

(2000) 04 BOM CK 0015

In the Bombay High Court

Case No : Chamber Summons No. 296 of 2000 in election petition No. 3 of 1999

Anantrao Narayan Thopte

APPELLANT

Vs

Shri Kashinath Parvati Khutwad and others

RESPONDENT

Date of Decision : 10-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 19 Rule 2, Order 6 Rule 15, Order 7 Rule 11
Conduct of Elections Rules, 1961 — Rule 94A
Representation of the People Act, 1951 — Section 100(1), 117, 123(4), 81, 82
Supreme Court Rules, 1966 — Order 11 Rule 13

Citation : (2000) 3 ALLMR 382 : (2000) 4 BomCR 254 : (2000) 2 BOMLR 818

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : K.K. Singhavi, A. instructed by S.R. Borulkar, I.M. Acharya and V.P. Sawant, for the Appellant; V.R. Manohar, S.C. Dharmadhikari and D.A. Nalawade, for the Respondent

Judgement

R.M. Lodha, J.—This chamber summons is at the instance of returned candidate praying therein that election petition be dismissed summarily under the provisions of Order 7, Rule 11 of the CPC read with section 86 of Representation of Peoples Act, 1951 (for short "R.P. Act").

2. In the affidavit in support of the chamber summons, the returned candidate has stated that dismissal of election petition is sought since the election petition does not satisfy the mandatory requirements prescribed in the R.P. Act. According to the returned candidate the pleadings in the election petition do not contain the statement of material facts nor the particulars with dates and details have been stated. It is thus, stated in the affidavit in support of chamber summons that the pleadings are not verified in accordance with the mandate of law; the election is sought to be challenged on the ground of corrupt practice solely on the ground of alleged speeches made by Shri Sharad Pawar and the alleged publication which is annexed as Exhibit "D" to the election petition but the material facts in relation thereto are not pleaded; the election petitioner has

also based his case on the ground that the returned candidate published the alleged pamphlets but there is inconsistency in the election petition in that regard in as much as at one place, the election petitioner has alleged that the pamphlets were got published by the returned candidate at Rajeshwar and at another place it is alleged that at an election meeting held on 8th September, 1999 at village Velhe in Pune district pamphlets were distributed; in the election petition, reference to pamphlets has been made but no proper particulars about the same have been given; there are no proper pleadings of corrupt practice given necessary for raising triable issues in the election petition at one place the petitioner refers to the public meeting held on 8th September, 1999 and alleges that pamphlets were distributed by Shri R. Darvatkar and in another paragraph, the election petitioner has stated that pamphlets were distributed by Shri Dilip Bathe and the petitioner does not disclose while referring to Shri Darvatkar that the pamphlets distributed by him were published by whom. The returned candidate has set up the case that these facts do not meet the requirement of precise statement of fact and particulars about the corrupt practice contemplated by section 83(1)(b) of the R.P. Act. It is alleged by the returned candidate that the election petition is verified by the petitioner as being based upon the facts which are true to his own knowledge while in the affidavit in support of the election petition, the petitioner has tried to make distinction between the facts true to his personal knowledge and facts believed to be true based on information received by him. According to returned candidate there is inconsistency in the verification of election petition and the affidavit annexed therewith and, therefore, election petition does not inspire confidence at all. In some and substance, it is the case of the returned candidate that election petition does not disclose any cause of action deserving consideration by this Court and the election petition deserves to be dismissed at threshold.

3. The chamber summons taken out by the returned candidate is contested by the election petitioner and in the affidavit in reply, it is stated that the election petition does contain material facts constituting corrupt practice within the meaning of section 123(4) of the R.P. Act and that all mandatory requirements prescribed in the R.P. Act have been complied with. According to the election petitioner, the election petition contains concise statement of material facts and full particulars thereof which constitute corrupt practice within the meaning of section 123(4) of the R.P. Act. The requisite pleadings and ingredients of the material facts have been pleaded and full particulars have been furnished with regard to every corrupt practice pleaded by him in the election petition including with regard to the pamphlets. The election petitioner has stated that the pleadings in the election petition are sufficiently clear and precise and in accordance with the provisions of section 83 of the R.P. Act and the returned candidate has understood the same sufficiently and then filed the written statement. The election petitioner has denied any defect in the verification or inconsistency in the verification of the election petition and the contents of the supporting affidavit. Without prejudice to above, the election petitioner has

stated that if this Court comes to the conclusion that the election petition does not provide sufficient particulars and/or there is any defect in the verification or the affidavit, he is ready to furnish and/or rectify the defect. It is thus prayed by election petitioner that chamber summons be rejected.

4. The question that falls for consideration in the chamber summons is whether the election petition deserves to be rejected summarily under Order 7, Rule 11 of C.P.C. read with section 86 of R.P. Act.

5. Section 86 of the R.P. Act provides that the High Court shall dismiss the election petition which does not comply with the provisions of section 81 or section 82 or section 117 of the said Act. It is not the case of the returned candidate that the presentation of petition is not in accord with section 81 or that the election petition does not comply with section 81. It is also not the case of the returned candidate that there is any breach of section 82 in respect of the parties of the petition. The returned candidate has also not challenged that there is any non-compliance of section 117. Thus, it is clear that non-compliance of neither section 81 nor section 82 nor section 117 is alleged by the returned candidate and therefore, dismissal of election petition u/s 86 of the R. P. Act does not arise. As a matter of fact, the substance of the grievance of the returned candidate in chamber summons is that the election petition does not disclose cause of action and therefore, the election petition is liable to be rejected under Order 7, Rule 11 C.P.C. However, during the course of arguments, Mr. Manohar learned Senior Counsel appearing for the returned candidate principally contended that the affidavit filed by the election petitioner under proviso to Clause (c) of section 83 is an integral part of election petition and the said affidavit being not in conformity with the mandatory provisions, the election petition deserves to be dismissed summarily. The learned Senior Counsel appearing for the returned candidate strenuously urged that though the said affidavit has been styled as affidavit purporting to be in accord with the proviso to Clause (c) of section 83, it is no affidavit in the eye of law and the defect being fatal and non-curable, the election petition does not deserve to be tried on merits. Highlighting the defects in the affidavit filed by the election petitioner under proviso to Clause (c) of section 83, Mr. Manohar, learned Senior Counsel appearing for the returned candidate submitted that the said affidavit does not specify corrupt practice as per the mandate of Rule 25 and the particulars of corrupt practice are not stated. According to the learned Senior Counsel, though annexures have been annexed with the election petition, there is no mention of the said annexures in the affidavit. Mr. Manohar submitted that it was incumbent upon the election petitioner to disclose the source of information in the affidavit and the source of information has not been stated. He also contended that the supporting affidavit does not allege corrupt practice at all. The learned Senior Counsel appearing for the returned candidate relied upon various judgments viz. M. Kamalam Vs. Dr. V.A. Syed Mohammed, , M. Karunanidhi Vs. Dr. H.V. Hande and Others, . Rajendra Singh Vs. Smt. Usha Rani and Others, , Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others, ; Sharif-ud-din Vs.

Abdul Gani Lone, , Manohar Joshi Vs. Nitin Bhaurao Patil and Another, , Shri Harasingh Charan Mohanty Vs. Sh. Surendra Mohanty, . R.P. Moidutty Vs. P.T. Kunju Mohammad and Another, . Shivajirao B. Patil Kawekar Vs. Vilasrao D. Deshmukh, . Mr. V. Narayanaswamy Vs. Mr. C.P. Thirunavukkarasu, , F.A. Sapa Etc., Etc., Vs. Singora and others, Azhar Hussain Vs. Rajiv Gandhi, , Daulat Ram Chauhan Vs. Anand Sharma, and the judgments of this Court in Sahebrao s/o. Kachru Patil Dongaonkar v. Ashok s/o. Rajaram Patil Dongaonkar 1997(3) ALL M.R. 665, Kokate Baburao Narsingrao v. Munde Gopinathrao Pandurang & others 1997(3) All.M.R. 184, Balwant s/o. Harishchandra Jadhav v. Narendra s/o. Baburao Borgaonkar & another 1997(4) All.M.R. 199, Ashok Shankar Gholap Vs. Krishnarao H. Deshmukh and Another, and the judgment of the Allahabad High Court in Ram Autar Shastri Vs. Khurshid Alam Khan and Another, .

6. On the other hand Mr. K.K. Singhvi, the learned Senior Counsel appearing for election petitioner strenuously urged that the election petition contains the concise statement of material facts which has given rise to the cause of action to the petitioner and also set forth full particulars of corrupt practice giving names of the parties who have committed such corrupt practice and the date and place of commission of such practice. He submitted that there is no infirmity and/or inconsistency in the verification of the election petition or in the affidavit annexed therewith. Mr. Singhvi submitted that at the present stage, the contents of the election petition are to be seen and treating them to be true, it is apparent that the election petition discloses causes of action based on the ground of corrupt practice. Mr. Singhvi submitted that all mandatory requirements have been complied with and that the election petition does not suffer from any fatal defect. According to Mr. Singhvi, the supporting affidavit filed by the election petitioner alongwith the election petition as per proviso to Clause (c) of section 83 is not an integral part of the election petition and if this Court finds any defect in the affidavit or in the verification, of election petition, the said defect being curable an opportunity may be given to the election petitioner to rectify such defect. Mr. Singhvi, learned Senior Counsel for election petitioner heavily relied upon the judgments of the Apex Court in Ashwini Kumar Sharma v. Yaduvansh Singh & others AIR 1998 S.C. 337 , Ch. Subbarao Vs. Member, Election Tribunal, Hyderabad, , T.M. Jacob Vs. C. Poullose and Others, , K.M. Mani Vs. P.J. Antony and Others, , Raj Narain Vs. Indira Nehru Gandhi and Another, , Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others, , Balwan Singh Vs. Lakshmi Narain and Others, , H.D. Revanna Vs. G. Puttaswamy and Others, , Krishan Chander Vs. Ram Lal, and Prabhu Narayan Vs. A.K. Srivastava, . He also relied upon the judgment of the Apex Court in T.M. Jacob Vs. C. Poullose and Others, , V.S. Achuthanandan Vs. P.J. Francis and Another, .

7. By means of the present election petition filed by the election petitioner, the election of the returned candidate (respondent No. 1) is being challenged on the ground of corrupt practice committed by the returned candidate himself and his agent Shri Sharad Pawar and other nominated persons with the consent of the returned candidate within the meaning of section 123(4) read with section 100(1)

(b) and 100(1)(d)(ii) of R.P. Act. The petitioner has further sought declaration that he should be declared elected from the said constituency having secured the majority of votes. In para 8 of the election petition, the election petitioner has stated about the public meeting held on 8-9-99 at village Bholavade. In the said paragraph, the petitioner has given the details of the utterances made in the public meeting by Shri Sharad Pawar which according to him were made in the presence of returned candidate and with his consent, statements of fact which were false and which he believed to be false or did not believe to be true in relation to the personal character or conduct of the petitioner as the Chairman of Raged Sahakari Sakhar Karkhana Ltd. In para 9, the petitioner has given further details of the speech made by Shri Sharad Pawar in the said meeting and the facts which transpired in the presence of the returned candidate. The election petitioner has reiterated the utterances made in the said speech by Sharad Pawar in the presence of the returned candidate. According to the petitioner, the statement made by Shri Sharad Pawar in his speech referred to in para 8 of the election petition that a sum of Rs. 20 lacs or Rs. 25 lacs was given to the petitioner or trust formed by the petitioner by cheque from Maharashtra Treasury, was totally false and Shri Sharad Pawar was fully aware that no such amount of Rs. 20 or 25 lacs was ever given to the petitioner and/or petitioner's trust. These facts are stated in para 10 of the election petition. In para 11 of the election petition, the petitioner has stated that the meeting referred to in para 8 of the election petition viz. the meeting held on 8-9-1999 at village Bholavade, Taluka Bhore, District Pune was attended by Shri Krishna Tukaram Shete and Shri Bhujangrao Marutrao Dabhade from village Kiwat. The petitioner came to know about the contents of the said speech from these two persons who personally heard it. The election petitioner has further stated in para 11 that he also learnt that the proceedings of the said meeting are recorded by the State Election Commissioner on video cassette and upon petitioner acquiring that knowledge, he applied to the Returning Officer for a true copy of the video cassette which has been annexed at Exhibit "A" with the election petition. In para 12, the election petitioner has averred that the returned candidate (first respondent) was present on the dias with Shri Sharad Pawar when he gave speech as referred to in para 8 of the petition. In fact the first respondent corrected Shri Sharad Pawar to say that petitioner or the trust formed by the petitioner was given a sum of Rs. 10-20 lacs. It is further stated in para 12 that though the false statements were made by Shri Sharad Pawar in the presence of the first respondent, the first respondent never objected to these statements and he did not in any manner disassociate himself with these statements. The petitioner has thus stated that corrupt practice committed by Shri Sharad Pawar was with the consent of the first respondent and the statements made by Shri Sharad Pawar were known and believed to be false by both of them. The petitioner in para 13 of the election petition has set out the facts relating to publication of pamphlet relating to Rajeshwar Temple wherein the misconduct of the petitioner in managing the trust is alleged. It is averred by the petitioner that the said pamphlet was got printed by the first respondent at Shriram Mudran Mandir 218, Shukrawar Peth, Pune on

8-9-99 and the said pamphlet was published by Shri Dilip Bathe. In para 14 of the election petition, the petitioner has averred that the first respondent by making the said statements of fact in relation to the personal character or conduct of the petitioner which are false and which he believed to be false or did not believe to be true were made with reasonable calculation to prejudice the prospects of the petitioner's election. According to the petitioner, the first respondent knew that the then Defence Minister Shri Sharad Pawar had not given Rs. 20 lacs or any other sum for the development of Rajeshwar Dongri temple and he also knew that the 7 x 12 extract did not stand in the name of the petitioner. The first respondent also knew that the petitioner's daughter, son and son-in-law are not trustees of the said trust. In para 15 of the election petition, the petitioner has given the details of the public meeting held on 8-9-99 at around 1400 hrs. at Velhe, Taluka Velhe, District Pune which was addressed by Shri Sharad Pawar in support of the candidature of the first respondent. The first respondent is stated to be present in the said meeting and was sitting on the dias. It is averred by the petitioner that in the said meeting, on instructions from and with the consent of the first respondent, the pamphlets reference of which have been made in para 13 of the election petition were distributed by the President of Velhe Taluka Nationalist Congress Party, Shri Ravannath Darvatkar of Village Kondgaon, Taluka Velhe, District Pune and other workers. One of such pamphlets was received by Shri Sharad Balknshna Deshpande of village Kodapur, Taluke Velhe, District Pune. It is stated by the petitioner that Shri Ravannath Darvatkar and other workers of the first respondent believed that each of the statements of fact contained in the said pamphlet was false and which they did not believe to be true in relation to the personal character or conduct of the petitioner. The petitioner has also stated that Shri Ravannath Darvatkar being the party worker of National Congress Party, took active part during the election campaign of the first respondent. By the said corrupt practice, it is stated by the petitioner that it has materially affected the result. In para 16 of the election petition, the petitioner has set out that on 8-9-99 at about 13.45 hrs., on instructions from and with the consent of the first respondent, the pamphlets referred to in para 13 were distributed by Shri Dilip Bathe, publisher of pamphlet and workers/agents and/or persons who held out to have acted as agents of the first respondent. The petitioner has stated that the said pamphlets were received by the supporters viz., Shri Krishna Tukaram Shete and Shri Bhujangrao Marutrao Dabhade who were present in the said meeting. In para 17, the petitioner has averred that the said speech of Shri Sharad Pawar delivered on 8-9-99 was given wide publicity and the same was published in a local newspaper widely read by the voters in the constituency. It is stated that on 9-9-99, the said speech of Shri Sharad Pawar was published in daily Kesari, Pune on page 8 with the caption "Voters should teach a lesson to Thopte". The said news item dated 9-9-99 was published in Dainik "Kesari", Pune. It is stated that the said news item dated 9-9-99 concerning the petitioner was published by the Reporter Mrs. Pradaya Purushottam Musale, Editor, Shri Arvind Gokhale of Dainik Kesari, Pune at the instance of the first respondent and Shri Sharad Pawar with

the consent of the first respondent. The details of the news items have been given in para 17 and it is further stated that the said publication was in the knowledge of the first respondent and his agents false and they did not believe it to be true and the said news item was published to prejudice the prospects of the petitioner's election.

8. The close reading of various paragraphs of the election petition referred to hereinabove clearly indicate that the Election petitioner has in the election petition given concise statement of all material facts of corrupt practice alleged in the election petition. The facts averred in the election petition in respect of corrupt practice allegedly committed by respondent No. 1 clearly disclose the cause of action and by no stretch of imagination can it be said that the election petition suffers from want of material facts. Not only that, in the election petition the full particulars of corrupt practice have been set out including the names of the parties who are alleged to have committed corrupt practice. The election petitioner has also given the dates and place of commission of each corrupt practice. The election petition, therefore, cannot be said to suffer from any infirmity so far as the contents of petition in respect of clauses (a) and (b) of sub section (1) of section 83 are concerned. As a matter of fact, it was for this reason that the learned Senior Counsel appearing for the returned candidate did not address on the point that the election petition does not contain concise statement of material facts though it has been set out as a ground in Chamber Summons. The principal contention raised by Mr. Manohar, learned Senior Counsel appearing for the returned candidate is that the affidavit filed by the election petitioner purportedly under proviso to sub-section (1) of section 83 is no affidavit in the eye of law. Upon perusal of the said affidavit, I find myself unable to accept the contention of the learned Senior Counsel for the returned candidate. Proviso to sub-section (I) of section 83 provides that where the election petitioner alleges any corrupt practice, the election petition shall be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Rule 94-A of the Conduct of Election Rules, 1961 states that the affidavit referred to in the proviso to sub-section (1) of section 83 shall be sworn before the Magistrate of the First Class or a Notary or a Commissioner of Oath and shall be in Form 25. Form 25 of the affidavit under Rule 94-A reads thus :---

"FORM 25 (See Rule 94A) Affidavit

Ithe petitioner in the accompanying election petition calling in question the election of Shri/ Shrimati..... (respondent No.in the said petition) make solemn affirmation/ oath and say---

(a) that the statements made in paragraphs of the accompanying election petition about the commission of the corrupt practice of..... and the particulars of such corrupt practice mentioned in paragraphs of the same petition and in paragraphs

of the Schedule annexed thereto are true to my knowledge:

(b) that the statements made in paragraphs of the said petition about the commission of the corrupt practice of and the particulars of such corrupt practice given in paragraphs of the said petition and in paragraphs of the Schedule annexed thereto are true to my information:

(c)

(d)

etc.

Signature of deponent

Solemnly affirmed/sworn by Shri/Shrimati at
this day of 19

Before me Magistrate of the first Class/Notary/Commissioner of Oaths."

9. The affidavit which has been filed by the election petitioner under sub-section (1) of section 83 reads thus :---

"I, Anantrao Narayan Thopte, the petitioner in the accompanying election petition calling in question the election of Shri Kashinath Parvati Khutwad (the respondent No. 1 in the said petition) make solemn affirmation and say---

(a) that the statements made in paragraphs Nos. 13, 14, 17 of the accompanying petition about the commission of corrupt practice of publication and circulation of statements of fact, by the first respondent and/or other persons with the consent of the first respondent named therein, which are false and which they believed to be false or not believed to be true in relation to the personal character or conduct of the petitioner, which was reasonably calculated to prejudice the prospects of the petitioner's election, within the meaning of section 123(4) of the Representation of People Act, 1951 and the particulars of corrupt practice mentioned in paragraphs 13, 14 and 17 itself of the same petition, are true to my own knowledge;

(b) that the statements made in paragraphs No. 8, 9, 10 and 12 of the accompanying election petition about the commission of corrupt practice of publication and circulation of statements of fact by the first respondent and other persons with the consent of the first respondent named therein, which are false and which they believed to be false or not believed to be true in relation to the personal character or conduct of the petitioner, which was reasonably calculated to prejudice the prospects of the petitioner's election, within the meaning of section 123(4) of the Representation of People Act, 1951 and the particulars of corrupt practice mentioned in paragraphs 11, 15 and 16 of the said petition are true to my information."

10. A perusal of the said affidavit on its face indicate that the said affidavit is in

accord and in compliance with Form 25 and cannot be said to be defective in any manner whatsoever. The election petitioner in the said affidavit has disclosed which paragraphs of election petition in relation to commission of corrupt practice are true to his knowledge and which paragraphs are true to his information. The form 25 prescribed under rules does not require that in the affidavit, the election petitioner should disclose the source of information. In *Murarka Radhey Sham Ram Kumar* (supra), the Apex Court affirmed the view of the High Court and Election Tribunal wherein it was held that the affidavit contemplated by proviso to sub-section (1) to section 83 can be filed even at the later stage. In *Krishan Chander* (supra), the Apex Court held thus:---

"4. The petitioner who argued of the appeal in person contends, inter alia, firstly, that as the affidavit filed by him in support of the election petition merely stated that the allegations contained in paragraphs 11 and 12 were based on information received and he had not stated what the sources of information were, that part of the petition in which the allegations of corrupt practices were made against Piyare Lal, Kali Ram and Kalu Ram cannot form the basis of a triable issue. Consequently the allegations against the respondent should have been enquired into; secondly, that the learned Judge should have on the pleadings framed and tried all issues arising out of the petition and not merely issues confined to a preliminary point. Where issues of fact and law arise out of the petition it is contended that evidence should have been recorded and findings given in respect of all those issues; thirdly, the appellant submits that while section 82(a) is mandatory, section 82(b) is directory, as such the petition cannot be dismissed; fourthly, the allegations in paragraphs 11 and 12 of the petition did not constitute corrupt practice inasmuch as the allegations only state that money was paid, but there was no express averment that it was accepted by the persons concerned; and lastly, it was contended that section 82(b) is violative of Article 14 of the Constitution in that it was harsh and would result in the dismissal of the petition in which allegations of corrupt practices were made against the successful respondent who committed them, merely because proper allegations were not made against the persons who were not elected.

5. In support of his first contention the appellant has referred to decisions rendered under Order 6, Rule 15 and Order 19, Rule 2 of the Code of Civil Procedure. These decisions in our view, have no relevance and do not support the submission of the appellant that in the affidavit in support of the petition if he has not stated the sources of information on which the several allegations in the petition are based, those allegations cannot be deemed to have made. Order 6, Rule 15(2) states that the person verifying shall specify, by reference to numbered paragraphs of the pleadings what he verifies on his knowledge and what he verifies upon information received and believed to be true. This provision, as we shall presently show, is no different to that required to be stated on an affidavit by the proviso to section 83(1), read with Rule 94-A and Form 25 of the Conduct of Election Rules, 1961. Order 19, Rule 2 has no relevance as that deals with evidence being given on affidavit and if either party insists the Court

may order the deponent to attend for cross-examination.

6. As the outset it may be stated that the provision for setting out the sources of information where the allegations have been verified as having been made on information and knowledge of the petitioner is not a requisite prescribed under Rule 94-A of the Conduct of Election Rules, 1961, which are applicable to the filing of an election petition. Under sub-section (1) of section 83 an election petition has to contain a concise statement of the material facts on which the petitioner relies; it has to set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the Commission of each such practice and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of the pleadings, provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. The affidavit in Form 25 prescribed under Rule 94-A as follows :---

"1 the petitioner in the accompanying election petition calling in question the election of Shri/ Shrimati..... (respondent No.....in the said petition) make solemn affirmation on oath and say...

(a) that the statements in paragraphs of the accompanying election petition about the commission of the corrupt practice of and the particulars of such corrupt practice mentioned in paragraphs of the Schedule annexed thereto are true to my knowledge :

(b) that the statements made in paragraphs of the said petition about the commission of the corrupt practice of the particulars of such corrupt practice given in paragraphs of the said petition and in paragraphs of the schedule annexed thereto are true to my information.

(c)

(d)

(e)

Signature of deponent.

Solemnly affirmed/sworn by Shri/Shrimati
at this day of
19

Before me, Magistrate of the First Class/ Notary/Commissioner of Oaths."

*Here specify the name of the corrupt practice.

There is nothing in this form which requires the petitioner to state under clause (b) of Form 25 the source or sources of his information. The appellant has referred us to Order XI, Rule 13 of the Supreme Court Rules as also to Rule 12(A) of the Punjab High Court Rules, in which when the deponent in the affidavit filed in support of the petition states that he has made the allegations in the paragraph or paragraphs specified on information, he is required also to disclose the sources of information. But when there are specific rules made under the Act which govern the election petitions, no other rules are applicable. Nor is the disclosure of the source of information a requisite under Order VI, Rule 15(2) C.P.C. On this ground alone the submission of the appellant can be rejected. But as he has cited several cases, a few of them may be examined to show that they do not help him."

11. The Apex Court in the aforequoted judgment has held in an unequivocal terms that Form No. 25 prescribed under Rule 94-A does not require the petitioner to state the source or sources of information. The view taken by the Apex Court in Kishan Chander's case has been reiterated by the Apex Court in Prabhu Narayan v. A.K. Srivastava (supra) and F.A. Sapa (supra). In K.M. Mani (supra), the Apex Court in para 12 held thus :---

"12. It has also been argued that the election petition has not been properly verified as it has not been stated which of the averments in paragraphs 3 to 6 were true "according to the information received by the petitioner" and which were "believed" by him to be true. Our attention has in this connection been invited to a judgment of this Court in Virendra Kumar Saklecha v. Jagjiwan. We find that the only objection which was taken in the written statement (paragraph 11) was that the "affidavit filed alongwith the petition (was) not in conformity with the requirements of law". The law in that respect is contained in the proviso to section 83(1) which requires that the affidavit shall be in the "prescribed form". A cross reference to Rule 94-A and Form 25 of the Conduct of Election Rules, 1961 shows that it was enough for the election petitioner to say that the statements made in the relevant paragraphs (3 to 6) were true to his "information" and that is what he has done. The decision in Saklecha turned on the rules of the High Court, but no breach of any rule of the Kerala High Court has been brought to our notice."

12. In F.A. Sapa (supra), the Apex Court ruled thus :---

"23. In Virendra Kumar Saklecha Vs. Jagjiwan and Others, Rule 7 of the M.P. High Court Rules provided that every affidavit should clearly express how much is a statement and declaration from knowledge and how much is based on information or belief and must also state the source of information or belief. This Court held that the requirements of Form 25 were not consistent with Rule 7 which purported to give effect to Order 19 of the Code. In that case the affidavit accompanying the petition did not disclose the source of information in respect of

certain speeches alleged to have been made by the appellant which constituted corrupt practice nor were the notes thereof allegedly made by certain persons produced therewith. This Court while stating that it was not necessary to express any opinion on the question whether the non-disclosure of the source on ground of information in the affidavit can prove fatal, nevertheless observed that the grounds or sources of information are required to be stated since section 83 states that an election petition shall be verified in the manner laid down by the Code and the affidavit was therefore, required to be modelled as required by Order 19 of the Code. This decision is not an authority for the proposition that failure to disclose the source or ground of information would result in dismissal of the petition u/s 86(1) of the R.P. Act.

24. In *Krishan Chander Vs. Ram Lal*, , the appellant, a voter questioned Ram Lal's election on the allegation that he, his election agent and some others with his consent, had committed various acts of corrupt practices detailed in paragraphs 11 and 12 of the petition. The petition was verified by the appellant and was accompanied by an affidavit wherein he stated that paragraphs 11 and 12 were based on information received and believed to be true. The respondent raised a preliminary objection that the petition was liable to be dismissed for non-compliance with the provisions of the R.P. Act read with the Code as the sources of information were not disclosed. In support of this contention reliance was placed on the decisions rendered under Order 6, Rule 15 and Order 19, Rule 2 of the Code. Dealing with this submission, this Court observed in paragraph 6 of the judgment as under :

"At the outset it may be stated that the provision for setting out the sources of the information where the allegations have been verified having been made on information and knowledge of the petitioner is not a requisite prescribed under Rule 94-A of the Conduct of Election Rules, 1961, which are applicable to the filing of an election petition. Under sub-section (1) of section 83 an election petition has to contain concise statement of the material facts on which the petitioner relies; it has to set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of the pleadings, provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof."

Setting out Form 25 prescribed under Rule 94-A, this Court proceeded to further observe (para 6).

"There is nothing in this form which requires the petitioner to state under Clause (b) of Form 25 the source or sources of his information. The appellant has referred us to Order XI, Rule 13 of the Supreme Court Rules as also to Rule

12(A) of the Punjab High Court Rules, in which when the deponent in the affidavit filed in support of the petition states that he has made the allegations in the paragraph or paragraphs specified on information, he is required also to disclose the sources of information. But when there are specific rules made under the Act which govern the election petitions, no other rules are applicable. Nor is the disclosure of the source of information a requisite under Order VI, Rule 15(2) C.P.C. On this ground alone the submission of the appellant can be rejected."

Thus this Court came to the conclusion that the election petition u/s 83(1)(b) must itself contain all the necessary material facts and in the affidavit in support the petitioner is required to say which of the allegations are based on personal knowledge and which are based on information received and believed to be true. If the source of information has not been set out and the opposite party finds it difficult to answer the allegations regarding corrupt practice, he can always apply for better particulars. In other words the failure to disclose or divulge the source of information was not considered fatal to the petition. This Court, therefore, concluded that the election petition did not suffer from any defect on that source.

25. Similar was the view taken by this Court in Ziyauddin Burhanuddin Bukhari Vs. Brijmohan Ramdass Mehra and Others, while dealing with the contention that the affidavit in support of the election petition founded on allegations of corrupt practice falling under sub-sections (3) and (3-A) of section 123 was not in proper form. Repelling this contention the Court held that a petition can only be dismissed for a substantial defect. In taking this view reliance was placed on Prabhu Narayan Vs. A.K. Srivastava, , wherein this Court had negated the contention that failure to disclose the sources of information would render the affidavit defective.

28. A charge of corrupt practice has a two-dimensional effect; Its impact on the returned candidate has to be viewed from the point of view of the candidate's future political and public life and from the point of view of the electorate to ensure the purity of the election process. There can, therefore, be no doubt that such an allegation involving corrupt practice must be viewed very seriously and the High Court should ensure compliance with the requirements of section 83 before the parties go to trial. This is quite clear from the observations of this Court in the case of K.M. Mani Vs. P.J. Antony and Others, . While defective verification or a defective affidavit may not be fatal, the High Court should ensure its compliance before the parties go to trial so that the party required to meet the charge is not taken by surprise at the actual trial. It must also be realised that delay in complying with the requirements of section 83 read with the provisions of the Code or the omission to disclose the grounds or sources of information, though not fatal would weaken the probative value of the evidence ultimately lead at the actual trial. Therefore, as election petitioner can afford to overlook the requirements of section 83 on pain of weakening the evidence that he may ultimately tender at the actual trial of the election petition. That is because as held in Mani's case the charge of corrupt practice has to be proved

beyond reasonable doubt and not merely by preponderance of probabilities. Allegation of corrupt practice being quasi-criminal in nature, the failure to supply full particulars at the earliest point of time and to disclose the source of information promptly may have an adverse bearing on the probative value to be attached to the evidence tendered in proof thereof at the trial. Therefore, even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lead the Court in a given case to doubt the veracity of the evidence ultimately tendered. If, however, the affidavit or the schedule or annexure form an integral part of the election petition itself, strict compliance would be insisted upon."

13. It would be, thus, seen that in Sapa's case, the Apex Court discussed large number of judgments including Krishan Chand, Virendra Kumar Saklecha, Murarka Radhey Shyam and the legal position was called out in para 28 holding that the defect in verification is curable and it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments and allegations which are based on the information believed to be true. The Supreme Court held that it is always open to the respondent to seek better particulars if the same are wanting in the election petition. The Apex Court also ruled that the defect in affidavit in prescribed Form 25 can be cured unless the affidavit forms an integral part of the petition in which case the defect concerning material facts shall have to be dealt with subject to limitation u/s 81(3). As a matter of fact the Court will have to decide in each individual case whether the schedule or annexure referred to in section 83(2) constitutes an integral part of the election petition or not and different considerations will follow accordingly. It is not that in all cases of corrupt practice, affidavit filed under proviso to sub-section (1) of section 83 is an integral part of election petition. When the election petition by itself does not disclose the complete facts relating to corrupt practice which is supplemented by facts stated in the affidavit under proviso to sub-section (1) of section 83, such affidavit would become an integral part and not otherwise. In the present case, the affidavit filed by the election petitioner under proviso to sub-section (1) of section 83 is the supporting affidavit and cannot be considered to be an integral part of the election petition. Even if he assumed that the said affidavit filed by the election petitioner under Form 25 is an integral part of the election petition, as already indicated by me above, there is no defect in the said affidavit and it is in conformity and accord with law. There is no merit in the contention of Mr. Manohar that the affidavit though styled as affidavit under Form 25, is no affidavit in the eye of law.

14. Mr. Manohar, learned Senior Counsel appearing for returned candidate heavily relied upon the observations made by the Apex Court in Gajanan Krishnaji Bapat (supra) wherein paras 17 and 18, the Apex Court held thus ---

"17. Section 83 of the Act provides that the election petition must contain a,

concise statement of the material facts on which the petitioner relies and further that he must set forth full particulars of the corrupt practice that he alleges including as full a statement as possible of the name of the parties alleged to have committed such corrupt practices and the date and place of the commission of each of such corrupt practices. This section has been held to be mandatory and requires first a concise statement of material facts and then the full particular of the alleged corrupt practice. So as to present a full picture of the cause of action.

18. A petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit and the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice. This becomes necessary to bind the election petitioner to the charge levelled by him and to prevent any fishing or roving enquiry and to prevent the returned candidate from being taken by a surprise. See *Samant N. Balkrishna and Another Vs. V. George Fernandez and Others*, ."

15. Mr. Manohar construed para 18 of the aforesaid report to mean that election petitioner is obliged to disclose his source of information in the affidavit. I find myself unable to accept Mr. Manohar's submissions. In para 18 in *Gajanan Krishnaji Bapat*'s case what the Apex Court has said is that in a petition levelling a charge of corrupt practice, in law, it is required to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of the corrupt practice. What is obligatory on the part of the election petitioner is disclosure of source of information in respect of the commission of corrupt practice which has been done by the election petitioner in various paragraphs of the election petition. Para 18 of the said report does not lay down that it is incumbent upon the election petitioner to disclose his source of information in the affidavit in Form 25. Mr. Manohar, learned Senior Counsel appearing for returned candidate also relied upon the observations made by the Apex Court in para 14 of *Shivajirao B. Patil Kawekar* (supra). In para 14 of the said judgment the Apex Court has reiterated the principle laid down in *Gajanan Krishnaji Bapat*. In *Shivajirao B. Patil Kawekar*, the Apex Court has not ruled that in the affidavit in Form 25, the election petitioner should disclose the source of information.

16. Mr. Manohar, learned Senior Counsel appearing for the returned candidate also relied upon various paragraphs of the Apex Court in *R.P. Moidutty* (supra). He particularly referred to paragraphs 1, 4, 7, 9, 15, 16, 19 to 22, 24, 27, 31, 32, 33 and 35. In paragraphs 33, 34 and 35, the Apex Court held thus ---

"33. The affidavit filed by the petitioner in support of the election petition as required by Rule 94-A also does not satisfy the requirement of proviso to sub-section (1) of section 83 of the Act and Form No. 25 appended to the rules. The several averments relating to commission of corrupt practice by the first respondent as contained in paragraphs 4 to 12 and 16 of the petition have been verified as true to the best of "my knowledge and information"--both, without

specifying which of the allegations were true to the personal knowledge of the petitioner and which of the allegations were based on the information of the petitioner believed by him to be true. Neither the verification in the petition nor the affidavit gives any indication of the source of information of the petitioner as to such facts as were not in his own knowledge.

34. The verification of the petition does not even satisfy the requirement of Order 6, Rule 15 of the C.P.C. The verification reads as under :

VERIFICATION

I, R.P. Moidutty, S/o- Abubakkar Haji, aged 54, petitioner in the above election petition do hereby declare that the averments in paras 1 to 17 are true and made from personal knowledge and on the basis of personal enquiry, I believe that all the averments made in paras 1 to 17 is true. Signed and verified in this the 21st day of June, 1996.

PETITIONER (Underlining supplied)

35. All the averments made in paras 1 to 17 of the petition have been stated to be true to the personal knowledge of the petitioner and in the next breath the very same averments have been stated to be based on the information of the petitioner and believed by him to be true. The source of information is not disclosed. As observed by the Supreme Court in *F.A. Sapa Etc., Etc., Vs. Singora and others*, , the object of requiring verification of an election petition is to clearly fix the responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time, discouraging wild and irresponsible allegations unsupported by facts. However, the defect of verification is not fatal to the petition; it can be cured See: *Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others*, ; *A.S. Subbaraj v. M. Muthiah* 1953(5) E.L.R. 21. In the present case the defect in verification was pointed out by raising a plea in that regard in the written statement. The objection was pressed and pursued by arguing the same before the Court. However, the petitioner persisted in pursuing the petition without proper verification which the petitioner should not have been permitted to do. In our opinion, unless the defect in verification was rectified, the petition could not have been tried. For want of affidavit in required form and also for lack of particulars, the allegations of corrupt practice could not have been enquired into and tried at all. In fact, the present one is a fit case where the petition should have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings."

17. In the present case, the affidavit filed by the petitioner in support of the election petition as required by Rule 94-A in Form 25 has already been held by me being in accord with law. The election petitioner has stated the facts stated in the paragraphs which are true to his personal knowledge and the facts stated in the other paragraphs which are believed to be true based on information. R.P. Moidutty's case therefore, does not help the respondent No. 1 at all.

18. Before I close, I may observe that there is some inconsistency in the verification of the Election petition and the affidavit filed by the election petitioner under proviso to sub-section (1) of section 83. The defect in verification of the election petition is curable and accordingly, the election petitioner is granted two weeks time to cure the defect in verification of the election petition.

19. With the aforesaid observations, the chamber summons is dismissed with no order as to costs.

20. Office is directed to post the election petition for framing issues on 3rd May, 2000 at 2.45 p.m. The parties are directed to exchange draft issues well in advance.

Certified copy expedited.

21. Chamber Summons dismissed.