which an allegation of this type can be made against a person placed in the position of the appellant I would expect evidence of better type before holding the charge to be proved.

13. With regard to the second category of corrupt practices also the aforesaid witnesses have spoken about them. In addition P. Ws. 2, 6, 8, 9, 19, 24, 25, 27, 34 and 37 have also spoken about the same. Of these P. Ws. 2, 6, 8, 9, 24 and 27 had worked as election agents on behalf of the appellant, but at the time of giving evidence they went over to the other side. Though they may not be said to be accomplices in the strict sense, nevertheless, the conduct of persons who desert one candidate and go over to the rival side and say, on oath, that on behalf of the former candidate they had themselves committed corrupt practices cannot but be characterised as infamous.

In this connection, the following observations of the Punjab High Court in ELR (P&H) 417 are worth quoting :

"This apparently wholesale desertion of the respondent by her devoted supporters and active workers during the election campaign and their appearance en masse as witnesses for the rival candidate who is now seeking to unseat her, is sufficient in itself to arouse the strongest suspicions as to the bona fides of the witnesses."

While refuting the argument that these witnesses were merely coming forward to speak the truth in the interests of purity of election, the learned Judge further observed :

"I am very doubtful indeed whether the worship for truth flourishes to such an extent in the town of Jagraon that so many active workers and supporters on behalf of the respondent could overnight have turned into persons anxious to bring about her downfall merely for the sake of telling the truth at all costs."

Here also it cannot be said that these witnesses who according to their

deposition were accomplices of the appellant in the omission of crimes or corrupt practices, which are in any case highly improper, should have become suddenly repented and become votaries of truth especially when they were summoned by the petitioner to depose on his behalf.

The remaining witnesses are also not very impressive. Thus P. W. 19 gave up a lucrative job in Rourkela on his own evidence and returned home. He has deposed as a prosecution witness in a murder case which however ended in acquittal. Though he has denied the suggestion that he was compelled to resign his job at Rourkeia as there was threat of departmental proceeding against him for defalcation of Govt. money nevertheless the circumstances under which he left his job appear somewhat suspicious. P. W. 25 though not himself a Congressman admitted that his son-in-law was a propagandist for the Congress. P. W. 37 is a partner in a business with Gadadhar P. W. 2 who is a notorious litigant involved in 40 cases Civil and Criminal. Thus we are left with only one witness namely P. W. 34 against whom nothing had been brought out in cross-examination.

13a. But the petitioner's allegations in this respect suffer from an initial doubt which has not been properly displaced. The allegations about corrupt practices saw the light of day for the first time only in the election petition of the petitioner dated 27-7-61 nearly two months after the commission of the same. The obvious question that arises is why he kept quiet for such a long time.

Vigorous canvassing and campaigning on both sides were going on in the latter part of May 1961 and according to the petitioner, not clandestinely but openly in a brazen faced manner. In the entire constituency public meetings were held and people were exhorted to vote for the appellant on pain of committing sin against Lord Jagannath if they did not do so. Though the petitioner did not have personal knowledge of the commission of the aforesaid corrupt practices he must have come to know about them from his workers sometime before the date of polling because he stated that he worked and moved to the constituency for 13 days before election. Nevertheless he did not report the matter to the authorities concerned. It is true that the delay from the date of polling till the date of filing of the election petition was undeterminable, because once the polling was over the defeated candidate may as well wait to incorporate all these allegations in the election petition.

But the inaction of the petitioner till the date of polling has not been satisfactorily explained. From his ripe experience in conducting criminal cases, it can be safely inferred that he was fully aware of the fact that any undue delay in reporting to the authorities about the commission of corrupt practice by the appellant unless satisfactorily explained would itself be sufficient to throw doubt on the truth of the allegations. He also knew that his case would gain additional strength if a contemporaneous document of unimpeachable genuineness was available to show that such allegations were immediately brought to the notice of the authorities. As soon as his agents informed him about the corrupt practices said

to have been committed by the appellant he knew fully well that some of them may amount to offences under Sections 171F read with Section 171C and 508 I. P. C. and yet he remained silent. The obvious question is -- why he did not at once bring these facts to the notice of the Magistrate?

It is true that an offence under Sections 171F and 171C, I. P. C. cannot be taken cognizance of except with the prior sanction of the State Government or some other competent authority in view of the bar imposed by Section 196 Cr. P. C. It is also not unlikely that even if the facts are brought to the notice of the authorities concerned they may not take any action saying that he should bring these matters up in a proper election petition after the polling is over. But the question here is not what the authorities would have done if he had filed a complaint before them, but whether in view of his past experience and position as a lawyer he would have omitted to take the obvious step when the allegations were brought to his notice. He has given no explanation as to why he remained quiet so long. The absence of any such contemporaneous document must throw considerable doubt on the truth of the allegations. In this connection I cannot do better than quote the following observations of the Election Tribunal in *Thakur Udaya Singh v. Arjuna Doabia*'s EC 279 ;

"The petitioner is a barrister, an experienced lawyer and an experienced politician. According to his own admission he saw copy after copy of this notice which he knew to be illegal affixed in village after village some days before the polling day, and yet he would have us believe that he did not make any complaint to any official. We find it difficult indeed to believe that it was so. We very much fear that the reason that the petitioner made no complaint was the sufficient reason that the leaflet was not in fact in existence."

As in the aforesaid case here also the petitioner is an experienced lawyer, an experienced politician and an Ex-public prosecutor. In the absence of any satisfactory explanation to show why he delayed in filing a petition before the authorities concerned, I have grave doubts about the truth of these allegations and the mere fact that a large number of witnesses have been examined by him against some of whom nothing has been brought out, will not suffice to show that he has discharged the primary burden of establishing the allegations beyond reasonable doubt.

14. Realising this difficulty Mr. R. N. Misra for the petitioner invited my attention to Ext. 15 which is a letter said to have been written by P. W. 27 to P. W. 26 in which there is some reference to the use of Nila Chakra and also choosing the appellant as the addressee because he knew that if the letter was addressed to the appellant he cannot explain, later how it came into his custody. Hence I would not attach any importance to Ext. 15.

15. The mere production of the cards (Ex. 2 series) cannot also be given much importance. It is very easy to secure such cards and to affix the Nila Chakra marks on them, because a seal containing the Nila Chakra could be easily

prepared for the purpose of this case. The petitioner who was examined as P. W. 31 stated that he never saw these red cards being distributed by the appellant prior to the date of polling and that he noticed the Nila Chakra mark on such cards only after the polling day. Later on he weakened even this portion of his evidence by saying "Cards like Ex. 2 were first seen by me only a few days before the trial of this case commenced."

The trial commenced before the Election Tribunal only on 24-1-62 more than six months after the polling was over. If as alleged by the petitioner the red cards bearing the Nila Chakra mark had been widely distributed in the constituency during the election campaign it is difficult to accept the story that the rival candidate namely the petitioner, would not have seen them prior to the date of polling especially when on his own evidence he used to go now and then to do propaganda in his constituency -- though in the course of such visits, he as President of the District Congress Committee was also doing propaganda on behalf of other congress candidates throughout the district. I have therefore grave doubts about the genuineness of these red cards.

16. Mr. Misra then invited our attention to the following observations of the Assam High Court in *Nani Gopal Swami v. Abdul Hamid* AIR 1959 Guw 200 :

"A facile way of discarding all that material is to dismiss them with the observation that the first set is interested while the second set has come to depose against its own party; this is a thoroughly wrong approach to the evidence and would tend to deprive the Court of the most competent material available. If such a test were adopted no conscientious person would venture to assist the Tribunal because, whether he deposes for or against his party in either event he runs the risk of being disbelieved and his evidence being rejected on that score. These considerations, therefore, though relevant are seldom decisive and the evidence has to be appraised on its own merits in the light of the other materials placed on records."

These observations however cannot apply with full force here because apart from the fact that most of the witnesses examined by the petitioner are deserters from the appellant's camp some of them, on their own evidence, are accomplices in the commission of the offence under the Penal Code mentioned above. Moreover, as I have already pointed out the petitioner's inaction for a period of nearly two months, in spite of the alleged corrupt practices having been brought to his notice, has not been satisfactorily explained. With these distinguishing features in the instant case the observations of the Punjab High Court quoted above are, I think, more apposite than the observations of the Assam High Court.

It cannot obviously be laid down as a general proposition of law that under no circumstances should the evidence of a deserter or partisan witness be believed. Other factors such as the influence of the parties, the absence of contemporaneous complaint to the authorities concerned, the vulnerability of the

party to attack based on allegations such as those made in the case, should also be taken into consideration.

17. I am fully conscious of the principle that an appellate Court should not ordinarily disturb the finding of the trial Court based on appreciation of oral evidence. But here the Tribunal has overlooked the fact that most of the witnesses who appeared for the petitioner and spoken about the alleged corrupt practices are not only deserters from the appellant's camp, but some of them are also accomplices in the commission of the crime, within the meaning of the Evidence Act. The learned Tribunal has also failed to give due weight to the inference arising out of the inaction on the part of the petitioner in bringing the matter to the notice of the appropriate authorities concerned at the earliest opportunity which has been fully discussed above. I must therefore hold that the evidence of witnesses as regards the commission of corrupt practices is not of that high standard required to establish such a serious charge.

18. In view of this finding it is unnecessary to discuss whether the members of the family of the Raja of Puri are Khandayats or Kshatriyas. Most of the evidence bearing on this point is in my opinion, wholly unnecessary. It is more appropriate for historical or sociological research to decide who the ancestor of the present Raja of Puri was, what was his original caste, and how he steadily climbed up the social ladder and claimed to be a blue blooded Kashatriya. Whatever may be the origin of the ancestor of the Raja of Puri there is no doubt that on account of the association of his family, for several centuries, with the management of the Temple of Lord Jagannath the Raja does command respect throughout the State irrespective of his caste. But the question is whether the evidence of witnesses to the effect that an appeal was made to the Khandayat voters to vote for the appellant on account of his caste should be believed. I have given adequate reasons to show that the evidence of witnesses on this point cannot be believed.

19. Turning now to the cross objection filed by the petitioner the first question for determination is whether the voters of Bastapada were unlawfully prevented from voting and if so what would have been the number of votes which the petitioner lost thereby. I see no reason to disagree with the finding of the trial Court that some persons of Bastapada were prevented from voting due to some confusion somewhere. They first went to Nuas-ansarpur polling booth but as their names were not there they went to Jeepu'r polling booth. There also, though their names were found in the electoral roll they were shown as belonging to another village named Sulamal (said to be a hamlet of Bastapada) and hence the Presiding Officer of Jeepur (P. W. 32) refused to permit them to vote. The petitioner immediately contacted the authorities at Puri by telephone and P. W. 1 was actually sent to look into the matter, but by the time he came there and intervened it became too late.

Assuming with the petitioner that the Presiding Officer of Jeepur was wrong in not permitting these voters to vote merely because their names were noted under village Sulamal though they actually belonged to Bastapada, the main

question is how many voters were lost to the petitioner by this conduct of the Presiding Officer it is admitted that the total number of voters in Basta-pada village was only about 110. But no witness has stated that all the voters of Bastapada would have cast their votes either at Nuasansarpur polling booth or Jeepur polling booth. According to P. W. 15 the number of voters from Bastapada who went to cast their votes would be 80 to 90 ; P. W. 16 and P. W. 17 estimated this number at about 70; but P. W. 1 stated that only 30 to 40 persons complained to him outside the polling booth of their inability to vote, and P. W. 14 also supported him by saying that only 40 persons of Bastapada came to vote. In this state of discrepant evidence of the petitioner's own witnesses as regards the actual number of Bastapada voters who came to vote, the Tribunal was justified in holding that as not even 50 per cent of the total electorate exercised their franchise in this election the figure of 40 given by P. Ws. 1 and 14 should be preferred. I would therefore in agreement with him, hold that only about 40 voters of Bastapada were deprived of their right to exercise their franchise, due to some confusion regarding the name of village in the electoral roll.

It does not follow from this however that all the 40 persons must have voted en bloc for the petitioner. On this point the evidence of petitioner's own witnesses is somewhat conflicting. Thus P. W. 6 frankly admitted that he could not say in whose favour the Bastapada voters might have cast their votes. He is himself a Congressman and though Congress propaganda was carried in Bastapada he could not say to what extent the voters" would have voted for the Congress candidate (petitioner), His evidence would go against the assertion of the petitioner that all the voters of that village would have cast their votes for him.

It is true that some other witnesses for the petitioner like P.W. 15 have stated that on account of Congress propaganda the residents of Bastapada had decided to vote for the petitioner. But P.W. 5 does not support them on this point. Moreover P.W. 11 admitted that on account of the propaganda carried on by the appellant many persons who were originally Congress minded changed their attitude, and became favourably inclined towards the brother of the Raja of Puri. P.W. 14 further stated that the disappointed voters of Bastapada did not express before him the name of the candidate for whom they wanted to vote. In this state of evidence, adduced by the petitioner himself, the Court was not justified in holding that all the 40 disappointed voters would have cast their votes in favour of the petitioner. It is true that this inference must necessarily be somewhat approximate. But considering the fact that in the entire constituency the fight was very keen and both the candidates polled on almost equal number of votes the more reasonable inference would be that the Bastapada voters also would have been equally divided, and the petitioner would have lost 20 votes on account of the conduct of the Presiding Officer in not allowing the Bastapada voters to vote. In my opinion the Tribunal's estimate of the number at 40 is an over estimate, and his finding should not be disturbed by this Court on the cross objection of the petitioner.

20. On the second cross objection of the petitioner the question is; whether the lower Court's finding based on a scrutiny of the disputed ballot papers should be reversed. The Court allowed the petitioner to inspect the ballot papers with a view to point out those papers which were wrongly decided by the Returning Officer either in favour of the appellant or against the petitioner. About 700 ballot papers were thus sorted out by the petitioner's lawyer. The Court subjected these papers to further scrutiny bearing in mind the principles to be observed in accepting or rejecting a ballot paper laid down in Rule 56 of the Conduct of Election Rules, 1961 and the executive instructions issued to Returning Officers by the Election Commission. The Court also sought guidance from certain passages in the well-known book of Parker on "Election Agents and Returning Officers (6th Edition) pages 212 and 213 and ultimately came to the conclusion that 45 ballot papers counted in favour of the appellant by the Returning Officer should be declared invalid and 4 ballot papers rejected by the Returning Officer Ext. 35 should be added in favour of the petitioner. But even after making the above deductions and additions, it was found that the election result was not materially affected inasmuch as the appellant had won by a majority of 166 votes. Hence the lower Court rightly observed that neither the improper rejection of votes cast for the petitioner nor the improper reception of votes cast for the appellant materially affected the results of the election.

21. In the cross objection petition there is a general assertion that all the 700 ballot papers sorted out by the petitioner's lawyer should have been declared void and the number of votes cast in favour of the appellant should have been deducted accordingly. But there is no specific allegation as to which particular ballot paper was wrongly counted in favour of the appellant both by the Returning Officer and the Election Tribunal and where they have gone wrong. All the disputed ballot papers were before the Tribunal. The petitioner himself, notwithstanding his legal attainments, has nowhere in his deposition referred to the particular ballot papers which according to him should not have been counted in favour of the rival candidate namely the appellant. His evidence is extremely vague and general. He merely stated that some ballot papers were wrongly counted, in favour of the appellant though they should have been declared invalid or counted in his own (petitioner's) favour.

This type of vague statement especially from a lawyer witness is very unsatisfactory. If he had referred to any particular ballot paper he would have been cross-examined with a view to show that the marks were properly construed by the Returning Officer. For the purpose of this case it is unnecessary to decide whether in the absence of any definite evidence on the side of the petitioner to show which ballot papers ought to have been either counted in his favour or deducted from the total number of votes polled by the rival candidate (appellant), the Tribunal was justified in subjecting to its own scrutiny, after the close of the case, all the 700 ballot papers that were exhibited before him and coming to his own conclusion. The principles to be followed in counting ballot papers appear to have been correctly understood by the Tribunal and I have

myself examined some of the disputed ballot papers. I see absolutely no reason why sitting in appeal we should take a view different from that taken concurrently by both the Returning Officer and the Tribunal. I would accordingly dismiss the cross objection of the petitioner.

22. For these reasons the appeal is allowed with costs and the Judgment of the Election Tribunal declaring the appellant's election to be void on account of the commission of corrupt practices and disqualifying him from standing for election for a period of six years, is set aside. The petitioner's election petition is dismissed with costs. His cross objection is also dismissed but without costs.

Costs in the lower Court were assessed at a consolidated amount of Rs. 250/-. Costs of this Court are fixed at a consolidated amount of Rs. 500/- (Rupees five hundred only).

Das, J.

23. I agree.