PILAPITIYA
v.
CHANDRASIRI AND OTHERS

SUPREME COURT
SAMARAKOON, C. J., SAMERAWICKREMA, J. AND THAMOTHERAM, J.
S.C. NOS. 1/80 AND 2/80,
11, 12, 14, 15 AUGUST 1980 AND 2, 3, 4, 5 AND 8, SEPTEMBER 1980.

Election Petition — Election - Candidate — Burden of proof — Standard of proof — Question of fact — Question of law — Corrupt practice of publication of false statement of fact in relation to the personal character and conduct of candidate to affect his return - Section 58(1) (d) read with s. 77(c) of Ceylon (Parliamentary Elections) Order in Council, 1946 — Illegal practice.

In law an election becomes a fact and a reality only when a by-election is called under the provisions of Article 36 (2) of the Constitution or when a general election is called under the provisions of section 41(6) and (7) of the Constitution of 1972. The candidate who is accepted by the Returning Officer on nomination day as a candidate who is entitled to contest a particular seat is a person who is nominated as a candidate at that particular election within the meaning of section 3(1) of the Ceylon (Parliamentary Elections) Order in Council, 1946.

What is published before the nomination cannot be utilised to found an allegation of an election offence but it can be utilised as circumstantial evidence to prove publication of other statements after the nomination and also to test the credibility of witnesses.

The burden of proof lies on the petitioner and proof beyond reasonable doubt is required.

The determination of primary facts is always a question of fact. It is for the tribunal that sees the witnesses to assess their credibility and decide the primary facts. Conclusions from these primary facts are sometimes conclusions of fact and sometimes conclusions of law.

Holding a charge proved on the evidence of one man is unsafe although he impresses as a truthful witness where his information is what is gathered from others.

It was conceded that two documents P 18 and P 19 contained false statements of fact relating to the personal character of the petitioner. They contain allegations of the meanest and foulest kind meant, without doubt, to affect the return of the petitioner. Whoever did it stooped to conquer. Section 6 of the Newspapers Ordinance required the first name, surname and place of abode of the printer and publisher to be printed at the end of the newspaper. Section 52 A and section 68 A of the Ceylon (Parliamentary Elections) Order in Council required that all election literature should bear on the face of it the name and address of the publisher. The 2nd respondent's name is imprinted as publisher and he was 1st respondent's agent.

Cases referred to :

(1) *Premasinghe v. Bandara* 69 NLR 155

(2) *Don Phillip v. Illangaratne* 71 NLR 561

(3) *Subasinghe v. Jayalath* 69 NLR 127

(4) *Bracegirdle v. Oxley* 1947 1 All ER 126, 130

(5) *Venkataswami Naidu & Co. v. Commissioner of Income Tax* AIR 1959 S.C 359.

APPEAL from judgment of election judge.

C. Thiagalingam Q.C. with *A. C. Goonaratne Q.C., K. Devarajan* and *Daya Pelpola* for 1st respondent-appellant.

J. W. Subasinghe with *Waruna Basnayake* for 2nd respondent-appellant.

H. L. de Silva with *K. Shanmugalingam, Desmond Fernando, Suriya Wickremasinghe, Sidat Sri Nandalochana, Peter Jayasekera, N. V. de Silva, S. H. M. Reeza* and *Suren Peiris* for petitioner-respondents.

Cur. adv. vult

08 October 1980
SAMARAKOON, C.J.

The petitioner in this case was a candidate at the General Election held on the 21st July, 1977, for the election of members to Parliament. He stood for election to the Electoral District No. 159 Kalawana. The other candidates were the 1st Respondent, S. S. Gauthamadasa and H. R. S. de Soysa. The 1st Respondent received 12098 votes and the Petitioner received 10436 votes. The 1st respondent was declared elected by a majority of 1662 votes. On the the 15th August, 1977, a petition was filed praying (a) for a determination that the 1st Respondent was not duly elected or returned and (b) for a declaration that the 1st Respondent's election was void in law. After a lengthy hearing the Election Judge declared the election void. Hence this appeal.

The petition filed on the 15th August, 1977, sets out the following charges :—

1. That the third Respondent, Walter Jayawardena, made and wrote an article entitled 'වාමාංශික පෙරමුණ' as agent of the 1st Respondent or with the knowledge and/or consent of the 1st Respondent which was published on the 29th April, 1977, in the newspaper ("Jana Aviya") ජන අවිය (p6) by the 2nd Respondent as agent of the 1st Respondent or with the knowledge and/or consent of the 1st Respondent. The petitioner pleaded that the statements contained in the article (which statements are set out verbatim in para 3 of the petition) were false statements of fact in relation to the personal character or conduct of the petitioner and were made or published for the purpose of affecting the return of

the petitioner — a corrupt practice within the meaning of section 58 (1) (d) read with section 77(c) of the Ceylon (Parliamentary Elections) Order in Council 1946.

2. That the 2nd Respondent Nimal Chandrasiri, as agent of the 1st Respondent or with the knowledge and/or consent of the 1st Respondent published an article in the කලාවාන ජනතා (Kalawana Janatha) of 17th July, 1977, (P18) entitled 'සහෝදරවරු ගරාතාවක රතු අප්පෝ ඇපට තබා 20,000 කෙලියි' (Comrades in a Fraud — 20000 Misappropriated Keeping Red Appo as Surety) a false statement of fact (which statement is set out verbatim in para 4 of the petition) in relation to the personal character and/or conduct of the petitioner for the purpose of affecting the return of the petitioner — a corrupt practice within the meaning of section 58(1) (d) read with section 77(c) of the Ceylon (Parliamentary Elections) Order in Council 1946.

3. That the 2nd Respondent as Agent of the 1st Respondent or with the knowledge and/or consent of the 1st Respondent published in the 'කලාවාන ජනතා' (Kalawana Janatha) of the 19th July, 1977, (P19) an article entitled 'බැනාට මිනී මරන්න මාමා බඩු එවයි ' Uncle (father-in-Law) sends goods to nephew (son-in-law) for murder) containing false statements (which statements are set out verbatim in para 5 of the petition) in relation to the personal character and/or conduct of the petitioner for the purpose of affecting the return of the petitioner — a corrupt practice within the meaning of section 58(1) (d) read with section 77(c) of the Ceylon (Parliamentary Elections) Order in Council 1946. The last sub-para of para 5 reads —

> "The said newspaper 'කලාවාන ජනතා ' referred to above was published, sold and distributed before and during the said election from the 1st Respondent's Election Office at Manana, Kalawana and throughout the Electoral District No.159, Kalawana in support of the 1st Respondent who was the candidate of the United National Party in the said Electoral District. (An affidavit in support of the above allegation is annexed hereto marked 'B'."

4. (a) That the facts and circumstances set out in para 5 of the petition (the 3rd charge referred to above) constituted an illegal practice of false reports in newspapers within the meaning of section 58A of the Ceylon (Parliamentary Elections) Order in Council 1946.

(b) That by reason of the statements set out in the said para 5 the 2nd Respondent committed an illegal practice within the meaning of the said Section 58A.

(c) That the 2nd Respondent committed the said illegal practice as Agent of or with the knowledge and/or consent of the 1st Respondent thereby making the election of the 1st Respondent null and void within the meaning of the said section 58A read with section 77(c).

There were some objections against this petition being accepted which were filed by the 1st Respondent on the 15th November, 1977, but these are of no consequence now. On the 20th August, 1979, Counsel for the 1st Respondent gave notice to the petitioner that he would, at the trial, take objection that sufficient particulars as required by law had not been given to enable the said 1st Respondent to meet the charges and therefore the charges should be struck off. The Election Judge fixed this matter for preliminary hearing on 18.9.79 and after hearing parties on that date he delivered order on 1.10.79. There is a record of certain proceedings on 1.10.79 before order was delivered. It appears to have been conceded by Counsel for 1st Respondent that "publication, sale and distribution would all constitute publication in the general sense" and do not form three different charges. The Election Judge then proceeded to deliver order. He held :

1. That as "far as publication is concerned" no further particulars were needed as the petitioner had pleaded that the 2nd Respondent had published the newspapers of 29.4.77 (P16) 17.7.77 (P18) and 20.7.77 (P19).

2. That the petitioner should furnish the fullest particulars as regards places and dates and other particulars as required by section 80(5) (d) of sale and distribution by 2nd Respondent.

3. That the address of 1st Respondent's election office at Manana be furnished — for the benefit of 2nd Respondent and 3rd Respondent.

4. That the charge in paragraph 6 of the petition (one of illegal practice) contained no flaw and could not be struck off.

It must be noted at this stage that in this order the Election Judge makes a distinction between publication on the one hand and sale and distribution on the other.

The Petitioner filed an affidavit on the 23rd October, 1979, giving particulars to which Counsel for the Petitioner took a number of objections. The Election Judge made order after inquiry into these objections. The particulars furnished as amended by the Election Judge appear on the reverse of the document P8. The sale and distribution of P18 was restricted to 17.7.77 and 18.7.77 and of P19 was restricted to 20.7.77 by choice of Counsel for the petitioner. P6 was stated to have been sold and distributed by the 2nd Respondent and "by persons unknown to the petitioner". The Election Judge recorded that " No evidence will be permitted that distribution was *by* (the underlining is that of the Election Judge) persons unknown". No order appears to have been made with regard to the particulars that P19 was sold and distributed by the 2nd Respondent to persons unknown at Pimbura and Sinhalagoda. Those particulars stood. In this state of things the inquiry commenced on the charges of corrupt practice and illegal practice. After inquiry the Election Judge held the 2nd Respondent guilty of committing corrupt practice in respect of charges 1 to 3 and guilty of illegal practice in terms of section 58A. The election of the 1st Respondent was declared void as the 2nd Respondent was the Agent of the 1st Respondent. The case against the 3rd Respondent was dismissed with costs. The 1st and 2nd Respondents appealed against this finding.

It is necessary at the outset to consider an objection taken by Counsel for the 2nd Respondent. He contended that the Jana Aviya dated 29.4.77 (P6) cannot be taken into account and be considered for any of the charges as it was alleged to have been published, sold and distributed on 29.4.77 at a time when there was no election in the offing. At that date there was a Parliament in existence and the Petitioner was a member of it. That Parliament was dissolved on the 18th of May, 1977. He pointed to the fact that section 53(1) (d) refers to " the return of a candidate " and he contends that as at 29.4.77 the Petitioner was not a candidate. Section 3(1) of the Ceylon (Parliamentary Elections) Order in Council defines candidate thus for the purposes of the Order in Council :—

> " 'Candidate' means a person who is nominated as a candidate at an election or is declared by himself to be or acts as a candidate for election to any seat in the House of Representatives ; "

For the purpose of this definition an election is a *sine qua non* — not an expectation or hope of an election being held. An " election " is defined in Section 3 (1) of the Order in Council as " an election for the purpose of electing a member " to Parliament. An election became necessary when the seat of a Member of the National State Assembly fell vacant in terms of the provisions of Section 36 (1) (a) to (f) of the Constitution of Sri Lanka 1972. The President then by notification in the Gazette ordered the holding of an election to fill the vacancy, commonly referred to as a by-election. A general election is held when Parliament is dissolved (Section 36 (1) (g) of the Constitution of 1972). The President then by Proclamation fixes a date or dates for election of Members to the National State Assembly (Section 41(6) of the Constitution, 1972). When Parliament stands dissolved by expiry of the period of six years fixed for its continuance, (Section 41 (7) of the Constitution, 1972), the President in consultation with the Prime Minister fixes dates within the period of four months from the date of dissolution for the holding of elections (Section 47 (7) of the Constitution, 1972). In law therefore an election becomes a fact and a reality only when a by-election is called under the provisions of Article 36 (2) or when a General Election is called under the provisions of Section 41(6) and (7) of the Constitution, 1972. These are the elections contemplated by the words "candidate at an election" in section 3 (1) of the Ceylon (Parliamentary Elections) Order in Council. From the time such an election is called according to the provisions of the Constitution a person may declare himself to be, or act as, a candidate for election to any seat in Parliament. Indeed, the authorized agent of a recognized party may, even before the day of nomination issue a "valid certificate of official candidature to a candidate and such person then " acts as a candidate". After nomination day he will also be nominated candidate. In every proclamation dissolving Parliament and in every notice ordering the holding of an election (i.e. a by-election) a "day of nomination" and "place of nomination" is specified. (Section 28 of the Election Order in Council.) The candidate who is accepted by the Returning Officer on nomination day as a candidate who is entitled to contest a particular seat is a "person who is nominated as a candidate" at that particular election within the meaning of Section 3 (1) of the Ceylon (Parliamentary Elections) Order in Council 1946. The reckoning of any period prior to the notice in the Gazette, or the

Proclamation by the President is to do violence to the language of the Section for, to take an extreme case, a person may declare himself to be a candidate for every election that might be held for a particular seat, during his lifetime in the future. Such a construction will reduce the provisions of Section 58 of the Elections Order in Council to an absurdity.

The petitioner himself understood these words in this light for in his affidavit dated 15.8.77 filed with the petition he stated that P6 was "published before the said election". Para 4 of the affidavit sets it out thus :

> "(d) This aforesaid statement was published before the said election in the newspaper "Jana Aviya" bearing the date 29th April 1977, by the 2nd Respondent as Agent of the 1st Respondent or with his knowledge and consent of the 1st Respondent."

The particulars given by the affidavit of 19th October 1979 states that P6 was distributed by the 2nd Respondent on 29.4.77 at Manana Election Office (para 4) and that it was sold and distributed on 29.4.77 at a meeting held at the Manana junction which was addressed by the Hon. Mr. J. R. Jayewardene. P6 cannot therefore be utilised to found an allegation of an election offence. Charge 1 therefore fails. Nor can it be utilised for the purpose of proving the charge of illegal practice because that charge refers to the pleadings in para 5 of the petition which concern only P19 of 19.7.77. Para 4 (g) of the affidavit on 15.8.77 states that P6 "was published and sold and printed before and during the said election". P6 has been admitted for the limited purpose of proving that it was in circulation and was utilised as circumstantial evidence to prove publication of P18 and P19. It was also used to test the credibility of witnesses. P7 of 19.3.77 falls into the same category. Such use is permissible.

The Election Judge has held that the burden of proof that lay on the petitoner was one of proof beyond reasonable doubt as in a criminal case. He followed the decision of de Silva, J. in the case of *Premasinghe v. Bandara* (1). In that case de Silva, J. reviewed all the decisions relating to the burden of proof in

election cases and set out the following rules which he states were deducible from those decisions :—

"1. that any charge laid against a successful candidate by a petitioner in an election petition should be proved beyond reasonable doubt before a court could satisfy itself of such charge ;

2. that suspicion however strong it may be does not amount to proof of any charge ;

3 that even a high degree of probability is not sufficient to constitute the proof required to establish a charge and ;

4. that a court should be slow to act on one witness's word against another's even if the word of the person who supports a charge rings true when that constitutes the only evidence of such charge."

De Silva J. himself was dealing with charges of corrupt practice. The petition in this case sets out charges of corrupt practice and one of illegal practice. The Order in Council makes them criminal offences as well, by a provision that a person guilty of any such offence is liable to prosecution and on conviction by a District Court he may be punished with fine or imprisonment or both. To my mind this seems to indicate that the standard of proof as in a criminal case is required in proving the offence in an election case. There cannot be different standards of proof for the same offence — one for the election case and another for the criminal prosecution. I agree that the burden of proof in this case which lay on the petitioner was one of proof beyond reasonable doubt. I do not however agree with the criticism made by de Silva of the Judgment of Nagalingam J. in the case of *Don Phillip v. Illangaratne* (2) in which Nagalingam J. stated that the "falsity of the statement is *prima facie* established when there is a bare denial on oath". However, it is not necessary to discuss this at length as Counsel for the 1st Respondent has conceded that the statements in P18 and P19 are false statements of fact in relation to the personal character and conduct of the petitioner.

The appellants have no right of appeal on the facts. Section 82A of the Order in Council grants a right of appeal only on any question of law but not otherwise. Counsel for the 1st Respondent submitted that the findings of fact on which the election was declared void were not rationally possible and perverse and that

was a question of law which this Court had to decide. Counsel for the 2nd Respondent too stood his case on this question of law. There is no doubt that such a proposition has been accepted in our Courts and is part of the law in this country. Vide *Subasinghe v. Jayalath* (3). In essence this proportion is the distinction between pure questions on fact and inferences drawn from accepted facts. Denning J. in *Bracegirdle v. Oxley* (4) stated it thus :

> "The question whether a determination by a tribunal is a determination in point of fact or in point of law frequently occurs. On such a question there is one distinction that should always be kept in mind, namely, the distinction between primary facts and conclusions from those facts. Primary facts are facts which are observed by the witnesses and proved by testimony ; conclusions from those facts are inferences deduced by a process of reasoning from them. The determination of primary facts is always a question of fact. It is essentially a matter for the tribunal who sees the witnesses to assess their credibillty and to decide the primary facts which depend on them. The conclusions from those facts are sometimes conclusions of fact and sometimes conclusions of law."

In the case of *Venkataswami Naidu & Co. v. Commissioner of Income Tax* (5) the Court was dealing with an appeal in which the Jurisdiction of the High Court was limited entertaining references involving questions of law. The scope of this jurisdiction was stated by Gajendragadkar J. thus :

> "If the point raised on reference relates to the construction of a document of title or to the interpretation of the relevant provisions of the statute, it is a pure question of law ; and in dealing with it, though the High Court may have due regard for the view taken by the tribunal, its decision would not be fettered by the said view. It is free to adopt such construction of the document of the statute as appears to it reasonable. In some cases, the point sought to be raised on reference may turn out to be a pure question of fact ; and if that be so, the finding of fact recorded by the tribunal must be regarded as conclusive in proceedings under s.66(1). If, however, such a finding of fact is based on an inference drawn from primary evidentiary facts proved in the case, its correctness or validity is open to challenge in reference proceedings within narrow limits. The assessee or the revenue can contend that the inference has been drawn on considering inadmissible

evidence or after excluding admissible and relevant evidence ; and, if the High Court is satisfied that the inference is the result of improper admission or exclusion of evidence, it would be justified in examining the correctness of the conclusion. It may also be open to the party to challenge a conclusion of fact drawn by the tribunal on the ground that it is not supported by any legal evidence ; or that the impugned conclusion drawn from the relevant facts is not rationally possible ; and if such a plea is established, the Court may consider whether the conclusion in question is not perverse and should not, therefore, be set aside. It is within these narrow limits that the conclusions of fact recorded by the tribunal can be challenged under s.66(1). Such conclusions can never be challenged on the ground that they are based on misappreciation of evidence."

It is within these narrow limits that this Court must consider this appeal.

What then are the primary facts and what are the inferences drawn from them. The evidence falls into two separate compartments —

1. Evidence in respect of the distribution at Pimbura and Sinhalagoda of P19 by the 2nd Respondent.

2. Evidence in respect of the publication of P18 and P19 by the 2nd Respondent.

At the outset the Election Judge has dismissed the case against the 3rd Respondent. I have already held that a charge of committing an election offence cannot be founded on P6 as it was published on 29.4.77 when there was no election. He has also held that there was an Election Office of the U.N.P. at Manana at all relevant times. This finding is unimpeachable for the reason that in documents P9 to P12A the 2nd Respondent himself has given this address to the Police when applying for loudspeaker permits. His reason for giving that address was that it was easier for him to communicate with the police. The Police cannot communicate with him at an address at which he cannot be found. The 2nd Respondent was deliberately stating an untruth on this point.

Counsel for the 1st Respondent conceded that the 2nd Respondent was an Agent of the 1st Respondent at the said election. The Election Judge has found that the 2nd Respondent

distributed P19 at Pimbura and Sinhalagoda on the 20th July. The evidence that was led to support the petitioner on this point was the evidence of Weragama and Gunaratne who spoke of the distribution at Pimbura and Sinhalagoda respectively. The Judge holds that they were contradicted by the petitioner on points that he considered material. As such he took the view that these contradictions would affect the credit of these witnesses "as they were party supporters" of the petitioner. From this it is obvious that had their evidence stood alone the Judge would not have held against the 2nd Respondent on this charge. However on further consideration he decided to accept this evidence. His reasoning goes thus :

> "However on further consideration I have decided to accept their evidence for the reason that there is corroboration of their evidence by the petitioner when he says that these two witnesses told him about the distribution of P19 when he followed the motorcade."

Then he takes the next step. In reference to Weragama and Gunaratne he continues :—

> "They both stated that they saw the 2nd Respondent hand over a bundle of this paper to some unknown person. On this matter there is obviously no corroboration by the petitioner but once again it is not unreasonable to infer that it was the 2nd Respondent who was seen by the petitioner in the motorcade who handed over the papers to unknown persons in these two villages."

Once again it is a statement of the petitioner that induced the Election Judge to so hold. It is the evidence of the petitioner, and that of the petitioner alone, that clinched this issue against the 2nd Respondent. But for the evidence of the petitioner this charge would not have been proved. It is the evidence of one man that caused this charge to be held true. This does not conform to the 4th conclusion of de Silva, J. in *Premasinghe v. Bandara* (1). How safe is it to act on the evidence of the petitioner alone? The Election Judge's reasoning was that the petitioner is a truthful witness. What the petitioner spoke to of his own personal knowledge is very meagre and may have been true in the main but the rest of his evidence needs careful analysis as they consist solely of information given to him by others. He maintained that he first became aware of P19 at his own office at Manana on the 20th July, i.e., the day before the election. He said "it was first

brought to (his) notice by Mr. Senanayake at about 7.30 or 8.30 a.m." He read it and he was very disturbed in mind because the whole article was not damaging to his election. His Counsel then asked "what did you decide to do ?" His answer was "I decided to go to the more populated parts and tell my supporters that there was nothing in this." That was how he came to be on the same road as a motorcade and as a result came upon the distribution of P19 from a motorcade. Senanayake said in evidence that he was given a copy of P19 by the 2nd Respondent on the 20th July when he was going along the road opposite the U.N.P. Office at Manana. He then went straight to the C.P. office which was about 5 chains away and gave it to the petitioner. The Judge has disbelieved this evidence of Senanayake. This rejection of Senanayake's evidence necessarily means that the petitioner's evidence that Senanayake gave him P19 on the morning of the 20th July at the Manana Office must also be rejected. That is the reason why there is no express finding that P19 was distributed by the 2nd Respondent opposite the U.N.P. office at Manana. How then did the petitioner come to be on the road to Ayagama and Galature that day following a motorcade? There is no other reason given in the evidence. In this state of facts there is no basis for accepting the statement that the petitioner set out on the road to Ayagama on the morning of the 20th resulting in his following a motorcade. Senanayake's evidence that he received P19 from the 2nd Respondent at Manana and gave it that very morning to the petitioner has been disbelieved. The Judge could not then believe the petitioner that Senanayake gave it to him that morning saying that he received it from the 2nd Respondent. The story that the petitioner set out to contradict its contents cannot also be accepted. Therefore the story that he followed a motorcade from which P19 was distributed from Manana to Sinhalagoda falls flat.

Let us however continue with the petitioner's tale of following a motorcade. He states he was stopped at various points by supporters and questioned about P19. He stated further "Mr. Weragama at Pimbura and Mr. Gunaratne at Sinhalagoda stopped me and showed me this. They had got this from the motorcade." According to what witnesses told him the 2nd Respondent had distributed it by stopping at various points on the way. Weragama states that he only spoke about P19 to the petitioner in the verandah of the Party Office. He did not show the petitioner the paper nor did the petitioner ask for it. Neither Weragama nor Gunaratne said in evidence that they got it from the motorcade. They stated in evidence that they got it from others who are alleged to have got it from the 2nd Respondent when he got down

from the jeep. No doubt legally this is distribution by the 2nd Respondent but when a villager speaks of getting it from a motorcade he means just that and not a nicety concerning agency in law. As far as Gunaratne is concerned it is a matter of doubt whether he got his copy from a bundle that came from the motorcade. His copy was obtained from the U.N.P. Party Office about 20 minutes after the alleged distribution. The petitioner was relying on something that these two witnesses told him then but they, for reasons best known to them, did not say they got it from the motrocade but brought in some unknown persons into the picture. The petitioner appears to have been misled by these two witnesses. In any event their credit is questioned for the reason that they were party supporters but in the final analysis their evidence is accepted because they are corroborated by the petitioner. I find some difficulty in accepting this reasoning. The petitioner himself is a party supporter and has been for 24 years. His credit should therefore suffer the same infirmity and his evidence cannot give credence to these two witnesses. The judge's inference from this evidence cannot be upheld.

At this stage I wish to deal with evidence of the petitioner with regard to P6 of 29.4.77. He states that this was given to him on that date itself by Senanayake and he remembers this quite clearly because that date happened to be his birthday. But Senanayake says he received it on the 30th April and not on 29.4.77. This throws considerable doubt on the evidence of the petitioner. Senanayake has been disbelieved but the Election Judge has not stated whether or not he accepts the petitioner's evidence on this point. The Judgment is silent on this point. In his affidavit dated the 19th October, 1979, the petitioner stated that P6 had been sold and distributed on 29.4.77 at a meeting held at Manana junction which meeting was addressed by Hon. J. R. Jayewardene. Later, when he was preparing for the inquiry, he found that this particular was wrong and that he had been misled by his witnesses. It is now alleged to be a reference to P7 of 19.3.77. In any event it is unlikely that P6 was distributed in the electorate on the very date it was printed. I have set out the above matters not only to show that it is unsafe to act on the evidence of the petitioner alone but also to show that the Election Judge's reasoning is untenable on the facts. We do not have the benefit of the Election Judge's view on these vital matters. Furthermore, the evidence with regard to the distribution of P19 is not one that satisfies the rule that proof must be beyond reasonable doubt. To

be so it must be of sterner stuff. I therefore hold that the 2nd Respondent did not distribute P19 at Pimbura and Sinhalagoda and acquit him of that charge.

I now come to the distribution of the Kalawana Janatha of 17.7.77 (P18) which the petitioner says he got from Senanayake on 18.7.77 when he got down from the platform at the Katalana meeting. This is the meeting at which a vocalist, by name Nanda Malini, sang on the platform. Senanayake says he got P18 from the 2nd Respondent opposite the U.N.P. Office at Manana and he gave it to the petitioner at the Katalana meeting. Senanayake has been disbelieved. Witness John Singho stated that he received P18 from the 2nd Respondent at the U.N.P. Office at Manana. His evidence was such that even Counsel for the petitioner was constrained to disown him. Counsel informed Court that he was not relying on his evidence to prove the charge but was merely leading his evidence as part of the transaction. Police Constable Ratnayake stated in cross-examination that there was no meeting on the 18th July 1977. In re-examination he repeated this. He was speaking from 4 Registers which he had before him. Counsel for the petitioner submitted that this witness was mistaken. In Court he showed us a Register for Rakwana which had an entry against 18.7.77. Counsel for petitioner stated that it was a reference to the meeting of the 18th July. On a perusal of the entry it was found to contain particulars germane to excise matters and we were not in a position to hold that it referred to an election meeting. We are therefore left with only the evidence of the petitioner which does not establish that P18 was distributed by the 2nd Respondent and that charge too fails.

I now come to the finding that the 2nd Respondent was the publisher of P18 and P19. That they contained false statements of fact relating to the personal character of the petitioner is conceded. Suffice it to say that P19 along with P17, P20, P21 and P22 contain allegations of the meanest and the foulest kind meant, without doubt, to affect the return of the petitioner. They were also capable of influencing the result of the election. Whoever did it stooped to conquer. P6 and P7 must be considered along with these papers. P18 and P19 were published on the 17th and 19th July, 1977, respectively giving the petitioner no time whatsoever to contradict them or to take counter measures for his benefit. There was no direct evidence of publication but Counsel for the petitioner sought to prove this charge by circumstantial evidence. There was ample circumstantial evidence. All except P17 are printed at Sastrodaya, a press in Ratnapura which also printed

some of the 1st Respondent's election literature (Vide receipt P3A of 19.7.77). All except P7 and P20 bear an imprint stating that the 2nd Respondent was the publisher. The 2nd Respondent denied this and tried to father it on one Nimal Chandrasiri Attanayake whose name was on his list of witnesses. However he had to admit that person was from Wennapuwa and did not reside at Manana. He could not give a satisfactory explanation as to why he included this man's name in his list of witnesses. Eventually he was driven to admit that he himself was the only person by that name at Manana. Section 6 of the Newspapers Ordinance (Chapter 180) required that the first name, surname and place of abode of the printer and publisher shall be printed at the end of the newspaper. Section 52A and Section 68A of the Ceylon (Parliamentary Elections) Order in Council required that all election literature should bear on the face of it the name and address of the printer and publisher. All these publications contained such an imprint giving the name of the 2nd Respondent as publisher. Residents of Manana would not have been wrong if they identified the 2nd Respondent as the publisher. The 2nd Respondent was known throughout the electorate as the 1st Respondent's Chief Election Worker and voters of Kalawana would also have so identified him. I do not think any anonymous donor or donors of the 1st Respondent would have falsely used this imprint because that would only have served to defeat their purpose. He stated that he read only two papers of the Jana Aviya, and that too, only the headlines. His excuse was that he did not have the time to read the whole paper. P16 and P17 were published in April and March 1977 at which time there was no election campaign. During an election campaign election literature is much sought after and avidly read by all and sundry and time is always found for such reading. His plea of want of time cannot be accepted. P6 published on 29.4.77 bore an imprint giving the 2nd Respondent's name as publisher. P7 contained an article contributed by him. He first denied all knowledge of the Kalawana Janatha publications but had to admit at one stage that some youth leaguers brought to his notice the fact that the Kalawana Janatha was being circulated in the electorate. This is a rural electorate spreading over a length of 72 miles. The total voting strength was 26964. It is well nigh impossible to believe that the private Secretary and Chief Election Worker of the 1st Respondent did not know of or read of these papers which contained the party symbol, and pictures of the candidate he supported prominently displayed and whose literature was all in support of his candidate. The 1st respondent was the sole beneficiary of such propaganda. Such a statement is hard to accept in the context of village life. They contained attacks on the petitioner and yet the 2nd Respondent pretends that he was not aware of them and that he

was not interested in reading them. His evidence has been justifiably disbelieved. He found himself in a difficult situation in the witness box because he could not admit that he read any of the publications and therefore had to resort to half truths and untruths. I need not labour the point. The Election Judge has rightly held that the 2nd Respondent was guilty of charges 2, 3 and 4. The Election Judge has not found it possible to hold that the 1st Respondent had knowledge of these papers. Once again in the context of village life and ordinary human conduct such a finding is hard to accept. The 1st Respondent should consider himself a fortunate man that we are precluded from being Judges of fact in this appeal.

In view of the above I agree that charges 2 and 3 (publication of P18 and P19 respectively) and charge 4 have been proved against the 2nd Respondent and he is thereby guilty of corrupt practice in terms of Sectiion 58(1) (d) and of illegal practice in terms of Section 58A of the Ceylon (Parliamentary Elections) Order in Council of 1946. I therefore dismiss the appeal with costs.

SAMERAWICKRAME, J. — I agree.

THAMOTHERAM, J. — I agree.

Appeal dismissed.