

(1965) 12 AP CK 0001

In the Andhra Pradesh High Court

Case No : Special Appeal No. 2 of 1965

Chadalavada Subba Rao

APPELLANT

Vs

Kasu Brahmananda Reddy and Others

RESPONDENT

Date of Decision : 13-12-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Conduct of Elections Rules, 1961 — Rule 93
Criminal Procedure Code, 1898 (CrPC) — Section 337
Evidence Act, 1872 — Section 114, 123, 124, 133, 162
Penal Code, 1860 (IPC) — Section 171
Representation of the People Act, 1951 — Section 100, 100(1), 101, 102, 116

Citation : AIR 1967 AP 155 : (1967) CriLJ 691

Hon'ble Judges : Manohar Pershad, C.J;Kumarayya, J

Bench : Division Bench

Advocate : P. Lingayyacchowdry, B. Mannavala Chowdary, P.A. Choudry, M. Chandrasekhara Rao and B. Pandurangarao, for the Appellant; G. Balaparameswari Rao, K.V. Raghunatha Raddy, V.G. Krishnamurthy, B. Balamukunda Reddy, V. Raja gopal Reddy and M.B. Rama Sarma, for the Respondent

Judgement

Kumarayya, J.

(1) This is a special appeal against the order passed by the Election Tribunal, Hyderabad, Andhra Pradesh dismissing, with costs of respondent No. 1, the election petition No. 195 of 1962 on the file of the Said Tribunal.

(2) The appellant is an elector in Nadendla village. In the general election held on 19-2-1962 for return of a candidate from Phirangipuram constituency to the Legislative Assembly of the Andhra Pradesh State the only two contesting candidates found on the arena were respondent No. 1, Sri K. Brahmananda Reddy, and respondent No. 2, Sri Jagarlamudi Chandramouli. It was a contest close and keen. Respondent No. 1 contested on the ticket and program of the congress Organization and respondent No. 2 was a candidate set up by the

Swatantra Party. Both of them had considerable influence over the constituency -- the former being the resident of Tubadu, one of the villages in the constituency and the latter being a member of the Kamma community which, it is said, had a stronghold in that area. Of the total votes polled, as many as 1,503 were rejected as invalid. The valid votes to the credit of the respondent No. 1 were 27,494 and those polled by respondent No. 2 were 26,991 thus showing a narrow margin of 503 votes between the two. The unsuccessful candidate, Respondent No. 2, did not choose to file any election petition. Instead, the appellant herein, a resident of Nadendla, a sympathizer of the Swatantra party, became the petitioner. He called in question the election of respondent No. 1 on several grounds. The sum and substance of his allegations is that the process of election in that constituency was permeated and polluted by an organized system of bribery and corrupt practices on an extensive scale practiced by or on behalf of respondent No. 1 with the natural result that the election of the said respondent, in no sense was a pure and free choice of the electors and therefore cannot be allowed to stand.

To state in somewhat detail the petitioner contended that the 1st respondent abused his influence, official position and statutory powers for furthering his prospects of election. He was a minister in power holding the Finance Portfolio on the eve of election. His elder brother Sri Vengal Reddy, his own election agent, was then the President of Panchayat Samithi of Nadendla, most of the villages of which Samithi were included in the Phirangipuram constituency. The Executive Officer of the Samithi of i.e., the Block Development Officer was R. Narisimha Reddy, a gazetted officer of the Andhra Pradesh government. He was directly under the administrative control of Sri Vengal Reddy. It is said that it was the 1st respondent who got him appointed to the said office, and it was he who was responsible for his continuance in office there even though after the expiry of 3 years the department of Agriculture from which his services were loaned had promoted him and recalled him to his parent department and further what is more significant his partisan activities in the said area had given rise to several complaints of the public, who made regular applications to the minister-in-charge for his transfer. All this was for a set purpose and with a definite motive to utilise his services for promoting and procuring his election. The Block Development Officer and the Panchayat Samiti President, it is said, severally and jointly corruptly used their statutory powers, the Governmental funds and funds of Nadendla to vote for the 1st respondent.

They hatched a plan and carried it out by bribing in various ways the voters of Nadendla and Yedlapadu. They used for the purpose in those villages specially the amounts allotted for Village Housing Project Scheme sponsored by the Central Government. The Central Government had laid down certain principles governing the allotment, distribution and repayment of the loans under the scheme. The State Government had also made rules to implement the scheme as contemplated by the Central government. It is contended that Sri Vengal Reddy, the election agent of respondent No. 1 and the Block Development Officer

conspired to utilise these governmental funds for purposes of purchasing votes and in furtherance of this object cast to the winds the principle underlying the G. Os. In flagrant violation of the rules and regulations in this behalf, they freely and indiscriminately used these funds to advance their own scheme of procuring the election of the 1st respondent. Their modus operandi was this: They approached the Harijan voters of Yedlapadu and Nadendla with promises to get them free house sites and loans if they agreed in return to vote for the 1st respondent. As soon as they agreed the 1st respondent's election agent Sri Vengal Reddy with the aid and instrumentality of D. Kotiah and Sheik Adam Saheb got for the purpose an area of land measuring acres. 2-70 cents belonging to Muthavarapu Veeriah transferred under a common sale deed dated 29th December, 1961 in favour of 51 Harijan voters at Yedlapadu.

The purchase money of Rs. 5000 in all was paid by Sri Vengal Reddy himself. There was paucity of funds in the village Housing Project Scheme. Nevertheless the election agent and the Block Development Officer in furtherance of their scheme unauthorisedly and without sanction diverted a sum of Rs. 65,000 which was in deposit with the Panchayat Samithi under other heads and utilised the same in advancing loans to the said voters. The rules for granting loans were not observed. The loans were paid without getting proper documents without any satisfaction of their solvency and in utter disregard of the fact that the safety of Government money was to be ensured at all costs under the clear provisions of the rules. Indeed it was urged at the time of arguments that the said loans were free gifts in disguise never intended to be collected back and the very fact that no attempt was ever afterwards made collecting any portion of the same in spite of expiry of the due period must bear standing testimony to their being free gifts. Similar is the case in Nadendla village where the election agent and the block development officer entered into agreement with the mala Christian leaders offering them free house sites and money for construction of houses in return for the promise of votes for the 1st respondent.

It is said that as the leaders agreed, Sri Vengalareddy got the property of one Pullagara Hanumiah transferred in the names of several Christian voters. Thereafter the election agent and the block development officer advanced amounts in the same manner actually in furtherance of the election scheme though purporting to be in implementation of Village Housing Project Scheme. Nadendla and Yedlapadu alone were not the objects of such bounty. In Gurjavolu also the Harijan votes were given land free of cost and were promised besides amounts if they agreed to vote for the 1st respondent. The 1st respondent's election agent, Vengal Reddy purchased land transferred under common sale deed dated 14th February 1962 in the name of different persons who are Harijans. In another village, Kanaparti, the election agent Sri Vengal Reddy, it is said, had entered into an arrangement with the Luthern Christians of that village offering to construct a Church in return for their undertaking to vote for the 1st respondent.

Accordingly the construction of the Church was started in January, 1962 under the supervision of the President of the Village Panchayat Board and was completed some time later. The costs incurred, it is said, were paid by Sri Vengal Reddy. Similar arrangements are said to have been entered into with the Muslim voters in Vemulapadu village and Vankayalapadu village where the election agent and the Block Development Officer offered to construct a compound wall to Muslim burial ground in the first-mentioned village and a Masjid in the second-mentioned village free of cost in return of their promises to vote for the 1st respondent. In the villages of Komarapudi, Paladugu, Siripuram, Korrapadu, Mydavolu, Thimmapuram, Amensahebpalem and Appapuram money was freely distributed for purchase of votes. In the village of Ameensahebpalem, Vengal Reddy on 17th February 1962 at 10-30 A.M. distributed sums to several voters to induce them not to go to polling booth and vote. The 1st respondent, it is alleged, facilitated the work of the Panchayat Samithi President and the Block Development Officer by sanctioning the amounts time and again for the Village Housing Project Scheme.

He besides using his position as Minister got appointed P. Venkateswarlu, Bajeeth Saheb and Sheik John Saheb in the Electricity department, one Alluri Brahmananda Rao of Siripuram as clerk in the Department of Commercial taxes at Guntur and also one V. Srinivasa Rao of Siripuram appointed in the Bureau of Economics and Statistics at Hyderabad inducing them, their dependents and relatives to vote for him. Similar measures were adopted by his (1st respondent's) agent in collusion with the Block Development Officer by appointing Sheik Adam Saheb as road mastery and Sri V. Sivaramayya as teacher in Thimmapuram. All these corrupt practices, it is said, had their desired effect and even though most of the said voters were pledged to an in the heart of hearts wanted to vote for respondent No. 2, the free flow of money adversely affected their freedom of franchise and they were thus compelled to vote for respondent No. 1. It was further alleged that the 1st respondent and his election agent carried many voters in hired cars to the polling booths of Phiragipuram, Nadendla and Edugumpalem, that the 1st respondent by himself or through his election agent spent more than the maximum amount permitted in law and these amounts do not find place in the return of election expenses.

Besides these various corrupt practices which fall under S. 123(1), Clauses (a) (b) and Section 123 (5), (6) and (7) of the Representation of the People Act, which per se are sufficient to warrant a declaration that the election of the returning candidate is void, it is also alleged there were other corrupt practices and also irregularities committed in the process of election, which have materially affected the result of the election. There was presentation of dead voters and also there was plurality of votes polled. Invalid votes including the votes which violated the secrecy of ballots were wrongly counted. Apart from reception of invalid votes there was rejection of certain valid votes. For all these reasons it is alleged the election of the 1st respondent was void and that if the votes were correctly counted after discarding the invalid votes, respondent No. 2

would have been returned. With these allegations the petitioner has sought to set aside the election of the returned candidate and for a declaration that respondent No. 2 is the duly elected candidate.

(3) The 2nd respondent filed his counter supporting the petition and adding to the list of corrupt practices enumerated by the petitioner. He raised further grounds in support of the petition.

(4) The counter of the 1st respondent contains categorical denial of all the allegations made by the petitioner and the 2nd respondent. His contention is that for his part he took scrupulous care in maintaining the purity and freedom of election. He appointed a man of his confidence, his own brother, as his election agent. He had implicit faith in his integrity. He and his brother far from resorting to any of the corrupt practices gave clear standing instructions to every canvasser, supporter and worker to conduct himself strictly in accordance with the code of law and morality and not to allow any scope even for adverse criticism. He was keen and intent upon this all the more as he held high position in the congress party as well as in the Government of Andhra Pradesh. On the enquiries made after the service of the petition, the 1st respondent was satisfied that the allegations in the petition are wholly false and have been mischievously concocted. The 1st respondent dealt in his counter with the allegations of the petitioner parwise denying one and all of them. He also raised certain technical grounds relating to the maintainability of the petition.

In relation to the counter of the 2nd respondent which contained certain additional allegations and fresh grounds of attack the 1st respondent filed a rejoinder contending that these fresh grounds cannot be countenanced, and that they should form the subject-matter of a regular election petition which the 2nd respondent failed to file. the petitioner, on the objection taken by the 1st respondent, gave further particulars as to certain allegations. Yet the technical grounds taken by the 1st respondent nevertheless remained. The issues framed in view of the technical grounds as to the maintainability of the petition and also the competence of the 2nd respondent to raise such grounds of attack as were not found in the election petition itself were taken up first for consideration. The tribunal held on 7th November 1962 these issue against the 1st respondent. Then the issues finally framed on the merits of the case were taken up. These are issues Nos. 5 to 15. The evidence in the case was adduced only after Supreme Court finally confirmed the order of the Tribunal on 13th January 1964 53 witnesses in all were examined on behalf of the petitioner and 43 on behalf of respondent No. 1. Respondent No. 2 did not examine any witnesses.

The Block Development Officer of Nadendla was examined as a court-witness. The documentary evidence adduced in the case is voluminous consisting of 845 documents called on behalf of the petitioner and 444 on behalf of the 1st respondent. The said evidence did not cover all the allegations set out in the petition. Finally the petitioner did not chose to press some of these issues at the time of the arguments also. such of the issues as pointed out by the election

tribunal in its judgment are 6(b), 9(b), (c) (e), (f), and part of issue of (g) and issue No. 10. Issue No. 14 was not pressed by the 1st respondent. The Tribunal on the material on record came to the conclusion that corrupt practices pleaded have not been substantiated as the direct evidence adduced is either tainted on account of the witnesses being privy to the acts complained for or interested and as a whole discrepant and further the entire evidence adduced falls for short of the requisite standard of clear and unequivocal proof necessary to establish the corrupt practices. The Tribunal took also into consideration the fact that the petitioner and respondent No. 2 did not come into the witness box and offered no opportunity to cross-examine them whereas respondent No. 1 gave such opportunity. In the result the Tribunal dismissed the petition with costs of respondent No. 1.

(5) The main contention of the learned counsel Sri Lingaya Chowdary is that the material on record is sufficient to establish bribery and corrupt practices as alleged in the petition and corrupt practices as alleged in the petition and that the finding of the Tribunal to the contrary is vitiated by a wrong approach to the problem and by grave misconception as to the place, relevancy and probative value of circumstantial evidence in election cases and as to the standard of proof required for establishing corrupt practices affecting election. It is urged in this connection that the Tribunal went wrong in assuming that the standard of proof required in such cases is different from that in civil suits and is the same as required for establishing criminal offences, that mere preponderance of probabilities is not sufficient and bribery and corrupt practices ought to be established by strong, cogent proof beyond shadow of doubt, that in this connection the petitioner should rely entirely upon the strength of his own evidence and not on the weakness of his adversary; that circumstantial evidence, however strong is of no avail, that the evidence of the receivers of the bribe stands on the same footing as that of accomplices requiring corroboration on material particulars, that their admission is of no consequence and that the failure of the petitioner and the 2nd respondent to come in the witness box would warrant adverse inference against their case.

(6) As the questions raised are purely of law basic in character having regard to the nature of the proceeding affecting or influencing the decision in the case were propose to examine the same before we advert to some other ancillary points and the evidence adduced in the case. These are indeed the questions which in their ultimate analysis turn mainly on the correct understanding of the terms "evidence" and "proof" and the place of circumstantial evidence in election matters. The proceeding with which we are concerned is a proceeding under the Representation of the People Act, 1951 (hereinafter referred to as the Act) which is a self-contained enactment on matters of election. Sections of the CPC and also of the Indian Evidence Act, by specific reference to them in subclauses 1 and 2 respectively subject, of course, to certain conditions. S. 90(2) which is material for the purposes of our cases reads thus:

"The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition."

It follows that the Indian Evidence Act on matters of evidence will govern the proceeding before the Tribunal, controlled, however, by the provisions, if any, relating to evidence made in the Act itself. The Act does contain certain qualifying provisions in Sections 95, 96 etc. The Section 99 refers to recording a finding as to the proof or otherwise of the commission of a corrupt practice, nature thereof and the names of persons who have been proved at the trial to have been found guilty of corrupt practices. Section 100(1)(b) which is also our main concern refers to the opinion come to by the Tribunal as a result of inquiry. It is indisputable that every conclusion of Judgment or finding whatever be its subject must be the result of evidence. It must be based on proof of facts. What then is this evidence and what is proof? The Act has not defined the terms "evidence" and "proved". We have therefore to look to the Evidence Act. According to the said law "Evidence means and includes: (1) All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry: Such statements are called oral evidence. (2) All documents produced for the inspection of the Court; such documents are called "documentary". This is not, however, a complete or exhaustive definition as it seeks to simply explain what the Legislature meant by the use of that word.

Then again fact according to the Evidence Act "means and includes -- (1) Anything, state of things, or relation of things, capable of being perceived by the senses; (2) Any mental condition of which any person is conscious." Section 5 says that "Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as of every fact in issue and of such other facts as are hereinafter declared to be relevant and of no others." Thus the Evidence Act makes not only the facts in issue but also the relevant facts admissible in evidence. As regards the term "proved" the Evidence Act says that "A fact is said to be proved when after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists." The Evidence Act postulates three possible contingencies; either a fact is proved, or not proved or disproved and explains accordingly these various situations. The requisite belief as to existence of the fact is engendered and probability in relation thereto is raised only on the strength and basis of the matters before the Court, namely the evidence in the case adduced under the provisions of the Evidence Act. This evidence is either oral or documentary and includes everything that is relevant and admissible under the provisions of the Evidence Act.

The evidence, whether oral or documentary, may be direct or circumstantial. The so-called "direct evidence" is the evidence afforded by the direct testimony of eye-witness to the fact to be proved. It is the evidence of direct perception of the

facts in issue. In other words, it applies directly to the fact which forms the subject of inquiry, the *factum probandum*. On the other hand the circumstantial evidence is the evidence of collateral facts which lead to an inference on the facts in issue. Like facts in issue, collateral facts have necessity to be proved by the testimony equally original and direct. In this way the circumstantial evidence is equally direct in its nature. The end and aim of an investigation or inquiry being discovery of truth, i.e. to get at the reality of events and things and find something which exists or certainly has existed, evidentiary facts and statements are the means which enable us to reach this end. It is not very often that we get evidence of direct perception. In a large number of cases circumstantial evidence is the only available evidence. Surely evidence of direct perception is not the only means of finding the truth. Facts are facts. They may be known by perception or may even known by inference or reasoning. Inference and reasoning, as we know, is a mode of thinking by which starting from which we know we end in forming a belief that certain fact does exist or has existed.

This reasoning process is valid because the universe of facts is rational. It is a harmonious whole marked by consistency. There is order, certainty, regularity, system in the internal relation of all the facts of the universe. Facts are never contradictory. It is therefore possible to come to the thing signified from the sign that is seen. Of course, the chain of inferential facts must be complete and the process of inference must be well marshaled free from all fallacies and all shortcomings to reach the correct result. Just as what we see and feel is proof if there has been nothing to delude the senses or the testimony, of an eye-witness may be acted upon if it is free from all sources of error, viz, imperfect observation, bias, temptation to exaggerate and all other disturbing causes. So also if the chain of circumstances which lead to an inference as to the fact in issue is full and complete and the reasoning is valid and proceeds on right lines and the belief that results therefrom corresponds to all the facts covered by it and leads to one necessary result, the inferential result will be as credible and acceptable as the direct undeluded perception. It is on this basis that the Indian Evidence Act has made provisions for admissibility of evidence not only of facts in issue but also of relevant facts. There can therefore be little scope for the contention that in a proceeding governed by the Evidence Act, circumstantial evidence has no place.

Learned counsel for the respondent concedes this position and contends that even though certain observations of the Tribunal read in isolation may justify the criticism of the appellant, read in the context they cannot validly evoke any such criticism for the stress was not so much on the relevancy as on the probative force which the evidence on record did not satisfy. Therefore what all is contended for on behalf of the 1st respondent is that where the case is made to rest wholly on circumstantial evidence not only the circumstances should be proved but they should be of conclusive tendencies and the chain of circumstances should be so far complete as to lead to the irresistible conclusion compatible with the existence of the facts alleged. There can be no two opinions

on this point. In the case of circumstantial evidence, process of inference and deduction is essentially involved, frequently of a delicate and perplexing character, leading to numerous cases of fallacy. It is therefore necessary that circumstantial evidence must not only be full and cogent but also of conclusive nature as to exclude to moral certainty any other hypothesis on which it could be explained. It has been repeatedly pronounced thus by the highest Court of the land. In *Hanumanant Vs. The State of Madhya Pradesh*, their Lordships expressed themselves thus:

"In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability that act must have been done by the accused."

We therefore hold that circumstantial evidence has the same place and relevancy in election matters as in civil or criminal proceeding.

(7) This takes us to the other question in relation to standard of proof in inquiries into corrupt practices in election matters. We have already noticed that according to the Evidence Act, a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The said Act defines also the terms "not proved" and "Disproved" suggesting thereby the degree of certainty to be ensured for proof. The standard of proof adopted by the provision is the requirements of a prudent man which must of necessity vary with each case. It must all turn upon the circumstances of each case to determine whether a man of ordinary prudence ought, under the circumstances of the particular case, to act upon the supposition that it exists. The said Act defines also the terms "not proved" and "Disproved" suggesting thereby the degree of certainty to be ensured for proof. The standard of proof adopted by the provision is the requirements of a prudent man which must of necessity vary with each case. It must all turn upon the circumstances of each case to determine whether a man of ordinary prudence ought to act on the supposition that the fact exists from which the liability has to be inferred. Then again the probative effect of evidence in civil and criminal cases is not always the same. There is a strong and marked difference as to the effect of evidence in the proceeding of either type. It is well settled that whereas in civil cases a mere preponderance of probability is sufficient, in criminal matters the persuasion of guilt must amount to such moral certainty as would convince the mind of the Tribunal beyond all reasonable doubt.

It is therefore clear that in cases of criminal nature or in cases dealing with the questions of guilt or innocence of a person charged with a criminal offence, the onus of proving everything essential to the establishment of charge against that person lies on the prosecution and the guilt has to be proved beyond reasonable doubt. The question then is what is the nature of inquiry into bribery or corrupt practices in an election proceeding. An election proceeding is a creature of statute and not a common law right. The underlying policy of the statute is the election of a successful candidate should not be lightly interfered with. That is not to say that such election should be upheld even though it is a product of corrupt practices or of flagrant breaches of that law. On the other hand, purity and freedom of election is sacrosanct and has to be maintained at all costs. All that it means is that such breaches or corrupt practices must be strictly proved to justify interference with the result of election. The statute recognises the seriousness of the charge of bribery and other corrupt practices and enjoins that election shall be declared void on proof of the same. Due proof of a single bribery, be that act however insignificant, even if not committed by the candidate himself but by his agent, be it without his consent is sufficient to invalidate the election under the provisions of S. 100 and to unseat the respondent. "Judges are not liberty to weight its importance nor can they allow may excuse whatever the circumstances may be." See Plymouth case (1880) 3 OM & H 107 and Shrewsbury case (1870) 2 OM & H 36.

The Tribunal has not only to set aside the election on proof of commission of such corrupt practice but has a further duty u/s 99 of the Act to give a finding as to the names of all persons who have been proved at the trial to have been guilty of any corrupt practice. That is because S. 141 disqualifies the person found guilty of any corrupt practice upon the trial of an election petition from voting at an election for a period of 6 years from the date of election or from the date of the finding given by the Tribunal. It is therefore manifest that the inquiry into the charge of bribery where on proof of guilt the candidate not only loses his seat but also incurs stringent penalties - all this even though the act complained of be insignificant and not committed by himself personally, must be deemed to be of a quasi-criminal nature. The charge of bribery is indeed a serious criminal charge. It falls within the ambit of Section 171B of the Indian Penal Code and is a criminal offence. If that be so, it must follow that clear and unequivocal proof is required before a case of bribery is held to be established. It should satisfy the test applied to the proof of offences in criminal cases. The Court must be satisfied beyond all reasonable doubt that the said bribery has been proved. In this behalf we may refer to the passage cited with approval in the Londonderry case (1869) 1 OM & H 274 at p. 278 which is to the following effect:

"The charge of bribery, whether by a candidate or his agent, is one which should be established by clear and satisfactory evidence. The consequences resulting from such a charge being established are very serious. In the first place it avoids the election, and in the recent trial of the Warrington election petition, Baron Martin is reported to have said that he agreed with what had been said by Mr.

Justice Willes at Lichfield, that before a judge upset an election, he ought to be satisfied beyond all doubt that the election was altogether void. In the next place, the 43rd and 45th sections of the Parliamentary Elections Act, 1868 impose further and severe penalties for the offence, whether committed by the candidate or by his agent. Mere suspicion, therefore, will not be sufficient to establish a charge of bribery, and a judge in discharging the duty imposed upon him by the statute acting in the double capacity of judge and juror, should not hold that charge established upon evidence which, in his opinion, would not be sufficient to warrant a jury in finding the charge proved."

The law in India is in no way different so far as the standard of proof is concerned. The Bombay High Court in *Ahmedmiya Sherumiya v. Chhippa Ibrahim Nuraji* (1959) 17 Ele LR 218 (Bom) having regard to the seriousness of the charge of corrupt practice entailing penalties under the act and also the criminal nature of the offence held that the approach in the inquiry by the Tribunal must be the approach as in a criminal case. It further observed: "Section 123 of the Act (Representation of the People Act 1951) must be strictly construed in favour of the person against whom the charge is preferred: charges of corrupt practice must be strictly proved and if there is any reasonable doubt, the benefit of that doubt must be given to the person against whom the charge is preferred." To the like effect are the observations of this Court *D. Muralidhar Reddy Vs. Paga Pulla Reddy and Another*, to which one of us was party. At page 535 it was observed thus:-

"..... clear and positive proof is required to make out a case of corrupt practice. In the absence of affirmative and unequivocal evidence, the allegations of corrupt practices have to be rejected as baseless and the election upheld. It cannot be overlooked that, it is for the person, who impugns the election on the ground of corrupt practices to establish the commission of such practices, beyond a reasonable doubt. Since allegations as to corrupt practices within the contemplation of Section 123 of the Representation of the People Act are of a quasi-criminal character, very strict proof is necessary to bring home the charge as in a criminal case."

The same was the view expressed by this Court in *Jayalakshmiddevamma Vs. Janardhan Reddy*, to which one of us was a party. There it was observed:-

"Charges of corrupt practice are quasi-criminal in character, and allegations relating there to must be sufficiently clear and precise and must be proved by evidence of a conclusive nature."

These observations were made on the authority of the Supreme Court in *Harish Chandra Bajpai Vs. Triloki Singh*, . There the learned Judges observed:-

"Charges of corrupt practices are quasi-criminal in character and the allegations relating thereto must be sufficiently clear and precise to bring home the charges to the candidate."

(8) In a recent case in Jagdev Singh Sidhanti Vs. Pratap Singh Daulta, the Supreme Court reiterated the same view in the following words:-

"It may be remembered that in the trial of an election petition the burden of proving that the election of a successful candidate is liable to be set aside on the plea that he was responsible directly or through his agents for corrupt practices at the election, lies heavily upon the applicant to establish his case, and unless it is established in both its branches i.e., the commission of acts which the law regards as corrupt, and the responsibility of the successful candidate, directly or through his agents or with his consent for its practice, not by mere preponderance of probability, by cogent and reliable evidence beyond any reasonable doubt, the petition must fail."

These authorities fully support the contention of the first respondent that the standard of proof required in election matters in proving corrupt practices is the same as that for criminal offence.

(9) As against this Sri Lingayya Chowdary for the appellant relied on three decisions of Supreme Court. The first of them is Jagan Nath Vs. Jaswant Singh and Others, . There it was observed that:-

"an election contest is not an action law or a suit in equity but is a purely statutory proceeding unknown to the common law and the Court possesses no common law power."

The above observations were made while considering the questions of jurisdiction of the Tribunal entrusted with the trial of election petition in matters where the election law has not prescribed the consequences of non-compliance with certain procedural requirements of that law. The question as posed in this case did not fall for consideration before their Lordships and the observations above, therefore, do not help the petitioner to any extent. Similar is the case in K. Kamaraja Nadar Vs. Kunju Thevar and Others, and also in Inamati Mallappa Basappa Vs. Desai Basavaraj Ayyappa and Others, wherein a similar view was expressed. The last case referred to is Sheopat Singh Vs. Ram Pratap, . The learned counsel invited our attention to the particular passage in that judgment which relates to the burden of proof which reads thus:-

"The burden of proof as a matter of law and as a matter of adducing evidence is on the party who seeks to get the election set aside, to establish corrupt practice; but, if he adduces sufficient evidence, the burden of adducing evidence shifts on to the other party. That apart when the entire evidence has been adduced in the case the question of proof becomes merely academically."

In that case their Lordships on the material on record were of the view that the corrupt practice pleaded was fully established. No question of doubt or difficulty in holding the same did arise there so that any observations in relation to the standard of proof be made. These observations covered altogether a different field and a different aspect of the question. That is the reason why both the

cases *Harish Chandra Bajpai Vs. Triloki Singh*, and *Jagdev Singh Sidhanti Vs. Pratap Singh Daulta*, were not referred to at all in that case. It follows from the above discussion that the evidence in support of corrupt practice or bribery to be adduced in an inquiry in an election proceeding having regard to the nature of the charge and the seriousness of the matter and the far-reaching consequences thereof must of necessity satisfy that test which is applied to the proof of criminal charges. The evidence must be clear and unequivocal and just establish the charge beyond reasonable doubt not only because the election of a returned candidate cannot be lightly set aside without clear and cogent evidence with regard to the alleged flagrant violation of the provisions of the law but also because the charge in this nature partakes of a criminal offence and entails serious consequences. We therefore, agree with the Tribunal that the petitioner must establish the charge beyond reasonable doubt.

(10) There remains the question whether the receivers of the bribe can be termed as accomplices and whether even so or otherwise their testimony ought to be held worthy of credence only on finding corroboration from other materials on record on the well known rule of prudence that must be borne in mind in relation to the evidence of accomplices. The learned counsel for the appellant contends that according to the definition under S. 123 of the Act, the person who gives as also the person who receives, each on account of his individual act, namely, giving or receiving, come within the definition of bribery and that as the act of each constitutes a distinct and separate offence, one cannot be considered as an accomplice of the other even though the gratification or lucrative consideration connects the acts of the both. It is further urged that the receiver cannot be said to be an associate of the giver in the strict sense of the term and cannot be dubbed as an accomplice. The question is who is an accomplice? No statute has sought to define that term. The Evidence Act which bears reference to it has not refer to it at all. Even in Criminal Procedure Code in this term bears reference only in the marginal note to Sec. 337. The definitions attempted in the American Law are varied and as stated in para 109 at page 840 in American Jurisprudence, Vol. 14 (costs to criminal law) there is no universally accepted definition of that term and hence its meaning cannot be said to be settled.

While according to some it includes principal actors, aiders, abettors or accessory before the fact, according to others it includes accessory after the fact as well and all particeps criminis. In common parlance it means a guilty associate or a partner in crime or who is somehow connected with the crime. He must have a conscious hand in the offence or be a consenting party to it. He should not be victim of duress, undue influences or coercion Section 337 Criminal Procedure Code refers to a person directly or indirectly concerned in or privy to the offence. Courts have held that the accomplice must have such a relation to the criminal act that he could be jointly tried with the accused. This rule was adopted in *White v. Commonwealth*, 14 Century Digest Col. 1280. It was referred to with approval in the Madras case *Ramaswami Goundan v. Emperor* ILR (1903) Mad 271. The Patna case *Kailash Missir Vs. Emperor*, the Oudh case AIR 1942 221

(Oudh) have subscribed to it. This rule within its reasonable limits affords quite a practicable test. However having regard to the language of Sec. 337 Cr. P. C. persons who are directly or indirectly concerned in or privy to the offence must be within the scope of the term accomplice.

Thus, principals and abettors are covered by that term. He who intentionally aids by any act or illegal omission is well within the definition of abettor. Under the Act it may be that both giving and receiving are substantive offences, but it is obvious at the same time that there can be no receiving without giving. The person who receives without giving. The person who receives in fact intentionally aids in making the act of giving complete. The connection between the two acts is close and intimate though both of them may constitute distinct offences by themselves. This by itself satisfies the test as in Section 337 Cr. P. C. of being directly or indirectly concerned with the offence and also being a privy to the offence. There can be little doubt that according to the provisions of the Criminal Procedure Code such offences can be jointly tried if it were a criminal case. Thus both the tests are indeed satisfied. The receiver of a bribe therefore in relation to the giver is certainly in this behalf said that the least can be said of the evidence of a receiver is that it is tainted and on that basis his testimony must bear strict scrutiny and satisfy the conscience of the court.

An accomplice in the eyes of law is no doubt a competent witness: nay Section 133 of the Evidence Act says that a conviction based on this testimony does not become illegal merely because it proceeds upon his uncorroborated testimony. But section 144 in its illustration lays down the rule of prudence and caution in weighing his evidence. It says that an accomplice is unworthy of credit unless he is corroborated in material particulars. As observed by the Supreme Court in *Rameshwar Vs. The State of Rajasthan*, in weighing the evidence and basing a conviction thereon, the necessity of corroboration as a matter of prudence except where the circumstances make it safe to dispense with it must be present to the mind of the judge. The same consideration must prevail in weighing the evidence of the receiver of bribe in an election proceeding for his position is no different from that of an accomplice in relation to the offence committed by the giver. The tainted nature of his testimony must subject his evidence to strict scrutiny before it can be accepted. It should not be accepted without the case lend assurance to it. Mr. Justice Grove in *Wakefield case* (1874) 2 OM & H 100 as to the value of the evidence given by persons who allege that they have been bribed observed that:-

It is perfectly true that where witnesses are called to prove that they themselves were bribed, their testimony is open to suspicion, varying in degree with the circumstances under which that testimony is given, and its effect upon the judge must depend a good deal upon the demeanor of the witnesses, and to such circumstances as may transpire to lead to any fair or well-founded opinion as to whether, although they are tainted with the necessary admission that they have been guilty of improper practices, they are so tainted that their evidence is to be

disbelieved altogether, or whether what I may call the circumstantial value of their evidence is such that they may be believed, although they do not come forward in a reputable character. There are no infallible rules to be laid down upon such a matter as this, and very slight differences may turn the scale and influence the mind of the tribunal, as to whether the witness is to be believed or not."

Thus the English law also stresses on a rule of caution and sounds a note of warning. In our opinion the dictum of the Supreme Court in relation to the testimony of accomplices applied to persons who say they received bribe.

(11) The further question that falls for consideration is concerned with the legal effect of non-examination of the petitioner and the 2nd respondent. Whether an adverse inference ought to be drawn by reason thereof is a moot point, the decision of which must depend upon whether they are material witnesses in the case. As that turns upon evidence, the question can be properly decided only at a later stage in this judgment.

(12) Now we come to the merits. The allegations brought against the 1st respondent are indeed serious falling within Section 123 and Section 123(5) and 123(7) read with Section 100(1)(b) besides Section 100(d)(iii) of the Act. The issues that survive for consideration are 5(a) and (b), 7, 8, 9(a), (c), (d), 11, 12, 13 and 15. The gravamen of the charge is that the 1st respondent and his brother, with the assistance of the Block Development Officer, jointly and severally influenced the electorate by bribing the voters of various villages in diverse ways, viz., by offering free house sites and loans for construction of houses, promising construction of a Church, of a compound wall around the grave-yard, of a Mosque, by granting employment's and by free distribution of money either for purchase of votes in various villages or for inducing voters in a certain village to refrain from voting. It is urged that on account of these corrupt practices the election of the returned candidate was not the free choice of the electorate. It is further urged that there are also certain irregularities which have materially affected the result. However, we have to first examine the main charge.

(13) It is but fundamental that for the successful working, of a true democracy (i.e.) the rule of the people, for the people, by the people, the choice of representatives to whom the power which in truth resides with the people is entrusted for the time being must be free and real. Purity and freedom of choice is indeed the Keynote for success of any representative Democratic Government. Elections therefore should take place in an atmosphere conducive to the free exercise of choice by the electorate moved by the worth of the candidate and the merits of the program of the party to which he belongs rather than be influenced by the unfair aid of his wealth or other influences. Every man upon whom the election franchise is conferred should be free to judge for himself who is the best and preferable candidate and give his vote accordingly. One of the best established rules of freedom of election is that the electors shall come to the poll

perfectly free, that they shall not themselves accept bribes and they shall not be treated, coerced or intimidated. It is no doubt also true that it is always open to all the subjects to use their legitimate influence to persuade the electors to vote for such persons as they think fit.

Ordinarily this is done by addressing meetings, posting placards, distributing handbills and so forth. All these are perfectly lawful, subject to certain defined restrictions and so long as they do not interfere with the freedom of election, these influences may be called due influences. But there are certain kinds of influences which are called undue influences and in these are included bribery, treating, undue and improper pressure put upon a man. The law abhors these methods as they are fatal to the very essence of purity and freedom of election which is a basic essential of true representation. These methods if permitted are bound to corrupt the very institution. As are the means so is the end, is the popular adage. The effect in its characteristics cannot be far different from its cause. The product of corruption in its turn is bound to pollute and corrupt the body politic and the administrative machinery. It is vain to think that it would serve as a mere bad oil to make machinery run smoothly. It is a vicious circle too difficult to be rooted out if once permitted enter into the system.

The law has therefore, taken scrupulous care to zealously guard against this danger and nip it in the bud. As already noticed due proof of a single bribery by or with the knowledge of the candidate or by his agent is sufficient to invalidate the election and subject the candidate to various penalties. Bribery may take different forms and guises. It may be present in an involved manner making it difficult to see it in all its naked simplicity. It is therefore left to the Tribunal or the court to give effect to the purpose of the Act by instituting a thorough and careful scrutiny. As observed in Belfast Borough case, (1869) 1 O'M and H 281 at p. 284 "the court strips the proceeding in each case of every colour, every dress, and every shape to discover its real and true nature." Colourable charity, colourable employment and colourable purchases must all fail to cloak a corrupt act. It is apt here to refer to the remarks of Justice Grove in (1874) 2 O'M & H 100 which are as follows:

"Corruption will try to beat the law but generally speaking and in the long run the law will end in defeating corruption. We should not fail to bear in mind at the same time that abominable as corruption is while we make all efforts to detect it, the very seriousness of the charge fraught with grave consequences must make it incumbent on the court to hold it proved only on clear and strict proof of the same.

(14) With these preliminary remarks we consider the relevant issues-5 is an omnibus issue and read issues 7 and 8 practically covers all forms of bribery alleged to have been employed in the constituency for promoting and procuring the election of the 1st respondent. Issue No. 5 covers cases of giving house-sites, lands, granting loans, entering into contracts for completion of the construction of the Church, construction of Mosque, construction of compound

wall, and also free distribution of money for procuring votes in certain village. Each category of cases described in paras 6 to 15 of the petition must be considered separately. As we have already pointed out, any single instance out of them, if proved, is sufficient to invalidate the election. We take up first the case of free distribution of money for purchase of votes and also for inducing voters to refrain from voting. Amensahebpalem is the only village where it is alleged that money was distributed for inducing voters to refrain from voting.

In other villages, viz. Kamarapudi, Palgudu, Siripuram, Korrapadu, Mydavolu, Thimmapuram, and Appapuram the object of distribution was to induce the voters to vote for the 1st respondent. We have to examine how far these contentions have been substantiated. The distribution of money is mainly attributed to the 1st respondent's election agent Sri Vengal Reddy. It has also been stated that 1st respondent was aware of the same and even extended his helping hand. Be that what it may. It would be sufficient for the purpose if it be established that the 1st respondent's election agent was guilty of bribery in the manner alleged. It may not, then be necessary to consider also whether the 1st respondent was aware of the same or whether the acts complained of had the sanction or tacit consent of the 1st respondent.

A candidate is always bound by the acts and conduct of his election agent even though they may be quite in contravention of the directions given by him. It is always the duty of the candidate to be most careful in the selection of his agent for the man who is appointed will have to own many responsibilities both to him and to the public for the proper management of the candidature and for due observance of the electoral law. Their relationship is somewhat akin to that of master and servant rather than that of principal and agent. Should his agent play foul, he cannot have the benefit of the foul play without being responsible for it in the way of losing his seat even though the foul play was committed by the agent without the candidate having precisely known it. That is the reason why Section 100 in clause (1) (b) makes the election void even if the corrupt practices have been committed by the election agent of the returned candidate. It is also void if it is committed by any other person with the consent of the returned candidate or election agent. In this state of law, if it be proved that the votes were purchased by the election agent or by somebody with his consent, that would be sufficient for unseating the 1st respondent. We therefore, proceed to consider whether such a situation alleged to have been created has been substantiated.

(15) We take up first Komarapudi. The evidence adduced is to the effect that the 1st respondent, his brother and two others came to the village 15 days prior to the election and held a meeting which was arranged by Bakka Rama Reddi, a supporter of respondent No. 1. There the 1st respondent addressed the Malas and said that his party was in power and could help the Malas in all their ventures, whether it is for the construction of houses or any other work. After the meeting was over, Bakka Rama Reddy (R. W. 11) asked some of the people

to go over to his house, after their meals, when respondent No. 1 and his brother would like to speak to them. P. W. 14, P. W. 15 and four others accordingly went there. They were received by Sri Vengal Reddy and were told by him that if they voted for respondent No. 1 he would give them money for construction of houses after the elections and pay for the time being a sum of Rs. 10 for each vote. The six persons thereupon made up their mind to vote for the 1st respondent. Sri Vengal Reddy then told them that within 3 or 4 days he would send Narsireddy (R. W. 10) his sister's son-in-law with the promised money. Accordingly Nasireddy came to the village, stayed there the election was over. P.W. 14 and 5 others induced the persons of their group of vote for the 1st respondent; got each person paid Rs. 10 per vote and took 150 persons to the polling booth, where all of them cast their votes for respondent No. 1.

Such is the story of P. Ws. 14 and 15 recounted at the time of enquiry. P. W. 20 with the help of his tick-marked voters' list has sought to lend assurance to their statements that the people of their group who had pledged support to respondent No. 2 earlier had changed their mind under the influence of money. The case of the 1st respondent, on the other hand, is what all has been alleged and told is a while lie. Neither the respondent No.1 had visited or was present in that village on the 6th of February nor did Vengal Reddy offer any bribe to enlist the co-operation of the six self-styled elders or for purchase of any votes in the village. the story that Narsi Reddy or Bakka Rama Reddy distributed money to the voters is a myth. In support of his case, respondent 1 examined himself (R. W. 43), his election agent (R. W. 41) and Bakka Rama Reddy (R. W. 11), Narsi Reddy (R. W. 10). Besides he examined R. W. 16 and 3 residents of that village and called the records relating to the Guest House Kurnool to show that he was present on that day at Kurnoon Ghest House and he examined R. W. 42 to vouch for the same. To show that P. W. 20's testimony was palpably wrong he called R. W. 17, a clerk of the court with a judgment Ex. B-420 and warrants Exs. B-420 and 428 relating to certain votes. In this state of evidence the only question is whether bribery alleged can be held to be proved.

(16) As already discussed in the earlier part of this judgment the proof of bribery in such proceedings must be clear and cogent. Bribery must be established not by mere preponderance of probability, but by proof beyond reasonable doubt. The evidence adduced must bear strict scrutiny. It is but elementary that the testimony to be entitled to any credence must be consistent with itself, conform with the case pleaded, appeal to common sense and reason and accord with the probabilities of the case. To start with whereas according to S. 83(b) of the Act it was incumbent upon the petitioner to set forth in his petition full particulars of the corrupt practice including a statement of the names of the parties alleged to have committed such practice and the date and place of commission of such practice, the petitioner in this proceeding chose to rest content with a bald statement in paragraph 14 of his petition that in the village Komarapaduy moneys were freely distributed and votes were purchased by the 1st respondent's election agent. Further the version contained in the petition even in

material facts underwent substantial improvements at the stage of evidence. The fact that respondent No. 1 himself visited the village and held out promises of help to the villagers for construction of houses and other works was not stated in the petition.

It cannot even be spelt out from any of the averments in the petition. Yet that is the evidence sought to be adduced. The promise of financial aid for construction of houses alleged to have been made by the Election Agent also is a later development. The proof of this improved story is made to rest on the sole testimony of two witnesses, P Ws. 14 and 15, who claim to be elders of one group of Harijans. (After discussing the evidence his Lordship continued). We therefore hold that it is not established that R. W. 1 had visited that village on 6th Feb. in the morning or that he addressed a meeting promising any help in his official capacity, or that his agent, or any other person on his behalf bribed the voters.

(17) We then turn to the similar corrupt practice alleged to have been committed at Korrapadu. (After discussing evidence His Lordship continued). It is thus clear that the petitioner has failed to prove this item as well.

(18-22) Then the next village is Paladugu where it is alleged that the votes were purchased for respondent No. 1. The proof of this is made to rest on the testimony of P. Ws. 23 to 26. (After discussing evidence. His Lordship continued.) It is clear therefore the case set up is disproved.

(23) The next village is Ameensaheb Palem. The flow of money in this village was for inducing the voters to refrain from voting. Of course Ameensaheb Palem was mentioned in para 14 of the petition as well; but para 15 which is exclusively devoted to it is material for the purpose. It is stated therein that the 1st respondent's Election Agent distributed large sums of money on the 17th February 1962 at 10-30 p. m. to several voters in order to induce them to abstain from going to polling booth. The petitioner has specified these voters by given their voting numbers. The numbers shown ultimately turned out to be the voters numbers of Appapuram hamlet and not of Ameensaheb Palem. Notwithstanding that this defect was brought to light at the time of evidence itself, the petitioner did not take early steps to apply for amendment and get the numbers rectified. It is only during the course of arguments in this court the petitioner-appellant sought for such amendment. It was urged that though the numbers are wrong, the petitioner brought out in evidence the actual names of the person who had abstained from voting and that the respondent had full opportunity to cross-examine the witnesses in that behalf and hence the amendment is but formal and must be allowed as it would not result in prejudice or take the other party by surprise. This request was strenuously opposed. We allowed the request of the petitioner on the simple ground that in the circumstances of the case the amendment ought too be permitted and the party which has cross-examined the witnesses on this point and had opportunity to tender rebuttal evidence cannot legitimately complain of any prejudice.

(24-26) Now we turn to the question whether the inducement alleged is proved. The evidence adduced on behalf of the petition consists of the testimony of P. Ws. 9 to 12. (After discussing the evidence His Lordship continued). It is obvious that the petitioner has failed to establish his case.

(27) The corrupt practices in other villages named in para 14 of the petition have not been pressed at the time of argument and so we need not avert to them.

(28) Now we turn to other forms of alleged bribery. It is said that the voters at certain village were induced to vote on promise of construction of Church, Compound wall, Mosque and a well. This takes us to paras 11, 12 and 13 of the petition. But here again the arguments were confined to the construction of the Church at Kanaparathi. As a result only para 11 falls for our consideration.

(29-35) Para 11 states that the 1st respondent's election agent entered into an agreement in the month of January, 1962, with the elders of Luthern Christians of Kanaparathi village to construct a church for their community free of cost in return of the latter's undertaking to vote for the 1st respondent. Accordingly the construction of the Church was started in January, 1962, with the elders of Luthern Christians of Kanaparathi village to construct a church for their community free of cost in return of the latter's undertaking to vote for the 1st respondent. Accordingly the construction of the Church was started in January, 1962 under the supervision of the President of village Panchayat Board, Kanaparathi. The cost incurred for the construction of the church came to Rs. 4500 which was paid by the 1st respondent's election agent. In consideration thereof the Luthern Christians in the village of Kanaparathi voted for the 1st respondent. Respondent No. 1 in his counter categorically denied these allegations as false and malicious. In support of the plea, the petitioner examined P. Ws. 4 to 6, 27, 44 and 49 and marked certain documents as Exs. A-702 to 710. As against this respondent No. 1 examined R. Ws. 38, 40 and 41 and relied on Exs. B-435 to 441 and the marked voter's lists Exs. B-826 & 827. (After discussing the evidence his Lordship continued). One other witness who was sought to be examined was P.W. 49. That was not for purposes of proving any facts in issue or relevant facts, but only to contradict the statement of P.W. 44 that Raghavaiah purchased this material for construction of the choultry by his brother-in-law, of Kollapudi village. The Tribunal refused to examine this witness. It observed that if any of the witnesses examined by the petitioner had spoken anything against facts it was up to him to seek permission at the very moment for cross-examination on that point, but not wait and cite witness to contradict him on that point. It is argued that the Tribunal erred in not allowing the party to examine this witness. We do not think that the course adopted by the Tribunal is unjustified. Section 90 of the Act gives discretion to the Tribunal to refuse to examine any witness whose evidence is not material for the decision of the petition. The petitioner can legitimately make a grievance of refusal only if the witness sought to be examined was to prove a fact in issue or a relevant fact for under S. 5 of the Evidence Act such could be the only evidence admissible in

law. The evidence sought to be adduced does not relate to a fact in issue or a relevant fact, but to contradict his own witness on certain point. No question was put to the witness examined to impeach his credit or to suggest that he was not telling truth. The method of examination of a witness merely to contradict a witness on some point the truth of which was not challenged while the witness was in the box cannot be encouraged and it will not be quite in accord with the spirit or letter of the Evidence Act. (After further discussing evidence his Lordship continued).

(36) From the above discussion it is clear that P.W. 4 who is the sole witness to depose that Vengalreddy paid Rs. 1000 for the construction of the Church cannot be believed. P.W. 5 and 6 are interested witnesses whose testimony does not advance the case of the petitioner. Further this testimony does not bear scrutiny. P.Ws. 44 and 45 do not connect the material supplied with the construction of the Church. In fact P.W. 44's statement is against it. The evidence of pastor dispels any doubt that might have been raised by any of the above witnesses and the documents produced corroborate his story. Vengalreddy's evidence too ought to merit credence. It is clear that the petitioner has failed to establish the corrupt practice alleged. He has failed to connect Vengalreddy with the construction work.

(37) We then advert to paragraph 10 of the petition which relates to another mode of bribery. It is averred in the petition that the 1st respondent's election agent entered into an agreement with the Harijans of Gurjavole that he will make a free gift of land in consideration of their promise to vote for the 1st respondent. In pursuance of this agreement he purchased land belonging to four different persons and got the land transferred under common sale deed dt. February 14, 1962 in the names of five different persons namely, R. China Venkayya, E. Papayya, C. Yesu, B. Bapayya and M. Venkayya. As a result of this, the Harijans in Gurzavolu, voters Nos. 1056 to 1128 voted for the 1st respondent. Respondent No. 1 in paragraph 12 of his counter categorically denied that his election agent had either purchased the said lands or paid consideration for the same. In support of the petition the petitioner has examined P.Ws. 2, 3 the polling agents of respondent No.2, P.Ws. 7 and 8, the vendees and two others (i.e.), P. Ws. 28 and 53. The documents relied on are Exs. A-9, A-10, A-711, A-712, A-713, A-714, A-720, A-721, A-743, A-749, A-757 and A-823. As against this respondent No. 1 examined R. Ws. 12, 15, 18, 29 and 41.

The case as sought to be set up is that the old Madigapalli was in a low land area. It was inundated by frequent floods from the minor irrigation tank in survey No. 296-A which is to the south thereof. It had therefore become unfit for habitation. Fifty-six Madiga families, therefore, had applied to the Government for providing them with house-sites. An area of acres 2-64 cents was already available with the Government for assignment to Harijans, but this was not sufficient for the purpose. A further area of ac. 9-88 cents was acquired by the Government through Social Welfare and Education Dept. The total number of

families for the purpose was determined as 44 even though 56 persons had signed the petition. They were allotted ac. 0-05 cents each. The case of the petitioner is that the land acquired was so situated that it could not afford them an easy access to the main road. Besides, it was not sufficient for all the families. The Madigas therefore were greatly inconvenienced and could not build up their houses. Vengalreddy sensed their difficulties and took advantage of the same by promising them that he would purchase the adjoining sites for the Madigas if votes were given to respondent No. 1. He purchased ac. 0-52 cents of land by paying a consideration of Rs. 900 and got the deed executed in favour in five elders. That is how it is said that Madiga voters, who promised to give votes to respondent No. 2 polled their votes for respondent No. 1.

(38) The question for consideration therefore is whether Vengalreddy was concerned with the transaction of sale of the land in favour of the five persons in the manner and for the purpose alleged.

(39-43) (After discussing the evidence his Lordship continued). We have no hesitation to hold that the corrupt practice alleged is not proved.

(44) Now we come to the next vital aspect of the petitioner's case. No doubt, bribery in various forms has been alleged in various other villages. It was Nadendla and Yedlapadu where public funds also are said to have been utilised for promoting and procuring the election of respondent No. 1. The case of the petitioner as adumbrated in paragraphs 3 to 11 is that the 1st respondent and his brother both jointly and severally as well as through the agency of their followers and associates including Sri B. Narasimha reddy the Block Development Officer of Nadendla Panchayat Samithi committed several corrupt practices in the constituency. The 1st respondent, who held the portfolio of finance in the Andhra Pradesh Government, with the object of using the public funds in furtherance of his election prospects acted contrary to the directions of the Government of India issued in the matter of Village Housing Project Scheme, and got sanctioned a huge amount to the five villages of Nadendla Panchayat Samithi of which Vengal reddy was the President and Narsimha Reddy was the Block Development Officer. In fact, he got the Block Development Officer appointed, retrained him for more than three years and resisted all attempts of his transfer to any other place and finally got him appointed as Group Officer in Nadendla Panchayat Samithi Area. All this was for the purpose of utilising his services for procuring his election. The Block Development Officer and the Election Agent joined hands and organised a plan of systematic bribery, carried out the same in the villages of Nadendla and Yedlapadu utilising public funds for the purpose. In this connection the election agent and the Block Development Officer approached the Harijan voters of Yedlapadu and Nadendla with promises of loans for construction of house in return for voting for 1st respondent. When the voters agreed, the election agent Vengal Reddy acting through D. Kotayya and Shaik Adam Saheb got acres 2-70 cents from the owners Mutavarapu Veerayya and got it transferred under common sale dated 29th December 1961 in relation to 51 Harijan voters at

Yedlapadu named in the annexure attached to the petition. The sale price was Rs. 5,000 which was paid by the 1st respondent's election agent himself. Subsequently according to the plan the Block Development Officer and the 1st respondent advanced loans to the voters. There was paucity of funds in the village Housing Project Scheme, but they unauthorisedly diverted certain sums from other sources, namely, communications, loans and I.M.S. loans etc. and distributed the amounts by way of loan without observing the regular procedure for constructing houses to the alleged vendees. As a result of this, the voters shown in the list voted in favour of the 1st respondent. Similar arrangement was made in Nadendla where Vengalreddy and Block Development Officer entered into an agreement whereby the Christian voters were promised house sites in Nadendla free of cost and lands for construction of houses in return for their votes. Accordingly the election agent paid the sale price for the property of one Pulagora Hanumaiah and got the land transferred in the name of several Christian voters and thereafter the Block Development Officer according to him plan gave amounts to them without observing the proper procedure and formalities. As a result several voters enumerated in paragraph 9 gave their votes in favour of the 1st respondent. Thus it is alleged that both private and public funds were utilised for the purpose of election programme, the private funds for purchase of sites and the public funds for advancing loans which are gifts in guise. The petitioner sought to prove these facts by both direct and circumstantial evidence. We first consider the direct evidence and then see how far circumstances relied on by themselves or in conjunction with the direct evidence raise an inevitable inference in favour of the petitioner's case.

(45-57) We take up first Yedlapadu. P. Ws. 22, 46, 47, 48, 50, 51 and 52 are the main witnesses in this regard. As against this, R.Ws. 35, 36, 41, 43 and C.W. 1 are the witnesses examined on behalf of the 1st respondent. (After discussing the evidence His Lordship continued.) The case of the petitioner thus stands fully rebutted. That the case of the petitioner is not true is obvious also from the fact that the case as set up in the petition is not the same as at the stage of inquiry. In the annexure A where the has given 51 names of the vendees, several of them are unconnected with the sale deed and not all of them are Harijans. The testimony of his witnesses besides suffers from serious defects. Even P.W. 51's version as to how the bargain was struck is in conflict with the case as averred in the petition. P.W. 22's version on the other hand supports the respondent's case. The testimony of R.Ws. 35, 41, 43 and C.W. 1 disproves the petitioner's case. We cannot therefore but reject the case. Even with regard to loans that were intended to serve as an inducement, we are of the view that the oral testimony as against the clear documentary evidence cannot merit credence. No loanee from this village has been in fact examined on behalf of the petitioner.

(58) Then we come to Nadendla where commission of similar corrupt practice has been alleged. Paragraphs 8 and 9 of the petition contain averments in this behalf. It was stated that the 1st respondent's election agent and the Block Development Officer told the Christian leads of the place that they would give

free house sites and loans if the latter voted for 1st respondent. It was stated in paragraph 9 that accordingly the property of Pillakuri Hanumiah was transferred in the name of several Christian voters and that the 1st respondent's election agent paid the consideration. The case as detailed and presented at the time of arguments is that in Nadendla there were separate colonies for Madigas and Malas. The Madigapalli consisting of 125 houses in all was at one place whereas the Malapalli for whom land for house sites China Malapalli for whom land for house sites was acquired by the Government under an award (Ex. B-272 dated 30-11-1961) and was handed over to them under Ex. B-267 dated 20-4-1961. All that they required further were loans for the construction of their houses. In Peda Malapalli which consisted of 60 houses 14 Harijans were already given a subsidy of Rupees 300 and interest-free loans of Rs. 500 each in the months of January and February 1961 under the Rural Housing Scheme which is distinct from the Village Housing Project Scheme. About 42 Malas were very anxious to have house sites. Taking advantage of their anxiety the 1st respondent's election agent and the Block Development Officer are said to have entered into an agreement with them and got the property of one Polagoru Hanumiah transferred in their name. Forty-two individual sale deeds, on 20, 21 and 22nd January 1962 and one separate sale deed on 9-2-1962 were got executed (Exs. A-369 to A-408 and A-463). Vengal Reddy paid the sale consideration for them. The result was that the said Malas and their families voted for respondent No. 1. It was also said that the Madigas of that village were slow to respond and not all of them in spite of great persuasion could be won over. About 70 Madigas were prevailed upon to take loans. A batch of 18 and finally 33 of them. These allegations were wholly denied by respondent No. 1 in his counter. In proof of his case the petitioner examined P. Ws. 21, 35 to 38 and 40 to 43. R. Ws. 31, 34 and 41 have been examined in rebuttal.

(59-66) On a consideration of their evidence it is difficult to accept the case of the petitioner. (After discussing the evidence his Lordship continued). In this state of evidence it is clear that the case of the petitioner that the 42 Malas were given free house sites on promise of tendering votes to respondent No. 1 is not proved.

(67) Now we turn to the question of loans. We may note here that all other instances with which we have dealt so far are cases where bribery shows itself in its native simplicity. But bribery in the case of these alleged instances is said to be a much involved affair. The contention is that it has been practiced in an organized manner on a large scale fully cloaked to defy easy detection and the loans advanced in purported implementation of the Village Housing Project Scheme in Nadendla and Yedlapadu were gifts in disguise for procuring election of respondent No.1. This indeed is the most formidable ground of attack and the mainstay of the petitioner's case. Though the ground taken in this regard in the petition seems to be limited to the amount of Rs. 2 lakhs sanctioned in February 1962, the attack at the stage of evidence became more broad based and its severity and expanse developed further in the argument. We now examine how

far this contention has been substantiated. The evidence adduced in this regard is both direct and circumstantial. The direct evidence is shaky and infirm and does not inspire confidence. We have already dealt with all the witnesses examined in relation to the alleged instances at Yedlapadu. We have also referred to the testimony of P.Ws. 35 and 36, the voters of Nadendla. Though they say they were promised construction of their houses free of cost, their testimony itself points to the fact that theirs were the loans obtained by executing formal bonds duly verified by the Karnam accompanied by requisite documents for securing their payment. Of course, whether loans or gifts, they are bribery if they are offered to induce the voters to vote. But P.W. 36 categorically says in cross-examination that Block Development Officer never told him that he should vote for the Congress. To a question that loan application had nothing to do with the election, he says he is not in a position to say. Both P.Ws. 35 and 36 have a grievance that they were not paid their loan in full, the veracity of which is open to doubt. The fact however, remains that the loans were an inducement cannot be held to be proved by their testimony. Whereas P.W. 36 says that Block Development Officer did not say that they should vote for Congress, P.W. 37 says that Block Development Officer was not content with half, the number of votes and refused to advance loan unless all the voters voted for the Congress. He says his partymen voted for Swatantra party. He did not take any loan. He speaks of fact that the Madigas were thrice prevailed upon to take loans so that they may vote for respondent No. 1, but they were apprehensive that they may not be gifts; that only a few could be induced into taking the loans on two occasions and on the last occasion respondent No. 1 himself had to assure them at Thimmampuram. Even then some did not take. When this witness was inclined towards the opposite party not to be served from that position, we fail to understand where was the occasion of his being present on each occasion. The evidence of P.Ws. 40 and 43 is not direct on the point. It is based on hearsay information.

(68) P.W. 41 a Madiga is said to be the person included in the first batch who readily accepted the loan. Though he says it was a gift he admits that he had executed loan application mortgage deed etc., and he executed the same knowing full well that they are so. He put thumb mark also when the amount of loan was enhanced. He was paid in three installments. Nevertheless he cannot say whether he took the amount as a loan on condition of repaying it in ten installments. His testimony that it was an inducement to vote is not consistent with his conduct. The Testimony of P.W. 42 suffers from similar infirmities. As against this, there are clear and categorical statements of R.Ws. 41 and 43 and C.W.1. We see no apparent reason to disbelieve them.

(69) The petitioner relies on certain circumstances to show that the direct evidence adduced on behalf of the petitioner is true. This consists in the conduct of Block Development Officer ever since he took charge and the close association of respondent No. 1 and his election agent with him.

(70) The Block Development Officer was made the target of multi-pronged attacks in connection with the discharge of his duties during the period commencing from the time much earlier than the implementation of the Village Housing Project Scheme. It is alleged that as a Gazetted Officer in the employment of the Government, he could not concern himself with the election campaign; but since he owed his appointment, retention and promotion to the 1st respondent and was being shielded from the baneful effects of public criticism by him, he left no stone unturned to create an atmosphere conducive to the election of the 1st respondent. He created factions in the village which were unknown before, involved himself in several affairs of the villagers to undermine the influence of the leaders of the place who were supporters of the Swatantra party and in order to counteract their effects made public funds of Nadendla Samiti available to the voters as loans in name and assured them that they were in fact gifts with a view to procure election of the 1st respondent. He neither kept the aims and objects of the scheme in view nor did he comply with the rules governing the scheme. He made disbursements of loans to people even though they did not need them. He advanced loans without caring for compliance with the imperative formalities and without plans, without title deeds, without obtaining security bonds or duly registered mortgage deeds or without ascertaining their solvency and above all without bearing in mind the note of warning sounded in the directions that safety of the Government money should be ensured at all costs and what is more significant that he made no attempt so far to collect the dues. Thus it is alleged that what was in view was not the implementation of the Village Housing Project Scheme but the election scheme of the 1st respondent and that the help of the 1st respondent and his election agent was always handy in that campaign as whenever there was paucity of funds the amounts were diverted unauthorisedly and illegally from other sources and further allotment of loans were made by the Finance Department.

(71) We now proceed to examine how far these remarks are just or warranted. At the very outset we may make it clear that the Block Development Officer is not on trial before us. We are not concerned with the inquiry into the conduct of the Block Development Officer in his discharge of duties. We are concerned simply with election offence attributed to respondent NO.1. As it is contended that the alleged corrupt practice has been committed by B.D.O. with the content of the election agent and also of the respondent No. 1 and that all the three were working in unison in furtherance of their common plan to procure the election of respondent No.1 we have to examine how far the conduct of the Block Development Officer supports this contention. In cases where collusion and conspiracy has to be established circumstantial evidence may form generally the only way of proof. Circumstances, it is said, cannot lie though narrators of them do often lie. Circumstances are inflexible proofs but of nothing more than of their existence; for a fact is a fact. But there they are relied on for inferential purposes the process of inference being essentially involved, the correctness would largely depend upon the completeness of the chain of circumstances and exclusion of all

fallacies. One of the circumstances relied on to prove agency of Block Development Officer in election campaign is that he was appointed and was retained in Nadendla Samiti on account of the good offices used by respondent No.1. The respondent No.1 in paragraph 20 of his counter has categorically denied that he had any hand in the appointment of the Block Development Officer or he had anything to do with him. P.W. 1 is the secretary of the Panchayat Raj Department. He deposes all about the appointment, retention and transfer etc. of the Block Development Officer showing that respondent No. 1 had no concern with any of these. According to him the appointment of Block Development Officer was by way of selection from among candidates of various apartments. He was selected by the Committee and was posted as Block Development Officer of Nadendla Block in Guntur District under Ex. A-1 dated 16-10-1957. He got his promotion in due course in his parent department on 6-12-1958 as District Agricultural Officer. In consequence thereof, the Government agreed to release him to the Agricultural Department for appointment as District Agricultural Officer and made its order dated 6-12-1958 (Ex. A-2). This order was subsequently cancelled under Ex. A-3. Eventually the post of Block Development Officer was upgraded under Ex. A-6 with a view to retain Mr. Narasimhareddy in that block. Nadendla was not the only block nor Naraimhareddy was the only officer who enjoyed this privileged position. There were several other blocks where the post of Block Development Officer was similarly upgraded. Some time thereafter, the Collector transferred Mr. Narasimhareddy to Macherla unmindful of the fact that the post at Marcherla was nongazetted. The Block Development Officer, as was natural enough, made a legitimate grievance of the same by a formal application. The Nadendla Samithi unanimously passed a resolution Ex. A-4 for the retention of the said Block Development Officer for some time more as the services already rendered by him in that post and his further services necessary for the progress of the block required his retention. Ex. A-5 is the letter dated 20th April 1960 forwarding this resolution to the Government. It was stated therein that the Transfer of the Block Development Officer to a post which is lesser in grade is irregular and the Block Development Officer should therefore either be retained in the Samiti or if that is not possible he should be sent to his parent department. It appears the Collector himself realising the irregularity in transferring the Block Development Officer to Macherla first suspended and ultimately cancelled the said order. This is the account given by P.W. 1 as borne out fully by the documentary evidence. It does not appear from the statements of P.W. 1, who as the Secretary to the Government in the department must be deemed to have full information, that the Finance Minister had anything to do with the appointment or retention of the Block Development Officer. On the face of it also it seems pureile to think that for the election of 1962, respondent No. 1 in anticipation of his own selection to contest the seat from that constituency must have brought the Block Development Officer in 1957 to work for him. Nevertheless it is urged the conclusion has to be reached out on a single fact but the cumulative effect of all circumstances. It is urged that having been returned previously from the same

constituency it is reasonable to expect that respondent No. 1 would see that his hold and influence on that constituency should be ever on the increase. He will be all the more particular when it is obvious to him that these villages are strongholds of Kamma influence. He had his own brother as the President Of Panchayat Samiti and what all has transpired after the appointment of the Block Development Officer is a telltale of the hectic efforts made pursuant to the common design to see that the growing power of the rival party is undermined and election of respondent NO. 1 is ensured. In this connection the learned counsel submits that there are three well marked stages in the career of the Block Development Officer during the period 1957-1962: - (1) During 1957-1959 the Block Development Officer made efforts to consolidate power and influence by co-operating with and thus winning the confidence of the leaders. (2) During 1960-1961 Block Development Officer made earnest efforts to create rifts among the people and leaders, thus undermining the influence of the latter and winning the former to his side. (3) During 1961-1962 Block Development Officer did his best to enlist the voters under the influence of money or colorable loans.

(72) We then proceed to consider how far this contention is true. The crucial periods are the so called stages 2 and 3. It is brought out in evidence that the atmosphere at Nadendla was peaceful for some time after the Block Development Officer had taken charge. It was so as long as there was perfect accord between the Block Development Officer and the Ex-village munsif N. Satyanarayana (P. W. 43). Thereafter there arose a wave of dissatisfaction on account of some differences between the leaders of the place and the Block Development Officer which in the estimation of the leaders were calculated to alienate the loyalty of the public. The result was that the said leaders became anxious for the transfer of the Block Development Officer and they made an application, using the good offices of Bachina Subbarao, M.L.C.(P.W. 39) to the Minister concerned. P.W. 39 who was concerned merely with complying with the request of P.W. 43, an all powerful personality, did not ascertain the grounds of transfer or the merits thereof. He gives an account of what all took place thereafter. He along with the village munsif met Sri Alluri Satyanarayana Raju, the then Minister for P.W.D. in the year 1960 at Chilakalurpet and requested him to see that the Block Development Officer is transferred as he is not liked by the people. The minister asked them to see him at Hyderabad. Accordingly all of them went to Hyderabad and presented a Mahazar to him. He forwarded the same which is the original of Ex. A-700 signed by five persons, to Sri. R. Ranga Reddy, the concerned Minister for planning. The signatories with P.W. 39 met Sri Rangareddy promised them that he would take necessary action after calling for a report from the subordinate officers. A month or two thereafter they met again Sri. P. Rangareddy who told him that the Collector had sent his report and that he would transfer the Block Development Officer to the Agricultural Department. But no orders were issued thereafter. They approached the Minister Sri Ranga Reddy said that respondent No. 1 was objecting to the transfer of the Block Development Officer to the Agricultural after. They approached the Minister Sri

Ranga Reddy said that respondent No. 1 was objecting to the transfer of the Block Development Officer and he cannot do anything in the matter. Then they met the Chief Minister Sri Sajeelayya who promised that he would look into the file and pass orders. But nothing came of it thereafter. This version of P.W. 39 is corroborated by P.W. 40 and P.W. 43 as well who are all inimically disposed towards respondent No. 1 P.Ws. 40 and 43 have also deposed to the grounds on which the petition was made. The reason for the requested transfer was only the differences that arose between the Block Development Officer and the leaders of the place in certain matters. These matters do not bear reference in the petition. The witnesses admit that this did not give rise to any difference of opinion among the people or rifts in the ryots. The matters on which the difference arose between the leaders and Block Development Officer were in all three in number. The complaint of P.W. 43 was that the Block Development Officer was getting work done by him and was not doing what he promised or undertook to do thus betraying him (the village munsif) and others before the public. It is difficult to understand who these three matters, if supposed to be serious did not bear specific reference in the petition. There is no reason why, if true, they should not have been referred to. They are said to relate to the following heads: - (1) Large-scale Co-operative Society which was formed in the village in 1958. (2) Construction of Building for the elementary School and (3) Construction of the building for Primary Health Centre. In connection with the first mentioned matter the grievance is that whereas the Block Development Officer had agreed to propose the name of the petitioner for the presidentship of the society, he actually sent the name of altogether a different person Sri Nallamutula Ramalingaswamy, who thereafter continued to be the President till the next election. In the next elections Nallamutla Adinarayana (P.W. 40) was elected president. But that was much against the will of the Block Development Officer as he was not amicably disposed towards him. He therefore created difficulties in the way of the newly elected. President in taking charge of the post, Ramalingaswamy applied in vain for setting aside the election. Even after the adverse decision against him, the ex-President did not hand over charge to the newly elected President. When Adinarayana assumed charge and stocked manure in another building, the Block Development Officer with help of the police sealed the manure and locked the godown on the ground that Adinarayana had no valid licence. This led to a writ proceeding. But it was eventually dismissed. This is all with regard to the first matter.

(73) P.W. 43 who deposes about the two other matters states thus. There was a proposal for the construction of a building for the elementary school in the village. He and the Block Development Officer and the President of the Panchayat Board agreed that Rs. 2,400/- should be contributed by the villagers and the rest should be borne by the Government and the Panchayat Board for the construction of the building, Rs. 2,400 were collected by contributions from the villagers. The building was constructed upon the foundation level. It was done so in 1960. Then he asked the Block Development Officer for further progress in the

matter. But he said that they should get the amount to be contributed by the Panchayat Board credited to the Samiti account. The President said that the amount to be contributed by the Zilla Parishad may be credited to the Pachayat Board. But nothing happened thereafter and no construction was done. This is the second point of difference.

(74) The third relates to the Primary Health Centre building. In this behalf an expense of Rs. 10,000/- had to be incurred by the Panchayat Board and the villagers and the rest by the Panchayat Samiti. Out of the said sum of Rs. 10,000/-, Rs. 3,000/- were agreed to be contributed by the villagers and the balance of the amount by the Panchayat Board. The witness collected Rs. 3000/- and credited it to the Panchayat Board. But the building was not started. That is all what is said of the third matter.

(75) Even if the version of the said witnesses is accepted in all its integrity, it is difficult to connect this difference of opinion on matters essentially within the realm of the Block Development Officer's office with the election programme or with any alleged plots hatched between respondent No.1 and the Block Development Officer. The Block Development Officer on oath has offered explanation of his conduct in all these matters. In our opinion these differences cannot be germane to our inquiry. But it is urged that respondent No. 1 would not have interefered and foiled the attempts of transfer had he had no interest in the matter. The learned counsel requests us to examine also further facts, which establish nexus between the acts or conduct of the Block Development Officer and the alleged objective of respondent No. 1 or his election agent of furthering the election prospects. The question is whether the respondent No. 1 at all had any hand in influencing the decision on the petition filed by the five signatories. P.W. 39, P.W. 40 and P.W. 43 do not give direct evidence in this behalf. The persons who are reported to have said so i.e., Sri P. Ranga Reddy and Sri Sanjeeviah have not been examined. Instead the said Mahazat and the connected documents were summoned; but the Secretary of the concerned department while bringing the documents in a sealed cover claimed privilege. This plea was upheld by the Tribunal under a detailed order dated 9-10-1964 which was made after hearing the petitioner and respondent No. 2. The correctness of this order has been challenged before us. It is urged that Sections 123(7) and 124 of Evidence Act do not apply to election case and that even if they apply the documents sought to be adduced in evidence do not come within the category of privileged documents. Above all the affidavit filed is not the affidavit of the Minister but that of the Secretary who cannot be deemed to be the officer at the head of the department as contemplated by the provision. These were the very pleas which were taken before the Tribunal. Of course the plea with regard to the competence of Secretary to claim privilege does not appear to have been pressed at the time of the arguments for the order does not make any reference thereto. We have noticed in earlier part of the judgment that the provisions of the Indian Evidence Act 1872 would apply to the trial of an election petition subject to the provisions made in this behalf in the Act. In other

words specific provisions is there be any made in the Act will apply in the sphere covered by them. In other respects the Indian Evidence Act will hold its filed in the trial of all election petitions. We search in vain for any provisions in the Act whether express or implied which are inconsistent with Ss. 123 and 124 of the Evidence Act. The Tribunal was therefore right in holding that the provisions of Sections 123 and 124 will apply to and govern the trial of election petitions.

(76) The next question is whether the Secretary is the officer at the head of the department to claim privilege within the meaning of Section 123 of the Evidence Act. According to the Rules of Business framed in exercise of powers of the Government under Art. 166 of the Constitution, the Secretary is the official head of the department. That is what the Rule 6 says. His affidavit may therefore be sufficient for the purpose. As the Minister is in charge of the port folio it is urged that his affidavit was essential for the purpose. Reliance has been placed in this regard on *Amar Chand Butail Vs. Union of India (UOI) and Others*, where in it was observed that the claim of privilege of a document under Sec. 123 Evidence Act should generally be made by the Minister in-charge who is the political head in charge of the department. The expression "generally" used by their Lordships is pregnant with meaning and further the word "political head" and not "the officer at the head" has been used. As this plea does not appear to have been pressed before the Tribunal, we think it unnecessary to enter into an elaborate discussion in this behalf.

(77) The next question is whether the case falls within section 123 of the Evidence Act. In other words whether the evidence sought to be given is derived from the unpublished official records relating to the affairs of state. S. 162 of the Indian Evidence Act provides that a witness summoned to produce a document shall notwithstanding any objection if there be whether to its production or to its admissibility bring it into Court if it is in his possession and the validity of any such objection shall be decided by the Court. The Court if it deems it necessary may inspect the document unless it refers to matters of State or take other evidence to determine its admissibility. It is thus within the province of the Court to determine whether a certain document sought to be let in evidence relates to affairs of state. It may not be open to it to inspect that document brought to the Court for determining the same. But it can take other evidence is that behalf. It is only when the court holds that the document is of the kind, the question of permission would arise. It is then left to the head of the department to decide whether he should permit its production or not.

(78) In this case no enquiry was instituted by the Tribunal as to whether the evidence sought to be adduced relates to unpublished records of affairs of State but that was because the Tribunal accepted the version found in the affidavit filed by the Secretary. If that be so we do not think the Tribunal has gone wrong in accepting the plea of privilege. The fact remains the Mahazar signed by five persons for transfer of Block Development Officer could not be brought on record and endorsement thereon could not therefore be ascertained. Of course all this

was of little moment except for purpose of tracing the connection of respondent No. 1. If no favourable action was taken on the application it does not necessarily follow that it was due to respondent No. 1 who was in no way concerned with the department. It is no doubt true according to the rules of business any minister can call and look into the file relating to the matter within the province of the other minister. But his voice can in no sense be effective. Above all it is on record there were also petitions for influential and important persons for retention of Block Development Officer. Ex. B. 11 signed by 29 members is one such application. The Block Development Officer's services besides were being appreciated even by important guests from other States. Respondent No. 1 has spoken to it. In these circumstances it is hard to believe that respondent NO. 1 was interested in or had influenced the decision on the petition in favour of Block Development Officer. Even Sri Sengal Reddy does not appear to have sought for his retention with any ulterior motive. As would appear from Ex. A-5 if his retention was recommended, for it was only with a view to see that in view of his hard work and valuable services he should not suffer any detriment. The fact that they were greeable to his being sent to his parent department at that stage dispels all doubts as to any common design.

(79) From the alleged period of incubation, which in fact it is not, we now turn to the crucial period of alleged development of the plot to procure the election of respondent No. 1 i.e. stage (3).

(80) It is alleged that the way in which the Block Development Officer has conducted himself immediately before the election and subsequent thereto and the manner in which he used he public funds available in Nadendla Samithi must establish the conspiracy and close connection between respondent No. 1 his election agent and the Block Development Officer of furtherance of their design to ensure the election of the Ist respondent.

(81) The village housing project scheme, a scheme sponsored by the Central Government with a view to establish a number of housing projects in selected villages all over the country was introduced in the 2nd five Year Plan with a provision of 5 crores of rupees. The idea was to encourage the villagers to improve or reconstruct their houses and repay the loans borrowed for the purpose without much inconvenience. For the due implementation of the scheme, the State Government also framed certain rules. As per these rules, the Collector had to select the villages. The Rural Housing cell attached to the Chief Planner had to prepare a Master Plan. The Block Development Officer was to receive applications and disburse amounts on the basis of the plans approved by the Block supervisors who will receive the necessary directives and guidance from time to time from the Rural Housing cell. The conditions for the eligibility to the loan and the formalities to be complied with for the grant of loan wee also specified in these rules. The applicant eligible for loan must mortgage the land and house to be constructed on it to the State Government and in addition he should complete such other form of security acceptable to the State Government

until the loan with interest thereon is repaid in full. The application form and its annexures were to be in accordance with the forms prescribed in appendices 2 & 4 & the proceedings of the Block Development Officer should be in accordance with appendix No. 3. After the Master Plan is prepared, the funds are allotted on the recommendations of the Director of Town Planning and entrusted to the Samiti as advances to the Samiti and it is from the Samiti that the loans to the intending builders are advanced. Originally the Block Development Officer was the sanctioning authority. Some time thereafter these powers were entrusted to the standing committee No. 2 of the Samiti, which consists of 7 members including the President ex-officio. The Block Development Officer, however, is the Chief Executive Officer, who would carry out the sanction orders and disburse the amounts after ensuring all steps necessary for its recovery.

(82) The scheme was introduced in 1957 but the funds were allotted by the State Government to certain samitis for the first time in 1959-60. Nadendla was not included therein. Tubadu, Solasa and Jaggapuram were the villages where funds were allotted for the Nadendla block for the first time under Ex. A-48 dated 20-1-60. In the following year Nadendla and Yedlapadu were also included in the scheme and a further allotment was made for the same.

Ex. A-48 Rs. 60,000

Ex. A-49 40,000

" A-50 1,00,000

" A-256 2,00,000

" A-341 30,000

531 persons in all were granted loans in this samiti. It is common ground that every applicant was granted loan and no application filed was rejected. It is also manifest that the loanees were not limited to Malas and Madigas but loans were granted to all communities: Kammas, Telagas, Baligas, etc.

(83) The position of the loans granted during 1961-62 was as follows:

Jaggapuram: 18 loans. The first loan granted was dated 19-4-61.

Solasa: 39 loans. The first application is dated 29-5-61.

Tubadu: Two loans and they were on 10-7-1961.

Nadendla: 185 loans the earliest of them being 20-5-61.

Yadlapadu: 65 loans, the earliest of them being 30-3-61 and the latest on 12-2-62.

During the year 1962-63 the position of the loans granted is...

Yadlapadu 5

Nadendla 3

Solasa 57

Tubadu 21

Jaggapuram 2

The position of the loans granted for the period of three years is as follows:

Solosa 155

Tubadu 44

Jaggapuram 20

Nadendla 237

Yadlapadu 75

Though it is not disputed that the block development officer did not reject any application, be that from persons of any party of community, his expeditious despatch and anxiety to make the scheme a success has been construed as implementation in fact a scheme of making the election of respondent No. 1 a success. The question is whether his acts and conduct bear such necessary construction. In this regard the charge against the officer is that he started sanctioning loans without waiting for the master plan, that he did not start granting loans to other villages till the allotment for Nadendla and Yadlapadu was received, that he granted loans even for places which were not included in the Master Plan and that even though in September 1961 only a sum of Rs. 30/- was available under the village housing project scheme, in his anxiety to advance loans he diverted other amounts from different heads and paid the loanees. All this was arbitrary without any sanction and contrary to the rules and he acted so in spite of the directions of the technical officer and also the Government's refusal to sanction the amounts. It is urged that all this haste was close in sight.

The allotments made from time to time to the Nadendla samiti are as follows:-

on 21-10-60 G.O. Ms. No. 132

on 25-2-62 G.O. Ms. No. 39

on 22-12-61 " 248

on 6-8-62 " 166

on 10-2-64 " 11

The other irregularities complained of bearing on the question are with regard to the application forms and security etc., to which reference has already been made.

(84) Now we proceed to consider how far these contentions are justified. We do

not wish to embark on a detailed discussion for we are not concerned with any of the irregularities of the Block Development Officer unless they have a bearing on the point at issue, (i.e.), only if they could be connected with election matters. We have already noticed the selection of the villages was made by the Collector who was the competent authority to do so. The process of disbursement of money had started on 31-3-61, i.e. after the allotment was made. Allotment is made by the Government only when the Director, Town planning after the Master Plan is approved has made the recommendation. As we have already stated the first allotment was made on 21-10-1960 itself for the three villages and the second allotment was on 25-2-61 for Nadendla and Yadlapadu. According to the Block Development Officer (C.W. 1) there were Master plans for all the five villages so that loans could be sanctioned. As there is no dispute with regard to the Master Plans of the first three villages we confine our attention only to the other two villages. Exs. A-614 and A-615 are the plans for Nadendla and Ex. A-616 is the plan for Yadlapadu. Ex. B-227 shows that the physical engineering survey was taken up in Nadendla and Yadlapadu in January 1961 and the survey was completed in February 1961 (Ex. B-228). Funds were allotted on 25-2-61. Ex. B-242 shows that there was in existence of an approved Master plan. However, Ex. A-49 was suggestive enough that the Scheme was to be implemented in anticipation of finalisation of the Master plan after the allotted amounts have been received. This is evidently because the finalisation of the Master plan to be complete in every detail entailed much delay and it would have taken several years for the work of disbursement to start after the allotment was actually made. In this situation, if having regard to the urgency warranted by the Scheme itself and the directions given thereunder, the grant of loans was started after the allotment was made, this conduct cannot be open to adverse criticism. The criticism based on the fact that loans were granted to places not included in the plan lacks in substance. As would appear from Ex. B-273 dated 28-9-61 the old sites of Peda Malapalli of Nadendla village were in the plan even on 28-9-61. It is contended that this plan itself is a suspect. We cannot accept this contention. As regard the Master plan of Nadendla the contention is that Madigapalli was not included therein. The plan as prepared does not specify each locality by name. It was therefore necessary to elicit the same from the witnesses. No question was put to the witness while in the box, C.W. 1 has stated that Kothavuru was included in the plan and when he received the plan he came to know that Madigapalli also ought to be included that he got it included.

(85) Then as regards disbursement, the petitioner makes a grievance of the fact that for 3 months after the amount of Rs. 60,000 was allotted and adjusted, the Block Development Officer did not exhibit any anxiety to distribute the funds in the three villages. This inaction he attributes to the design of the Block Development Officer to use the funds for election purposes after fixing up the votes. The imputation is rather farfetched and wholly unwarranted by the circumstances. C.W. 1 has given his explanation for this course.

(86) Then it was urged that whereas the loans ought to be sanctioned by the

Panchayat Samiti they have been in fact sanctioned by the Block Development Officer. This contention ignores the fact that the Block development Officer was duly authorized by the Committee to advance the loans under Ex. A-21(c). It is also on record that the sanction of all loans was duly ratified by the committee later. It must be remembered that the Standing Committee No. 2 consists of members belonging to various parties. The Karnam Rangarao, one of the members belongs to the Communist party and Resiah belongs to Swatantra party. There are other members who belong to the congress party. If the Block Development Officer's intentions were in doubt he would not have been authorised to sanction the loans or if any of his acts was unauthorised they would not have kept quiet. In fact all the loans sanctioned prior to 7-9-61 were put up before the committee and ratified. C.W. 1 says that the resolutions were passed unanimously. Assuming there were irregularities in making any of the initial sanctions they stood wholly cured by reason of ratification by the committee competent in law to sanction.

(87) The other contention is that the formalities in entertaining the applications and seeing that the requisite enclosures are attached to the application and that they are in order have not been complied with. Indeed several irregularities in respect of completion of forms, security bonds, mortgage bonds, etc., have been pointed out to us. After a careful consideration, we have come to the conclusion, irregularities indeed there are several but they are venial. At any rate in no way they are suggestive of any design or set purpose. That similar irregularities are to be found in other heads of loans etc., is borne out by C.W. 1's testimony and the records. C.W. 1 has given explanation for the cases where title deeds were though unnecessary, plans not insisted upon, personal security instead of guarantor deed was though sufficient and registration of mortgage does not effected. It may be seen that the encumbrance certificates etc. were duly attested by the village officials. Of these village officials, Koli Balaramaiah, who is no other than the uncle of P.W. 43 is one. He has attested all the documents in Nadendla certifying the solvency etc. as is clear from Exs. A-136 to A-154, A-274, A-288, A-301, A-312, A-359, A-362, A-409, A-410, A-412, A-423, A-425, A-426, A-433, A-434, A-442, A-448, A-449, A-455, A-549, A-551, A-554, A-556 and A-558 commencing from March 1961 and ending with April 1962. It is not contended that any loan was given without applications and without entry in loan files or records. The witnesses examined in behalf of the petitioner also have not said that due applications with formal attestation by the village officials were not obtained. Of course most of them have said that they were not intended to be loans and that when they filed the applications they did not know that they were loans. But most of them in fact in cross-examination have admitted that they knew that they were executing loan applications and that the loans were to be repaid. As already noticed their evidence is tainted. There is not a single witness who has said that any of the loan applications were rejected so that it may be said that loans were advanced to particular persons of Block Development Officer's choice arbitrarily. The implementation of the scheme was under the

supervision of the housing cell. Their inspection notes Exs. B-236 to B-242 show that they were satisfied with the working of the scheme. Ex. B-247 shows that the work was upto the mark and was in full swing. Progress reports were being sent regularly: see Exs. A-627 to A-640 and B-252 to B-266. There were auditor's reports also. Indeed irregularities complained of pale into insignificance in view of all these broad features. They are not serious enough to cast a doubt on the intention of the Block Development Officer. Much capital is made of the unauthorised diversions made to feed the project when the funds in that scheme were well-nigh exhausted. But that was done at a time when it was inevitable to prevent incalculable damage to the property which would have resulted otherwise. The work of construction had reached a stage where it would not be possible to postpone its completion till the funds are sanctioned. In various reports to the officers concerned in connection with the sanction of funds, the Block Development Officer has made specific references to this aspect of the matter. The justice of his contention has been endorsed by the recommending officers. In these circumstances if diversions were effected that cannot be imputed to any ulterior motive of the Block Development Officer. Besides, the diversions made were sanctioned under resolutions of the standing committee (see Ex. A-28(a), A-28(b) and Ex. A-318(a). In case diversions were for any object or motivated by any purpose other than for the due implementation of the scheme, the committee would not have approved of them. At last Rosiah who is a Kamma and who belongs to Swatantra party would not have kept quiet. Indeed Rs.W. 41 has said that these diversions are a normal feature which used to be resorted to even before. This is also pointed out by C.W. 1; it is significant that these diversions were shown in the progress reports and the Accountant General was even apprised of the same. It is urged that such diversions could not be effected without the previous sanction of the Government. Having regard to the limited province of our inquiry it is unnecessary for us to consider the legality of diversions. Suffice it to say that we do not see anything in the conduct of the Block Development Officer in implementing the Village Housing Project scheme which may legitimately excite a suspicion as to his bona fides or to any ulterior motive. It is pointed out most of the loans were advanced in December 1961 to February 1962 i.e. on the eve of election. Even if it be so such an advancement which was necessitated by the requirements of the people when the scheme is in full swing cannot be necessarily connected with the election. It is urged that the delay in naming attempts for recovery of loans is an important landmark in tracing the intention of the Block Development Officer that they were to be gifts. The Block Development Officer has satisfactorily explained the position. The conduct of the Block Development Officer in these circumstances cannot rouse suspicion as to his bona fides. We cannot attribute anything to the President of the Panchayat samithi also which may suggest that he wanted to exploit the scheme for the procurement of the election of respondent No. 1. There is also no evidence to suggest that respondent No. 1 had any hand in the sanction of funds at the time of elections. It was argued that the sanction of the funds and the recovery of loans was the responsibility of the Finance Minister; but R.W. 43 has

deposed that the budget estimate voted by the Assembly. Later they form the consolidated fund of the State. After the Appropriation Act is passed it is for concerned department to spend the monies allocated to them. The Finance Minister does not come into picture. The procedure is indicated in G.O. Ex. A-50 dated 22nd December 1961. He has categorically stated that he had personally nothing to do with the sanctioning of the amounts from time to time. He has denied that any sanction was made to further his election prospects. There is no apparent reason to disbelieve him.

(88) It would appear from the above that having regard to the seriousness of the charge and its far-reaching baneful and poisonous effects on the working of the Democracy we have taken pains to probe deep into the allegations of the petitioner even though that meant several inquiries in an inquiry. On a consideration of the entire record we are of the view that the circumstances relied on whether by themselves or in conjunction with the direct evidence do not establish the case of the petitioner that the public funds of Nadendla Samithi used for implementation of the Village Housing Project Scheme were either primarily in any manner whatsoever were intended to be or in fact directed towards or used for promoting the election of respondent No. 1. Direct evidence as we have already said is weak and discrepant and does not inspire confidence. Besides, it consists of the statements of witnesses who say that they received loans as bribes. Their evidence as we have already said is tainted and cannot be accepted without corroboration which we find none. There are also witnesses who are highly interested being themselves involved in a criminal charge of bribery at election in relation to the respondent No. 2. They have grievance and motive besides both against the Block Development Officer and the 1st respondent. Their evidence does not find support from the circumstances which, as we have said do not raise any inference in support of the petitioner's case. The petitioner, who has taken loan himself, who, according to P.Ws. 40 and 43 was connected with certain matters forming the subject-matter of the petition against the Block Development Officer and who is reported by several witnesses to have been apprised of corrupt practices, has kept himself away from the box. So also the respondent No. 2 who in his affidavit has stated that the facts stated therein were within his knowledge and information refrained from coming into the box even though his adversary has given him opportunity to cross-examine him. This indeed is a serious lacuna and the non examination of a material witness or a party to the case in possession of knowledge and information is sufficient to raise an adverse inference. The rebuttal evidence indeed outweighs the petitioner's evidence. It is significant to note that in the very villages where corrupt practices have been alleged it is the respondent No. 2 and not the respondent No. 1 who polled large majority of votes. It is not the case of the petitioner that the respondent No. 1 had no weight of his own there. According to the petitioner the kammass whose support formed the backbone for respondent No. 2 were divided, let alone the other communities. This is a sure indication against the case of the petitioner. It is obvious that the petitioner has failed to

prove that the truth lies with him. We have no hesitation to hold that the petitioner has failed to establish the corrupt practices alleged.

(89) Then we take up the other instances alleged which unlike bribery by themselves are not fatal unless they have materially affected the result. These relate to certain irregularities in polling or counting or votes. Paragraphs 20, 21 and 24 of the petition relate to these. It is said that certain persons impersonated the dead persons and cast their votes. Though the list given of such persons (see annexure B to the petition) covers hundreds of cases, the argument in this Court was confined only to the select 18 persons in relation to which a list has been filed in this Court. Having regard to the evidence that some of these persons were dead at the time, we may accept the contention that out of the list of 18 persons, the case with regard to 13 persons has been established that they were dead at the time of election. The counsel for the respondent No. 1 could not show that the evidence in this behalf is unsatisfactory. The five persons about whom there is no satisfactory evidence are Kodiah Talari, Seshamma, Seetharamma Moturi and Venkateswarareddy. It may thus be said that 13 votes of dead persons were wrongly received. But the wrong or improper acceptance of these dead votes is not fatal to the election unless it has materially affected the result of the election. That is what is provided in Section 100(d)(iii) of the Act. We do not think the addition of 13 votes would have turned the balance in favour of respondent No. 2. As it is there is a difference of 501 votes between the two.

(90) There was an allegation of plurality of votes also as stated in paragraph 21 of the petition read with annexure C. But that was not passed at the time of argument in the same manner as was done in relation to allegations in paragraphs 22 and 23 and also paragraphs 16 to 19 of the petition.

(91) The next contention raised by Sri Rama Sharma the learned counsel for the 2nd respondent turns on paragraph 24 of the petition wherein it was averred that among the ballot papers received there were some in favour of respondent No. 1 wherein were found thumb impressions of the voters disclosing their identity; but nevertheless the returning officer had counted them in favour of the 1st respondent. Indeed the 2nd respondent in paragraph 9 of his counter averred that in Kanaparru village the majority of votes polled for respondent No. 1 not declared invalid and that he has every reason to believe that respondent No. 1 has got the benefit of these votes. In view of these pleadings the issue as settled by the Tribunal reads thus:-

"9(c):- Whether the election of the 1st respondent is vitiated consequent on the infringement of the rule of secrecy in regard to ballot papers polled in Kanaparru village?"

It is obvious therefore that at the time of settlement of issues the allegation in this behalf was confined to Kanaparru village. At the time of trial when P.W. 4 was being examined questions were being put with regard to affixing of thumb impression in the ballot papers so that the identify of voters may be established.

On the objection raised on behalf of respondent No. 1 the Tribunal disallowed these questions and made its order on 22-4-1964 to the following effect:-

".. ... The other objection raised is no question with regard to the affixing to thumb impressions in the ballot papers in order to establish the identity of voters, could be asked. If these are thumb impressions on the ballot papers, the existence of thumb impressions by themselves would invalidate the votes and there is no purpose in asking a witness about it "

As a result of this order it is said no evidence with regard to the agreement or of making actual thumb impressions was let in. The substance and effect of the order of the Tribunal as understood by the petitioner and the 2nd respondent is said to be that since the ballot papers by themselves will constitute evidence with regard to the marks of identification made thereon which can be inspected by the Court for purpose, no other evidence is necessary. As would appear from the affidavit dated 29th May 1965 filed by one Bhimayya on behalf of the petitioner when subsequently an attempt was made on the part of the petitioner to get the ballot papers on record such request was not allowed by the Tribunal on the ground that the tribunal itself can look into the ballot papers with bringing them on record which would violate the secrecy of ballot paper. The petitioner then requested the Tribunal for inspection and that such of the ballot papers as were cast in favour of the 1st respondent and contained the thumb impressions or marks of identity may be excluded and relief be granted accordingly. The application for inspection was opposed by the 1st respondent. The tribunal therefore rejected the request of the petitioner on more than one ground. Firstly it was observed that as no list was filed as an annexure to the petition for such invalid votes, as has been done in relation to other matters, there could be no question of proving the same. Secondly at the time of counting there was no protest lodged in this behalf before the Returning Officer by any of the counting agents of respondent No. 2. Thirdly no counting agent has been examined and P.W. 4 could not have been a witness to this. Fourthly the non-examination of the voters who are said to have put their thumb impressions and also of respondent No. 2 or his polling agents is a serious lacuna. Fifthly there is no prima facie case made out for a recount by examining the ballot papers and the Court cannot resort to the said method for there is always a presumption that ballot papers which are not rejected are valid ballot papers. On these and request other grounds, the Tribunal rejected the request for inspection or recount by examining the ballot papers. It is no doubt true that scrutiny or recount cannot be granted for mere askance. It cannot be allowed either as a matter of right or as a matter of course. It is a matter of discretion solely with the Returning Officer or the Tribunal as the case may be. By a long chain authorities it is firmly established that this discretion can be exercised only on good grounds made out by evidence for believing that there has been a mistake on the part of the Returning Officer. The party has to make out a prima facie case that the return was not accurate and scrutiny and recount are necessary in the interests of justice. That is what has been laid down in *Stepney's case*, (1886) 4 O'M and H 34.

(92) To the same effect was the view of this Court in Adamala Mohan Reddy Vs. Anugu Narayana Reddy, , where it is observed that recount is not granted as of right but order on the evidence of good grounds for believed that there has been mistake on the part of the Returning Officer. A party cannot ask for count on the off chance of being able to defect mistakes. The proceedings before the Tribunal cannot be converted into a forum for fishing out any possible defects. What is said of recount the same principle should apply to the case of scrutiny as well. The Supreme Court in Ram Sewak Yadav Vs. Hussain Kamil Kidwai and Others, observed that by the mere production of sealed box of ballot papers pursuant to the orders of the Tribunal, the ballot papers would not become part of the record and they were not liable to be inspected unless the Tribunal was satisfied that such inspection in the circumstances of the case was necessary in the interests of justice. Their Lordships observed:-

"In a proper case where the interests of justice demand it, the Tribunal may call upon the Returning officer to produce the ballot papers and may permit inspection by the parties before it of the ballot papers. That power is clearly implicit in Sections 100(1)(d)(iii), 101, 102 and Rule 93 of the Conduct of Election Rules 1961. This power to order inspection of the ballot papers which is apart from Order 11 of CPC may be exercised, subject to the statutory restriction about the secrecy of the ballot paper prescribed by Sections 94 & 128(1). An order for inspection may not be granted as a matter of course; having regard to the insistence upon the secrecy of the ballot papers the Court would be justified in granting an order for inspection provided two conditions are fulfilled: (i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of the case and

(ii) the Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The Case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects and believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection".

(93) It is thus clear that inspection or scrutiny can be permitted only if there is sufficient basis for the plea in the pleadings and further a prima facie case is made out and the Court thinks it necessary in the interests of justice to order the same. The principle, thus, is well settled that unless a strong prima facie case is made out the order for inspection cannot be granted nor scrutiny made. Even in cases such an order is made, observance of the statutory restrictions about the secrecy of ballot papers prescribed by Ss. 94 and 128(1) is sacrosanct. It is

indisputable that at the time when counting was made no protest was lodged by respondent No. 2 or his agent. The petitioner here is not the defeated candidate but a voter in the constituency. He could not be present at the time. So the absence of protest is not fatal to his case. However, it is obligatory on him to make out a prima facie case for inspection or for scrutiny. It seems the petitioner did seek to make out such a case by examination of witnesses. The Tribunal then prevented him from having recourse to the same on the assumption that the ballot paper will itself be evidence of existence of thumb impressions or any marks of identification thereon. If the party was so precluded from letting in evidence, failure to examine witnesses in that behalf will not be raised as a ground against him. Having regard to the enormous delay which the enquiry has already undergone, we did not think it mete to remand the case for the limited purpose of taking such evidence as the party was precluded from adducing in this regard. We thought that interests of justice would be better served if we looked into the ballot papers ourselves. Accordingly we after removing the seal inspected the ballot papers of Kanaparru in Court in the presence of the parties. We found no traces of marks of any kind of those ballot papers polled in favour of respondent No. 1. That being the result of our inspection, we are of the view that the plea set up in this behalf is wholly unfounded. We therefore reject this plea covered by issue 9(c).

(94) This brings us to the end of the case as our above discussion covers all the allegations made in the petition.

(95) Before we part with the case, we may refer to the argument of Sri Rama Sharma that in cases where in addition to calling in question the election of the returned candidate, a declaration that the petitioner himself or any other candidate has been duly elected is sought for, the scope of enquiry inevitably would be enlarged and the Court or the Tribunal will then have to recount all the votes afresh irrespective of the fact whether the corrupt practices or other irregularities alleged are proved or not. We do not think that the provisions of Section 101 in any of its parts is susceptible of this construction. The question of declaration whether the petitioner or the candidate other than the returned candidate had been duly elected arises only when the Tribunal declares the election of the returned candidate as void under S. 100 either on the grounds enumerated mentioned in (a) to (c) or on the various grounds enumerated in sub-clauses under (d) provided the qualifications of clause (d) have been satisfied. Even so the Tribunal or the Court would, for arriving at the conclusion as to the majority of the valid votes, take into account only such votes as were affected by corrupt practices and those which have been affected by corrupt practices and those which have been affected by improper reception, refusal or rejection etc., and make its calculations based thereon. It may not be necessary to enter into scrutiny of all ballot papers. It is unnecessary for us to detail it further in view of the conclusion reached by us that the election of respondent No. 1 is not void either because of corrupt practices or of his getting in fact less votes than his rival.

(96) The result of our above discussion is that this appeal fails and is dismissed with costs. Advocate's fee Rs. 500.

(97) We may in the end record our appreciation of the able assistance rendered by the learned counsel on both the sides in this heavy matter.

(98) Appeal dismissed.