

(2014) 07 SHI CK 0201
In the High Court Of Himachal Pradesh
Case No : Election Petition No. 1 of 2013

Gangu Ram Musafir

APPELLANT

Vs

Suresh Kashyap

RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152, 153
Representation of the People Act, 1951 — Section 100, 103, 123, 123(2), 123(3)

Citation : (2014) 07 SHI CK 0201

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Advocate : M.L. Saggar, Senior Advocate, Rupinder Singh Thakur and Bhupinder Singh Thakur, Advocate for the Appellant; Satya Pal Jain, Senior Advocates, Anshul Bansal and N.K. Tomar, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Sharma, J.—The challenge herein in this election petition u/s 80 of the Representation of the People Act, 1951 (in short "the Act"), filed by petitioner Shri Gangu Ram Musafir, the runner up candidate, is against the election of respondent No. 1, Shri Suresh Kashyap, the returned candidate, from 55-Pachhad (SC) Assembly Constituency of Himachal Pradesh Legislative Assembly, held during 2012.

2. Facts of the case stand already noticed in quite detail vide judgment dated 6.12.2013, whereby issue No. 4, as extracted below, which was treated as preliminary issue, was partly decided in favour of the petitioner, however, facts necessary for disposal of rest of the issues shall be referred to wherever necessary:-

Whether in view of preliminary objection No. 1, petition is not maintainable? OPR Nos. 1, 3 & 4.

3. The preliminary issue in turn was based on the following preliminary objection

No. 1 raised on behalf of respondent No. 1:-

That the present election petition is not maintainable as the allegations in the petition are vague and petitioner did not disclose the concise statement of material facts and particulars as required under law. In absence of the material pleadings and facts of alleged corrupt practice, cannot be tried.

4. On the pleadings on behalf of the parties the following issues were settled on 1.7.2013:-

1. Whether respondent No. 1, who belongs to Koli caste, had appealed to the voters of his caste for furtherance of his prospects in the election and is thus guilty of commission of a corrupt practice within the meaning of sub-section (3) of Section 123 of the Representation of People Act, 1951? OPP

2. In case issue No. 1 is proved in affirmative, whether respondent No. 1 is guilty of exercising undue influence on the voters, which is a corrupt practice within the meaning of sub-section (2) of Section 123 of the Representation of People Act, 1951? OPP

3. Whether result of the election in which respondent No. 1 has been elected was materially affected by reception of void votes, as alleged? OPP

4. Whether in view of preliminary objection No. 1, petition is not maintainable? OPR Nos. 1, 3 & 4.

5. Whether the petitioner has no cause of action to file the present petition? OPR Nos. 1, 3 & 4.

6. Whether the petition has not been properly verified and the affidavit in support thereof is also vague and if so its effect? OPR Nos. 1, 3 & 4.

7. Whether copy of the petition supplied to respondent No. 1 is not a true copy of the election petition and has also not been properly verified, as required u/s 123 of the Representation of People Act, 1951 and if so its effect? OPR Nos. 1, 3 & 4.

8. Relief.

5. As prayed for on behalf of respondent No. 1, issue No. 4 regarding maintainability was ordered to be treated as preliminary issue without any opposition from other contesting parties, who along with the petitioner stated at the bar that no evidence was to be led on the preliminary issue. Accordingly, the petition was ordered to be posted for arguments on the preliminary issue on 22.7.2013, when issue Nos. 5 and 6 were also ordered to be treated as preliminary issues without leading any evidence in the interest of justice on the prayer of respondent No. 1, as not opposed and the matter was posted for arguments on preliminary issues.

6. It shall be pertinent to suo moto point out at this juncture that while disposing of issue No. 4 as a preliminary issue vide judgment dated 6.12.2013, issue Nos. 5 and 6, which were also ordered to be treated as preliminary issues, were

somehow inadvertently left out of consideration due to oversight, apparently for the reason that orders treating issue No. 4 as a preliminary issue on the one hand and similar orders regarding issue Nos. 5 and 6 were passed on different dates, that is, 1.7.2013 and 22.7.2013, respectively. Above all, the omission is required to be rectified in exercise of the powers under Sections 152/153 of the CPC 1908 (in short "CPC"), with the aid of Section 87 of the Act, as no prejudice is going to be caused to either of the parties by taking recourse to such an exercise in the peculiar facts and circumstances of the present case, particularly when the contesting parties have neither led any evidence nor addressed any arguments on these issues. Ordered accordingly.

7. I have heard the learned senior counsel/counsel for the contesting parties and gone through the records.

8. Now I proceed to take up the remaining issues including issue Nos. 5 and 6 for discussion and decision.

Issue Nos. 1 and 2

9. Both these issues being interconnected requiring common appreciation of facts and law are taken up together for discussion and decision.

10. The facts relating to these issues find place in paras 6 to 9 of the judgment dated 6.12.2013, vide which preliminary issue No. 4 was decided and are as under:-

6. It is alleged that respondent No. 1 during his election meetings between 20.10.2012 to 02.11.2012 criticized the people and voters of Koli caste for not supporting and casting their votes in his favour during the 2007 general election, which was the main cause for his defeat. He exhorted them not to commit the same blunder during the present (2012) election. He also cursed them that in case during the current election they vote for the petitioner, who is Chamar by caste then "they are not born of a legal marriage". He also asked the Koli caste population and voters to support and vote for him, as he belongs to their own Koli caste and is one of them. They should prefer to vote for him being of their own caste and defeat the petitioner, who belongs to Chamar caste. Respondent No. 1 appealed to the population and voters of Koli caste that "they are in a majority in Pachhad Assembly Constituency. The population and voters of the Chamar caste is about 1/3rd as compared to them. How could the petitioner who belongs to a Chamar caste, can be permitted to represent the majority Koli caste in the Assembly?.

7. It is further alleged that respondent No. 1 during his public meetings "openly challenged the population and voters of Koli caste that if they have conscious (sic. conscience) then they should vote and support for him. The voters of the Koli caste whose conscious (sic. conscience) is dead can vote for the petitioner who belongs to Chamar caste". Respondent No. 1 further claimed that "there are about 13000 voters of the Koli caste in the Assembly Constituency, whereas the

number of voters of Chamar caste is around 4900, therefore, it is their moral duty to vote for him to win the election". It was allegedly done by respondent No. 1 in order to further his prospectus (sic. prospects) in the election and to defeat the petitioner, "thus, prejudicially affecting the prospectus (sic. prospects) of the success of the petitioner during the elections.

8. On the strength of these averments the petitioner concludes vide para 8 of the petition in the end that "the appeal of respondent no. 1, the returned candidate, resulted in undue influence on the minds of the voters of Koli caste and depriving them of exercise of their right to vote with a free mind. It was for the first time that respondent no. 1, the returned candidate, had exploited Koli caste voters during the elections violating the basic essentials of a secular democratic republic. Thus, the election of respondent no. 1, the returned candidate, is liable to be set aside, having committed the corrupt practices as envisaged u/s. 123(3) and 123(2) of the Act."

9. An account of the public meetings held by respondent No. 1 during the election campaign, in which, after the usual criticism for corruption, lack of development etc. of Indian National Congress, he had committed the alleged corrupt practices, has been given by the petitioner in paras 9 to 14, which are extracted below in a tabular form:

11. The pleadings set up on behalf of respondent No. 1 in reply to the above averments have been noticed vide relevant part of para 17 at page 18 and paras 18 to 21 of the judgment dated 6.12.2013, which are as follows:-

Relevant part of para 17

According to the replying respondent he never appealed to any voter in the name of any caste, creed or region, much less Koli caste. The allegations to this effect are stated to be baseless, unfounded and without any proof to substantiate the same. The petitioner is indulging in mud slinging by way of present petition, which is nothing, but a bundle of lies and total misuse of process of law and hence requires dismissal with exemplary costs. It is stated that in none of his public meetings, the replying respondent provoked the voters on caste basis and the allegations in that regard are creation of the thinking of the petitioner himself and canvassing of votes on caste basis is denied. Population figures given in para 8 of the petition are also denied for want of knowledge. According to the answering respondent he did not commit any alleged corrupt practice during the election as alleged by the petitioner.

Paras 18 to 21

18. According to the replying respondent, he did not address any meeting on 20.10.2012 at 11.30 AM at village Nichala Panwa and Bhadi Bhun-Pandahan, in which 300 persons had allegedly participated. The names of persons mentioned in para 9 of the petition are stated to be in fact petitioner's own men. The allegations regarding seeking votes on caste basis are denied and instead it is

stated that the replying respondent is a person of progressive thinking and wants to see development in the area irrespective of caste and "any type of-ism". According to the replying respondent people of all castes have voted for him out of their free will and that he "supports eradication of corruption from the area, which is nowadays a burning issue".

19. It is also denied that during the election campaign the replying respondent addressed a gathering of about 200 persons and voters to canvass support on 25.10.2012 around 12.30 PM at village Bohal Talia and Faggu of polling station Kalath. It is also denied that he cautioned the people not to vote for the petitioner. The allegations regarding "not born out of legal marriage etc. etc." are stated to be un-parliamentary and the replying respondent can never think of using such words. According to him, "it is the worst creation of the perverse thinking of the petitioner". The replying respondent believes in parliamentary democracy adopted by the nation. He can in no way cause any threat to the democracy, the people and voters of this country. The people are free to use their right to vote and the replying respondent has never coerced or threatened them. The people have voted for him on their own free will keeping in view the development and welfare of the constituency.

20. Holding of public meeting at Rajgarh on 27.10.2012 is not denied. It is stated that this public meeting had good gathering from all areas and sections of the constituency. Smt. Sushma Swaraj did address the rally and the answering respondent did not appeal to the voters in the name of any caste or religion. All the allegations to the contrary are absolutely false, baseless and scandalous.

21. Public meeting at Sarahan on 29.10.2012 is also not denied. It is stated that this meeting had also good gathering from all areas and sections of the constituency, which was addressed by Shri Raj Nath Singh. It is denied that the replying respondent made any appeal to the voters to vote for him on caste basis. As regards the averments contained in para 13 of the petition qua the election meeting at village Daron Deoria attended by 200 persons and voters on 30.10.2012, at around 3.00 PM and at village Lana Baka comprising of 350 persons on 01.11.2012 around 3.00 PM, it is stated that the allegations to this effect are mere repetition of earlier paras of the petition and do not call for specific reply in view of reply to those paras. However, the same are denied being wrong and incorrect. It is stated that "the petitioner is just beating around the bush and it seems that he is unable to take his defeat manly hence; in frustration has filed the present election petition".

It is stated that the allegations levelled by the petitioner do not fall within the purview of "corrupt practices".

12. Reply filed on behalf of respondent No. 1 has also been adopted on behalf of respondents No. 3 and 4.

13. Respondent No. 2 is ex parte.

14. The crux of the reply filed by respondent No. 5, who was also later on proceeded against ex parte, finds mention in para 24 of the judgment dated 6.12.2013, which has no relevance for disposal of any of the surviving issues for adjudication.

15. Admittedly, both the petitioner and respondent No. 1 belong to Chamar and Koli scheduled castes, respectively. The mainstay of the case set up by the petitioner is that in Pachhad assembly constituency Chamar caste is in minority in relation to Koli caste.

16. PW-7, Shri Narpat Ram, Statistical Investigator Grade-I, Directorate of Census Operations, Shimla, H.P., has proved in evidence "category-wise population data of Tehsil Rajgarh and Tehsil Pachhad of District Sirmaur, Himachal Pradesh for 2001 and 2011", ExPW-7/A and CD of village-wise population of both the Tehsils, Ex. PW-7/B relating to 2001 and 2011 census operations. Both these documents do not go to reveal the caste-wise population in the constituency. However, respondent No. 1 in his deposition as RW-1 has candidly stated during cross examination that "it may be that there are about 13000 voters belonging to Koli caste and about 4900 voters belonging to Chamar caste in Pachhad Assembly constituency, but I am not aware about the exact numbers of voters of these castes", meaning thereby that the inter se ratio of both the castes is roughly 1: 21/2. Thus, apparently voters belonging to Koli caste are in majority in relation to the voters belonging to Chamar caste. However that apart it shall have to be seen whether the petitioner has been able to establish the allegation that respondent No. 1 had appealed for votes on caste lines in violation of the mandate of sub section (3) of Section 123 of the Act.

17. Whereas the petitioner has appeared as his own witness as PW-6, respondent No. 1 has stepped into the witness box as RW-1. Both of them have stated on the expected lines. It being so, their statements are not required to be scanned elaborately except to the extent and wherever necessary.

18. PW-3, Shri Tara Dutt, is a witness to the election meeting stated to have been held by respondent No. 1 on 20.10.2012, at about 11/11.30 AM at village Nichla Panwa, Dharoti and Badhi Bhu Pandahan of Gram Panchayat Bag Pashog, said to have been attended by 300 persons. According to the witness, he belongs to Koli caste and the meeting was addressed by respondent No. 1 and Smt. Dayal Payari, Chairman, Zila Parishad, Sirmaur. In that meeting respondent No. 1 had stated that the petitioner had won election 6-7 times and we (Kolis) had been losing all through. He had further stated that Koli caste, which is in majority has lost election 6-7 times and the petitioner, who belongs to a minority caste had been winning all through, so this time we should unite, so that we win the election. Nothing else except stating that everybody should unite, so that we may win, was stated by respondent No. 1. Besides himself, Shri Shradha Ram of village Majewali, again stated village Dharoti, Sh. San Ram and Sh. Nek Ram also of village Dharoti and many other people were present in that election meeting. All these named persons belong to Koli caste.

19. In cross examination he has admitted that in 2010, he had unsuccessfully contested election to the Block Development Committee as Member, in which he was supported by the Congress Party. It is also admitted that at that time the petitioner was local MLA and had supported him. However, he has hastened to state that as to why the petitioner should have supported him. In further cross examination the witness has stated that the petitioner had also held election meeting in his village Bajyana during 2012 election, but he did not remember the date in that regard. He also does not remember the dates of election meetings of other candidates organized at Sarahan and Rajgarh. However, he has admitted that during 2012 election he had worked for the petitioner and had supported his candidature. According to him, he was making the statement in the court for the first time and had not revealed the same to anyone earlier.

20. PW-4, Shri Hari Dutt, is another witness to the aforesaid election meeting allegedly held by respondent No. 1 on 20.10.2012, at about 11.30 A.M./12.00 noon, at village Dharoti. He also belongs to Koli caste. According to him, in the aforesaid meeting respondent No. 1 had stated that since we (Kolis) are in majority, we should support his candidature. As usual, in earlier elections also candidates have been wooing the electorate on the caste lines, but this time it was on a quite higher side. It was due to these reasons that earlier on many occasions, that is, 7/8 times candidates belonging to Koli community had been losing the elections in Pachhad constituency to the petitioner. During 2012 elections supporters of respondent No. 1 had been talking to the voters that this time the electorate belonging to Koli caste should vote for him or else a candidate belonging to Koli caste would not win the elections in Pachhad constituency forever. The supporters of respondent No. 1 belonging to higher caste had also been talking to the electorate belonging to Koli caste that this time (2012) they were also with the candidate belonging to their caste. He has further stated that the meeting at Dharoti was also addressed by various speakers belonging to upper caste, namely, Shri Surinder Nehra, Ex. Pradhan, Gram Panchayat, Bag Pashog and Smt. Lalita Sharma, Member, Zila Parishad. They also exhorted the people belonging to Koli caste on the same lines. In cross examination, he has also stated that prior to the date he was making statement in the court, he had a talk with the petitioner as regards his statement when the election petition was filed by him, but he did not remember the date and month in this regard. It was telephonic talk at the instance of the petitioner. Apart from the petitioner he had not discussed or informed anyone about this matter after 20.12.2013 (sic. 20.12.2012) till date. He has admitted that in 2012 assembly elections he had supported the petitioner. According to him, persons belonging to various castes, such as, Brahmin, Koli and Lohar, were present in the election meeting at village Dharoti. It is further admitted that village Nichla Panwa is overwhelmingly comprising of population of Brahmins.

21. PW-5, Shri Jai Prakash, is a witness to the election meeting said to have been held by respondent No. 1 on 25.10.2012, at about 12.30 PM at villages Bohal Talia and Faggu, falling in polling station Kulath, was attended by

approximately 200/250 persons. In that meeting respondent No. 1 had stated that majority population in village Faggu comprised of Koli caste and that they should support him. According to him in earlier election no candidate had appealed for votes on caste lines. Respondent No. 1 had further stated that for the last seven terms candidates belonging to Koli caste had been continuously losing assembly election in Pachhad constituency and this was the last chance for their candidate to win. In cross examination he has stated that villages Bohal Talia, Kulath, Dhar Bajara and Faggu, which fall in polling station Bohal Talia (Kulath) have population belonging to different castes, such as, Koli, Rajput, Chamar, Badai and Brahmin etc. However, majority population is of Koli caste. He has feigned ignorance as to whether in all 793 votes were polled at Polling Station, Bohal Talia (Kulath) during 2012 assembly election, out of which whereas the petitioner had got 383 votes and the score of respondent No. 1 was 356. According to him, he was taken to the aforesaid election meeting held by respondent No. 1 at Faggu on 25.10.2012, by one Shri Partap resident of village Talia, who belongs to Rajput caste. He has further stated that the statement made by him in the court was not disclosed by him to anyone earlier. He had not supported the petitioner or any other candidate during 2012 election. According to him, though he belongs to Koli caste, yet no one had asked him either during the aforesaid election meeting or thereafter that since they belong to Koli caste, they should vote for respondent No. 1, who is also Koli.

22. PW-8, Shri Ramesh Chand, has stated that during elections candidates belonging to various political parties, as also independent candidates canvassed for votes in their favour on the issue of development, such as providing more and better facilities of education, health, roads, drinking water etc. However, during 2012 assembly election a new trend was set up by respondent No. 1 in the form of appeal for votes on caste lines. According to him, whereas the petitioner belongs to Chamar caste, respondent No. 1 is Koli by caste. In their constituency majority population comprises of Koli caste and Chamars are in minority. During this election respondent No. 1 had raised the slogan "Abhi Nahin To Kabhi Nahin" According the witness this slogan was directed by respondent No. 1 towards the voters belonging to Koli caste. He has further stated that respondent No. 1 had also contested 2007 assembly election on BJP ticket, but at that time no such appeal for votes was made by him on caste lines. The witness goes on to state that on 27.10.2012 respondent No. 1 had organized an election meeting at Rajgarh, in which he was also present. In that meeting respondent No. 1 had appealed for votes to the voters belonging to Koli caste on caste lines. The witness also belongs to Koli caste. He further states that after the election meeting at Rajgarh was over, there were discussions amongst the people belonging to Koli caste that this time the community should vote and support respondent No. 1. The audience at Rajgarh comprised of people belonging to various castes, the majority being members of Koli caste.

23. In cross examination the witness has stated that the slogan "Abhi Nahin To Kabhi Nahin" was given by respondent No. 1 during the election meeting held by

him at Rajgarh on 27.10.2012. In further cross examination, the witness has stated that he had informed the petitioner about this slogan on 27.10.2012, at about 6.00 PM, telephonically. It is admitted by the witness that he is Vice President of Pachhad Mandal Congress Committee, as also President of Booth Level Congress Committee of polling station Gheel Pabiana.

24. PW-9, Shri Sanjay Pal, is a witness to the election meeting held by respondent No. 1 at Sarahan on 29.10.2012, which was also addressed by BJP national leader Shri Rajnath Singh. According to him, the election meeting had started after 1.00 PM. However, he had already left Sarahan at about 1.00 PM. The witness has not supported the case of the petitioner and has instead stated that nothing new was said by respondent No. 1 during the campaign carried out by him during 2012 election. As usual, the issues connected with development had been raised by him. On 29.10.2012, some people belonging to Koli caste had met him at Sarahan, who had told him that since respondent No. 1 also belongs to Koli caste, they should support him. According to the witness, he is Rajput by caste. In cross examination he has stated that he is a worker of the Congress Party.

25. PW-10, Shri Sadanand, has stated about the election meeting said to have been held by respondent No. 1 on 30.10.2012 at village Daron Dewaria. According to him, in that meeting respondent No. 1 had appealed to the persons present, majority of whom was belonging to Koli caste that they being from his brotherhood should vote and support him this time. He further exhorted them that on seven earlier occasions a candidate belonging to minority Chamar caste had been wining and this time they should ensure the win of their own candidate. Prior to this election, no candidate had ever appealed for votes on caste lines. This issue was thereafter discussed amongst people of the area at large. The people were generally of the opinion that a candidate should not appeal for votes on caste lines. During discussion with voters belonging to Koli caste, they were of the opinion that since respondent No. 1 had appealed for votes on the basis of caste they were under compulsion to vote for him. However, according to the witness he is Chamar by caste. In cross examination the witness has stated that the aforesaid meeting was addressed only by respondent No. 1. In village Daron Dewaria there are only 3/4 families belonging to Koli caste. In all there are about 50-60 families belonging to different castes. According to him, after the election meeting was over, he had informed the petitioner about it in the evening at about 6.00 P.M. telephonically. In further cross examination the witness has admitted that during the last 3/4 assembly elections Congress Party had been taking lead in polling station Daron Dewaria.

26. PW-11, Shri Ram Lal, is a witness to the election meeting said to have been held by respondent No. 1 on 1.11.2012 around 2.30/3.00 P.M. at village Lana Baka. According to him about 150/200 persons were present in that meeting. The meeting was also addressed by respondent No. 1. During the earlier elections held between 1982 to 2007, candidates belonging to various political

parties, as also independent candidates had been carrying out election campaign by raising various issues connected with development etc. It was only in 2012 election that for the first time the BJP candidate, respondent No. 1, appealed to the voters on caste lines by exhorting the votes belonging to Koli caste that for the last 4-5 elections a candidate belonging to another caste had been winning the election and this time all the voters belonging to Koli caste should unite, so that a candidate belonging to their own caste is returned in the election. The witness also belongs to Koli caste. In cross examination he has stated that on 1.11.2012, he had gone to Lana Baka to pay a visit to his relatives. According to him, he had telephonically informed the petitioner about respondent No. 1 having appealed for votes on caste lines during the election meeting at Lana Baka on 1.11.2012 in the evening at about 8/9 P.M. However, he does not know the names of persons, who were present in the election meeting at Lana Baka, as he did not know them. He has further stated that he had not talked about the aforesaid aspect with anyone else except with his family members and co-villagers.

27. PW-12, Shri Virender Kumar, has stated that during 2012 election, respondent No. 1 had visited their village for campaigning. During this election, the election campaign carried out by respondent No. 1 was based mainly on caste lines. He had appealed to the voters belonging to Koli caste that since he himself belongs to that caste they should vote and support him, so that he wins the election to represent them. According to him, it was a topic of general discussion amongst the voters belonging to scheduled caste in the constituency that respondent No. 1 had appealed for votes on caste lines, stating that it was a very good chance for him to win the election. As a result, the voters belonging to Koli caste decided to vote and support respondent No. 1. In cross examination he has stated that respondent No. 1 had also visited their house on 1.11.2012 in the evening, but he was not in a position to state about the exact time of his visit.

28. On the other hand, except admitting holding of two election meetings at Rajgarh addressed by Smt. Sushma Swaraj, a BJP national leader and Sarahan by Shri Rajnath Singh also a BJP national leader, respondent No. 1 has denied holding of any other meeting, as alleged by the petitioner.

29. RW-2, Shri Surinder Nehru, belongs to village Kanger Dharyar. He has stated that respondent No. 1 had not organized any election meeting in village Dharoti on 20.10.2012. He has further stated that respondent No. 1 had also not organized any election meeting in either of the villages Nichla Panwa or Badhi Bhu-Pandhan. According to him he was not aware whether he had held any election meeting in these villages either prior to 20.10.2012 or thereafter. To his knowledge, respondent No. 1 had not made any appeal for votes on Koli caste lines. The witness is Brahmin by caste. In cross examination he has stated that he does not know Tara Dutt, son of Shri Tula Ram of village Bajyana, Hari Dutt son of Shri Telu Ram of village Jakani and Shri Bhagat Ram, son of Shri Kula Ram of village Naina Tikkar. According to him, he did not recollect as to where he was

on 20.10.2012. However, as per his personal knowledge no election meeting was organized by any candidate in village Dharoti on that date. He has admitted that he is a BJP voter and supporter.

30. Similarly, RW-3, Shri Satpat Singh, has stated that no election meeting was held by respondent No. 1 in village Faggu on 25.10.2012. In cross examination he has stated that there are about 40/45 houses in village Faggu. The entire village is inhabited by people belonging to Koli caste. He has admitted that he is a BJP voter and supporter. In further cross examination he has stated that respondent No. 1 had visited his village about fifteen days prior to the voting, which had taken place on 4.11.2012 and that too he had just passed through the village, where the villagers had gathered to welcome him.

31. RW-4, Shri Narinder Kumar Thakur, has been examined regarding the election meeting organized by respondent No. 1 at Rajgarh on 27.10.2012. He has stated that the election meeting was addressed firstly by respondent No. 1 and thereafter by Smt. Sushma Swaraj, who spoke for 2-4 and 4-5 minutes, respectively, as they were in hurry, as Smt. Sushma Swaraj was to address another election meeting, for which helicopter schedule was fixed. There were about 4000-5000 people present in the meeting. Respondent No. 1 had not made any appeal for votes on caste lines to the members of his Koli community. The audience belonged to different castes and communities. In cross examination the witness has stated that he cannot say as to who was sitting on the dais before arrival of Smt. Sushma Swaraj. However, he had reached the venue of the election meeting well before her arrival. He has denied the suggestion that in the election meeting at Rajgarh respondent No. 1 had appealed to the audience that he was being supported by all other castes and that the voters belonging to Koli caste should also support him, as he is from their own caste and further that they should not vote for the petitioner, who belongs to Chamar caste. He has also denied that respondent No. 1 had lamented that he had lost 2007 assembly election, as the voters belonging to his own Koli caste had not voted for him. It is also denied that respondent No. 1 had also stated that voters belonging to Koli caste with conscience should vote for him and those who would not vote for him would have no conscience. It is lastly stated by him that Smt. Sushma Swaraj had appealed to the audience to vote for respondent No. 1 and return him as an MLA and had not stated anything else.

32. RW-5, Shri Bhupinder Gautam, has also been examined as witness to the election meeting held by respondent No. 1 at Sarahan, where the main speaker was Shri Raj Nath Singh. According to him, he was present in that meeting and respondent No. 1 had not addressed that meeting. In cross examination he has stated that when he reached the venue, respondent No. 1 was present on the stage. The witness had reached there 5-7 minutes prior to the arrival of Shri Raj Nath Singh. He has feigned ignorance whether respondent No. 1 had addressed the election meeting before his arrival or not. He has denied the suggestion that his father was got transferred by the petitioner owing to which he was annoyed

with him and it is due to this reason that he was deposing against him falsely. According to him, there were about 4000/5000 participants in the election meeting addressed by Shri Raj Nath Singh at Sarahan on 27.10.2012. He has denied that he had not attended the election meeting at Sarahan and was deposing falsely on the mere asking of respondent No. 1. He has admitted that now he is a BJP supporter. According to him, prior to 2012, he used to vote for the petitioner.

33. RW-6, Shri Sita Ram, has also been examined to state that no election meeting was held by respondent No. 1 on 1.11.2012 at Lana Banka. In cross examination he has admitted that the petitioner had always been appealing for votes for the development carried out by him in the constituency. According to the witness he is affiliated to the Congress Party.

34. Lastly, RW-7, Shri P.D. Sharma, has also been examined on behalf of respondent No. 1 to state that no election meeting was held by him at Dharon Dewaria on 30.10.2012, at about 3.00 PM. The witness, who is an Advocate, was earlier a member of the Congress Party and had later on joined Himachal Vikas Congress (HVC), a political outfit floated by Pt. Sukh Ram, former Union Minister.

35. On appreciation of the law to prove the corrupt practice under sub section (3) of Section 123 of the Act relating to the appeal for votes on the ground of religion, race, caste, community or language etc. etc., plethora of case law has been cited on behalf of the contesting/appearing parties as under:-

PETITIONER

1. Ram Dial Vs. Sant Lal and Others, ;
2. Shubnath Deogram Vs. Ram Narain Prasad and Others, ;
3. Kultar Singh Vs. Mukhtiar Singh, ;
4. Jagdev Singh Sidhanti Vs. Pratap Singh Daulta, ;
5. Ambika Sharan Singh vs. Mahant Mahadeva and Giri and others, 1969 (3) Supreme Court Cases 492;
6. Ram Swarup Verma Vs. Onkar Nath and Others, ;
7. Rahim Khan Vs. Khurshid Ahmed and Others, ;
8. Jagir Singh and Another Vs. Jasdev Singh and Others, ;
9. Ziyauddin Burhanuddin Bukhari Vs. Brijmohan Ramdass Mehra and Others, ;
10. S. Harcharan Singh Vs. S. Sajjan Singh and Others, ;
11. S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, ;
12. Manohar Joshi Vs. Nitin Bhaurao Patil and Another, ;

13. Prof. Ramchandra G. Kapse Vs. Haribansh Ramakbal Singh, ;
14. Ramakant Mayekar and Others Vs. Smt. Celine D'Selva, ;
15. Dr Ramesh Yeshwant Prabhoo Vs. Prabhakar Kashinath Kunte and Others, ;
16. Ismail Vs. P.C. Thomas,

RESPONDENT NO. 1

1. Pradip Buragohain Vs. Pranati Phukan, ;
2. Mahender Pratap Vs. Krishan Pal and Others, ;
3. Joseph M. Puthussery Vs. T.S. John and Others, ;

RESPONDENT NO. 3

1. Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi, .

36. I have taken into consideration the principles of law laid down in the above authorities and borne the same in mind, which shall be referred to wherever necessary.

37. Be it stated at the very outset that the case in hand relates to alleged appeal for votes by respondent No. 1 on the basis of his caste.

38. "On the question of appeal on the ground of caste" the Hon"ble Apex Court has held as under in Ambika Sharan Singh vs. Mahant Mahadeva and Giri and others, 1969 (3) SCC 492 vide para 6:-

On the question of appeal on the ground of caste, the allegation was contained in para 23 of the petition and Schedule VI thereto. The allegation was that between the 12th and the 14th of February, 1967 the appellant, his said election agent and other agents canvassed votes for him on the basis that the appellant was Rajput, that if he was elected he would become a minister, that one Satyendra Narain Singh, also a Rajput, would become the Chief Minister and that with the two of them in the cabinet they would establish Rajput Raj in the State and advance the interests of Rajputs. In support of the charge, Respondent 1 produced in all 71 witnesses from different villages where the appellant and his agents were said to have canvassed on the aforesaid basis. These witnesses were both Rajputs and non-Rajputs and expressly gave the names of the appellant and his canvassers who included Kalika Singh, Jai Narain Singh) the said Muni Lal, the said Sheo Bachan Singh and one Dinesh Singh. The learned Trial Judge, however, excluded evidence against these five persons from consideration on the ground that their names did not appear in Schedule VI. The aforesaid witnesses came from villages Chattar, Bhadeyan, Keshopur, Sanjoyal, Sinha, Ghhine-gaon, Milky) Mohanpur, Tola Acharajlal, Basantpur, Gaziapur, Purshotam-pur, Kaotia, Karari, Veria, Farhada, Fuhana and several other villages. Their evidence was that the appellant, the said Ram Bilas Singh, Tapeswar Singh, Ram Chandra Singh) Awadesh Kumar Singh, Dwarka Singh and Chandrika

Prasad Singh, all agents of the appellant, campaigned on the basis that the appellant was a Rajput and that the Rajput voters in these villages should therefore, vote for him. The Trial Judge examined the evidence of each of these witnesses separately in the light of the criticism offered against it on behalf of the appellant and the evidence given by him and his agents and accepted it holding that he found no valid reason why so many witnesses should come forward to falsely depose against the appellant and his agents and held that corrupt practice to have been proved.

39. Almost to the similar effect is the pronouncement of law handed out by the Hon"ble Apex Court in Ram Swarup Verma Vs. Onkar Nath and Others, . Para 6 of the judgment being relevant is extracted below:-

Now coming to the meeting at Rajpur on the side of the election petitioner we have the evidence of P.W. 11 Gur Narain; P.W. 12 Jagat Narain and P.W. 13 Moti Lal. All these witnesses consistently speak to the fact that both the appellant as well as Maurya appealed to the voters to vote for the appellant on the basis of his caste and not to vote for Misra as he was a Brahmin. It was said that both of them told their audience that Brahmins had been ruling over the leaver castes for hundreds of years and that by reciting Mahabharata and Ramayana they had been earning a lot without putting any labour and that the lower castes should not allow the Brahmins to have a predominating position. The witnesses examined on behalf of the petitioner appear to be disinterested witnesses. It is not established that they had any reason to speak against the appellant. As against their evidence the appellant has examined R.W. 4 Kalika Prasad; R.W. 16 Babu Ram and R.W. 17 Ram Shanker Ojha. Both Babu Ram and Ram Shanker admitted in their cross examination that they worked for the appellant during the election. The evidence of Kalika Prasad did not impress the Trial court.

40. On evaluation of evidence in such like matters the Hon"ble Apex Court has laid down the following principle in Rahim Khan Vs. Khurshid Ahmed and Others, :-

8. A few prefatory observations are necessary before we discuss the evidence, apply the law and reach our conclusions. It is of the first importance that elections must be free and fair if the democratic system is not to founder. Not long ago a Chief Justice of this Court, delivering the Lajpatrai Memorial Lecture, observed:-

Untruths before elections, during elections and after elections seem to be too prevalent for a healthy political society." He also tartly remarked in that speech:

There is always a danger of the failure of democracy. "Remember", said John Adams, "remember, democracy never lasts long. It soon wastes, exhausts and murders itself. There never was a democracy that did not commit suicide. We must realise that this is entirely true.

The Court is the conscience-keeper of the constituency, as it were, in the

maintenance of the purity of elections to the extent they are litigated in Court. Shah, J., in Harcharan Singh Vs. S. Mohinder Singh and Others, observed:

The primary purpose of the diverse provisions of the election law which may appear to be technical is to safeguard the purity of the election process, and the Courts will not ordinarily minimise their operation.

We have therefore to insist that corrupt practices, such as are alleged in this case, are examined in the light of the evidence with scrupulous care and merciless severity.

9. However, we have to remember another factor. An election once held is not to be treated in a light-hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the Court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded.

10. There are many who are cynical about the enforcement of the election law, which is too moral for the pragmatic skills of the politicians when locked in pitched battles. They regard these vices as inevitable and therefore remain indifferent to their prevalence. Sydney Harris' statement in this context is apposite:

Once we assuage our conscience by calling something a necessary evil", it begins to look more and more necessary and less and less evil.

For this very reason the Court has to be stern so as to induce in the candidates, the parties and workers that temper and truthfulness so appropriate to the process and not bewail, as the Report of the Fifth General Election in India (1971-72, issued by the Election Commission) does (at p. 198 thereof):

But how can we expect that elections will be absolutely and totally corruption-free when the whole country in every sphere and department of life and activity is plunged in the ocean of corruption ? It is everybody's complaint that there is no business, trade or industry where black-marketing or bribery is not practised.... Remove corruption in general and corruption in election will be a thing of the past.

20. Counsel for the appellant and, to some extent, the 1st respondent's advocate also, read before us rulings galore as to when witnesses should be

believed and when not. Precedents on legal propositions are useful and binding, but the variety of circumstances and peculiar features of each case cannot be identical with those in another and judgment of Courts on when and why a certain witness has been accepted or rejected can hardly serve as binding decisions, Little assistance can therefore be derived from case law on credibility.

There are no legal litmus tests to discover the honest conscience of a human being and the canons of truthfulness of oral evidence sans commonsense, are but misleading dogmas. The golden rule is, as George Bernard Shaw tells us, that there are no golden rules. For this reason we are not referring to the many rulings cited before us. But we certainly inform ourselves with the general touchstones of reliability. The fact that we are not ready to act on the testimony of a person does not mean that he is a perjurer. It merely means that on such testimony it is not safe to conclude in a quasi-criminal proceeding that the "corrupt practice" has been proved beyond reasonable doubt. The whole constituency is silently present before us it must be remembered (See observations of Dua I, J. in ILR (1969) I Punj 625.) (sic).

21. We must emphasize the danger of believing at its face value oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must be remembered that corrupt practices may perhaps be proved by hiring half-a dozen witnesses apparently respectable and disinterested, to speak to short of simple episodes such as that a small village meeting took place where the candidates accused his rival of personal vices. There is no x-ray whereby the dishonesty of the story can be established and, if the Court were gullible enough to gulp such oral versions and invalidate elections, a new menace to our electoral system would have been invented through the judicial apparatus. We regard it as extremely unsafe, in the present climate of kikkennycat election competitions and partisan witnesses wearing robes of veracity to upturn a hard won electoral victory merely because lip service to a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, untying circumstances or unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life.

41. In S. Harcharan Singh Vs. S. Sajjan Singh and Others, , it has been laid down as under vide paras 44, 62 and 63:-

44. These questions should be very broadly decided. It would not be an appeal to religion if a candidate is put up by saying "vote for him" because he is a good Sikh or he is a good Christian or he P is a good Muslim, but it would an appeal to religion if it is publicised that not to vote for him would be against Sikh religion or against Christian religion or against Hindu religion or to vote for the other candidate would be an act against a particular religion. It is the total effect of such an appeal that has to be borne in mind in deciding whether there was an appeal to religion as such or not. In each case, therefore, the substance of the

matter has to be judged.

62. In a matter of this nature, the evidence naturally is mostly oral. Therefore specially where the charge is a grave one; namely corrupt practice which if proved would disentitle the candidate to contest the election for some time to come, the Courts must proceed with caution. An election once held ought not to be treated in a light-hearted manner and defeated candidate should not get away with it by filing election petition. See in this connection the observations of Krishan Iyer, J. in *Rahim Khan Vs. Khurshid Ahmed and Others*, . See also the decision in the case of *Ch. Razik Ram Vs. Ch. Jaswant Singh Chouhan and Others*, .

63. Reference was also made to the opinion of this Court in *Kanhaiyalal Vs. Mannalal and Others*, and *M. Narayana Rao Vs. G. Venkata Reddy and Others*,

42. *Pradip Buragohain Vs. Pranati Phukan*, , is an exhaustive judgment recently rendered by the Hon''ble Apex Court on appreciation of oral evidence to prove commission of corrupt practices, paras 12 to 16, 18, 19, 22, 24 to 28 and 30 whereof read as under:-

12. From a conspectus of the pronouncements of this Court three distinct aspects emerge that need to be kept in view while dealing with an election dispute involving commission of corrupt practices. The first and foremost of these aspects to be borne in mind is the fact that a charge of corrupt practice is in the nature of a criminal charge and has got to be proved beyond doubt. The standard of proof required for establishing a charge of corrupt practice is the same as is applicable to a criminal charge. This implies that a charge of corrupt practice is taken as proved only if there is clear cut evidence which is entirely credible by the standards of appreciation applicable to such cases. (See *Rahim Khan v. Khurshid Ahmed*, *D. Vankata Reddy v. R. Sultan* and *Ramji Prasad Singh v. Ram Bilas Jha*.)

13. The second aspect that distinctly emerges from the pronouncements of this Court is that in an election dispute it is unsafe to accept oral evidence at its face value unless the same is backed by unimpeachable and incontrovertible documentary evidence. The danger underlying acceptance of such oral evidence in support of a charge of corrupt practice was lucidly stated by this Court in *Rahim Khan's* case in the following words: (SCC pp. 671-72, para 21)

21. We must emphasize the danger of believing at its face value oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must be remembered that corrupt practices may perhaps be proved by hiring half-a-dozen witnesses apparently respectable and disinterested, to speak to short and simple episodes such as that a small village meeting took place where the candidate accused his rival of personal vices. There is no X-ray whereby the dishonesty of the story can be established and, if the Court were gullible enough to gulp such oral versions and invalidate elections, a new menace to our electoral system would have been invented

through the judicial apparatus. We regard it as extremely unsafe, in the present climate of killkeny-cat election competitions and partisan witnesses wearing robes of veracity, to upturn a hard won electoral victory merely because lip service to a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, unlying circumstances or unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life.

14. To the same effect is the decision of this Court in *M. Narayana Rao v. G. Venkata Reddy* where this Court observed: (SCC p. 780, para 19)

(3) A charge of corrupt practice is easy to level but difficult to prove. If it is sought to be proved only or mainly by oral evidence without there being contemporaneous document to support it, court should be very careful in scrutinizing the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice, as alleged.

15. Reference may also be made to the decision of this Court in *Dadasaheb Dattatraya Pawar v. Pandurang Raoji Jagtap* where this Court expressed a similar sentiment and *Laxmi Narayan Nayak v. Ramratan Chaturvedi* where this Court upon a review of the decisions on the subject held the following principles applicable to election cases involving corrupt practices: (*Laxmi Narayan Nayak* case, SCC p. 177, para 5)

(1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* and *Kona Prabhakara Rao v. M. Seshagiri Rao*.

(2) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide *Manphul Singh v. Surinder Singh*, *Kona Prabhakara Rao v. M. Seshagiri Rao* and *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi*..

(3) The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void u/s 100 vide *Jumuna Prasad Mukhariya v. Lachhi Ram* and *Rahim Khan v. Khurshid Ahmed*.

(4) The evidence produced before the court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh*.

(5) It is unsafe in an election case to accept oral evidence at its face value

without looking for assurances for some surer circumstances or unimpeachable documents vide *Rahim Khan v. Khurshid Ahmed*, *M. Narayana Rao v. G. Venkata Reddy*, *Lakshmi Raman Acharya v. Chandan Singh* and *Ramji Prasad Singh v. Ram Bilas Jha*.

(6) The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded vide *Rahim Khan v. Khurshid Ahmed*, *Mohan Singh v. Bhanwarlal* and *Ramji Prasad Singh v. Ram Bilas Jha*.

16. The decision of this Court in *Thakur Sen Negi v. Dev Raj Negi* also states the same proposition and highlights the danger underlying acceptance of oral evidence in an election dispute as witnesses in such disputes are generally partisan and rarely independent. This Court observed: (SCC p. 648 para 3)

3It must be remembered that in an election dispute the evidence is ordinarily of partisan witnesses and rarely of independent witnesses and, therefore, the court must be slow in accepting oral evidence unless it is corroborated by reliable and dependable material. It must be remembered that the decision of the ballot must not be lightly interfered with at the behest of a defeated candidate unless the challenge is on substantial grounds supported by responsible and dependable evidence.

18. In *Sarju Pershad's* case (*supra*) this Court stated the approach to be adopted in an appeal arising out of an election dispute in the following words: (AIR p. 121. para 7)

7. The question for our consideration is undoubtedly one of fact, the decision of which depends upon the appreciation of the oral evidence adduced in the case. In such cases, the appellate court has got to bear in mind that it has not the advantage which the trial Judge had in having the witnesses before him and of observing the manner in which they deposed in court. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. The rule is-and it is nothing more than a rule of practice-that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial Judge on a question of fact.

19. Reference may also be made to the recent decision of this Court in *P.C. Thomas v. P.M. Ismail* where this Court observed: (SCC p. 226, para 44)

44. This Court in *Gajanan Krishnaji Bapat* has observed that although being the court of first appeal, this Court has no inhibition in reversing such a finding, of fact or law, which has been recorded on a misreading or wrong appreciation of

the evidence or the law, but ordinarily the appellate court attaches great value to the opinion formed by the trial Judge, more so when the trial Judge happens to be a High Court Judge, had recorded the evidence and had the benefit of watching the demeanour of witnesses in forming first-hand opinion of them in the process of evaluation of evidence. This Court should not interfere with the findings of fact recorded by the trial court unless there are compelling reasons to do so.

22. The first and the foremost feature that needs to be noticed is the fact that neither the appellant nor his election agent (PW 30) claims to be a witness to any act of corrupt practice alleged against the respondent. The entire case of the appellant as set up before the High Court and even before us is that the acts of corrupt practice allegedly committed by respondent were reported to the appellant or his election agent by different individuals from time to time.

24. The third aspect which we find noteworthy is that the witnesses examined by the appellant appear to be partisan in character. For instance PW-23 Smt. Gita Romoni has admitted in her cross-examination that she had come to depose before the Court at the instance of the election agent of the appellant. She has also admitted that she was a member of Naharkatia Sports Association of which the appellant is the President. She appears to have readily accepted the bribe offered to her but failed to report the matter to any authority except to the petitioner. Similarly, PW-23 Smt. Gita Romoni is also a sportsperson and plays football for Naharkatia Sports Association of which the appellant is the President. This is true even in regard to PWs 8 and 9 who happen to be father and daughter respectively, the latter being a football player associated with Naharkatia Sports Association. The incident of bribery alleged against the respondent at labour line of Desam ea Estate was not reported by these two witnesses to anyone and not even to the Manager of the tea garden concerned. So also PWs 15 and 16 are father and daughter whose testimony has been disbelieved by the High Court for good reasons while dealing with Issue No. 13 pertaining to the commission of corrupt practice of bribery by Shri Hiranya Mantri, the election agent of the respondent at Nabajyoti L.P. School premises.

25. Suffice it to say that the deposition of the witnesses has been evaluated by the High Court and rejected for cogent reasons. In the absence of a palpable error in the appreciation of the said evidence we see no reason to strike a discordant note.

26. The last but not the least of noteworthy aspects to which we must refer at this stage is the absence of any documentary evidence to show that any complaints were filed by the appellant or his election agent before the Election Commission of India or any other authority upon receipt of reports regarding commission of the corrupt practice by the respondent. The appellant's version in cross-examination and that given by his election agent is that such complaints were filed before the Chief Election Commission, the Chief Election Officer of the District, the Returning Officer and the Constituency Magistrate in writing and

against proper acknowledgement. But neither any copy of complaint so made nor the acknowledgment regarding their receipt by the concerned authorities has been produced at the trial.

27. What is important is that copies of the alleged complaints relating to the incident of bribery were said to be available with the election agent of the appellant but the same were not annexed to the petition or produced at the trial. The explanation offered for this omission on the part of the appellant and his election agent is that the election petition had been filed hurriedly. The High Court has, in our opinion, rightly rejected that explanation as totally unacceptable. Even assuming that the election petition had been filed hurriedly on account of constraints of period of limitation prescribed for the same, nothing prevented the appellant from placing the said complaints on record or having the same summoned from the concerned authorities to whom they were addressed.

28. Non-production of the documents admittedly available with the appellant that would lend credence to the version set up by the appellant that the incident of corrupt practice was reported to him and/or to his election agent would give rise to an adverse inference against the appellant that either such complaints were never made or if the same were made they did not contain any charge regarding the commission of corrupt practices by the respondent in the manner and on the dates and the places alleged in the petition.

30. We need to remind ourselves that in an election dispute where oral evidence is generally partisan in character as has been demonstrated in the present case, the non-production of documentary material that could lend support to the appellant's charge of bribery against the respondent would assume great importance. Absence of a plausible explanation for non-production of the documentary evidence would completely discredit the version which the oral evidence attempts to support.

43. In Joseph M. Puthussery Vs. T.S. John and Others, , the above principle of law finds further reiteration vide paras 21 and 22 of the report thus:-

21. The finding that there is overwhelming and satisfactory oral evidence on the point that the distribution had taken place on May 8, 2001 and May 9, 2001, to say the least is contrary to the evidence on record. What is the value of oral evidence while deciding issue of corrupt practice within the meaning of Section 123(4) of the Act will have to be considered? So far as election law is concerned by now it is well settled that it would be unsafe to accept the oral evidence on its face value without seeking for assurance from other circumstances or unimpeachable document. It is very difficult to prove a charge of corrupt practice merely on the basis of oral evidence because in election cases, it is very easy to get the help of interested witnesses.

22. In Abdul Hussain Mir Vs. Shamsul Huda and Another, , the Three Judge Bench of this Court held that oral evidence, ordinarily is inadequate especially if it is of indifferent quality or easily procurable. According to this Court, the oral

evidence has to be analyzed by applying common sense test. It must be remembered that in assessing the evidence, which is blissfully vague in regard to the particulars in support of averments of undue influence, cannot be acted upon because the court is dealing with a quasi-criminal charge with serious consequences and, therefore, reliable, cogent and trustworthy evidence has to be led with particulars. If this is absent and the entire case is resting on shaky ipse dixits, the version tendered by witnesses examined by election petitioner cannot be accepted.

44. The evidence led on behalf of the parties has to be evaluated and appreciated on the touchstone of the law laid down by the Hon"ble Supreme Court as above.

45. Admittedly, the petitioner was not present in any of the aforesaid election meetings said to have been organized by respondent No. 1. According to him, he was informed about it by various persons including some of the witnesses examined on his behalf. However, the fact remains that though the election meetings were allegedly held between 20.10.2012 to 1.11.2012, yet neither the petitioner nor his election agent or any other person on his behalf lodged any complaint with any of the authorities, including the police or Election Commission, at the constituency, State or national level. The allegations regarding appeal for votes by respondent No. 1 on caste basis have seen light of the day only after the same were included in the election petition, which was filed in the court on 24.1.2013. This aspect of the matter cannot be lightly overlooked.

46. All the allegations regarding respondent No. 1 having canvassed for votes on the basis of his caste are based on oral evidence. Out of the six election meetings allegedly held by respondent No. 1, two at Rajgarh and Sarahan have been admitted by him. Rajgarh is a sub-divisional headquarter. Sarahan is also an equally important place in the constituency. Both these meetings were admittedly addressed by Smt. Sushma Swaraj and Shri Raj Nath Singh, national BJP leaders. These being open election meetings attended by large number of people belonging to different castes and communities could not be expected to be addressed by respondent No. 1 the way the petitioner wants this court to believe. How can any sensible person contesting election as an MLA could have openly appealed for votes to the voters belonging to a particular caste, Koli in the present case on the basis of his caste and at the same time exhorting them not to vote for the petitioner, as he belongs to Chamar caste, which is a minority caste in relation to Kolis and that too by exhorting the voters belonging to Koli caste to vote for him if they have conscience and further saying that those Koli voters whose conscience is dead can vote for the petitioner. Any such proclamation and exhortation would definitely have antagonized voters belonging to other castes and communities attending the election meeting in sizeable numbers. It is unimaginable that a candidate would behave in such manner in the presence of national leaders of his party. This could otherwise have agitated

any right thinking person present in the election meeting and would have serious ramifications. Had such allegations been relating to secret meetings of voters belonging to a particular caste the situation would have been otherwise.

47. Since the election meetings at Rajgarh and Sarahan were addressed by national BJP leaders, Smt. Sushma Swaraj and Shri Raj Nath Singh after obtaining prior permission from the concerned authorities, as is apparent from the record produced by PW-1, Shri Tejinder Singh, which though has not been exhibited and proved in evidence in accordance with law, it can be reasonably inferred that both these meetings must have been covered by print and electronic media, officials of the Election Commission, State CID and IB etc. However, neither any news clipping nor any other documentary evidence, such as, video CD has been produced to lend credence to the allegations levelled by the petitioner against respondent No. 1 regarding appeal for votes on the basis of his caste.

48. Though the record produced by PW-1, Shri Tejinder Singh, which contains two Bills/Cash Memos regarding preparation of CDs at pages 88 and 89, prima facie goes to show that the Sarahan election meeting addressed by Shri Raj Nath Singh was got videographed at the instance of respondent No. 1, yet neither any notice was served upon him by the petitioner to produce that CD nor the receipt issued by the concerned studio in that regard was put to him (respondent No. 1) during his deposition as RW-1. He was not at all confronted with this aspect of the matter. It being so, the contention raised by the petitioner that non-production of that CD by respondent No. 1 would amount to withholding of a vital piece of evidence relevant to the litigation and is thus a fraud on the court, as held by the Hon'ble Supreme Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , though in an altogether different factual matrix, appears to have been raised so as to be simply rejected.

49. In para 10 of the petition it is alleged that during the election meeting at villages Bohal Talia and Faggu, respondent No. 1 "also cursed the voters of Koli caste that in case they do not vote for him during the present elections they will not be born out of legal marriage" (emphasis supplied). PW-5, Shri Jai Prakash, has been examined on behalf of the petitioner to depose about this meeting. However, he has nowhere stated about any such insinuation verging on illegitimacy having been hurled by respondent No. 1 on the voters belonging to Koli caste. Thus, there is a wide gap between the pleadings and proof.

50. Similarly, in para 14 of the petition it is alleged that during the election meeting at village Lana Baka, on 1.11.2012 "respondent no. 1 while addressing the gathering pointed out that the voters of Koli caste should be ashamed that in spite of their majority he had lost during the last elections of 2007" (emphasis supplied). It is further alleged that "The Koli caste voters should commit suicide in a cup of water if they are not to vote and support him being from their own caste" (emphasis supplied). PW-11, Shri Ram Lal, who has been examined to prove these allegations has not stated even a word about any such insinuation

having been hurled by respondent No. 1 at the voters belonging to Koli caste forming part of the audience. This again is a marked variance between the pleadings and proof. Still further, PW-8, Shri Ramesh Chand, has stated that in the election meeting at Rajgarh respondent No. 1 had raised the slogan "Abhi Nahin To Kabhi Nahin" . In cross examination, he has stated that he had informed the petitioner about it telephonically on the same very day, that is, 27.10.2012, at about 6.00 PM. However, no such averment finds place in the petition.

51. Majority of the witnesses examined by the petitioner can be safely characterized as interested witnesses. As already noticed, PW-3, Shri Tara Dutt, has admitted in the opening lines of his cross examination that in 2010 he had unsuccessfully contested election to the Block Development Committee as a member, in which he was supported by the Congress Party. He has also admitted that at that time the petitioner was a local MLA and had supported him, though in the next very breadth he has resiled from this part of his statement by saying as to why he should have supported him and the reason in this regard is not very far to seek in the given facts and circumstances. This witness does not belong to village Dharoti, where the election meeting was allegedly held by respondent No. 1 on 20.10.2012 and instead is a resident of village Bajyana situate at a distance of 4 K.M. from village Dharoti. Strangely enough, he does not remember the date of the election meeting held by the petitioner in his village during this very election. In further cross examination he has stated that during 2012 election he had worked for the petitioner and supported his candidature.

52. Similarly, PW-4, Shri Hari Dutt, who has admitted that in 2012 assembly election he had supported the petitioner is also an interested witness.

53. PW-8, Shri Ramesh Chand, has stated during cross examination that he was supported by Congress Party in the election for the post of Pradhan. However, he has volunteered that he was also supported by the people belonging to all the political parties including BJP. PW-10, Shri Sadanand, has admitted during cross examination that after the election meeting at Dharon Dewaria was over he had informed the petitioner about it on that very day in the evening at 6.00 PM telephonically. He has further stated that earlier also he had been talking to the petitioner on telephone during the election. According to him, he remembers the mobile number of the petitioner, which is 94189-40222, meaning thereby that he is well acquainted with the petitioner and thus an interested witness. PW-11, Shri Ram Lal also falls within the same category.

54. According to the petitioner, the information regarding canvassing for votes by respondent No. 1 on caste lines during the aforesaid meetings and campaigning was given to him by "my voters, supporters and sympathizers belonging to those areas", meaning thereby that the witnesses examined by him fall within the category of interested witnesses. It is admitted by him that S/Shri Hari Dutt (PW-4) and Shri Tara Dutt (PW-3) are his supporters. He has also admitted that PW-8 Shri Ramesh Chand is a congress worker and his supporter. In turn, PW-8,

Shri Ramesh Chand, has also admitted that he is Vice President of Pachhad Mandal Congress Committee and President of Booth Level Congress Committee of polling station Gheel Pabiana.

55. Neither any independent witness has been cited nor examined on behalf of the petitioner.

56. Onus to prove issue Nos. 1 and 2 is upon the petitioner, who as per settled principle of law has to stand on his own legs. Respondent No. 1, who though has admitted holding of election meetings at Rajgarh and Sarahan, but has denied the incriminating imputations alleged against him concerning those meetings and has also denied holding of rest of the election meetings. The evidence led by him is also on these lines. Any weakness in his evidence not amounting to admission, express or implied, would not go to strengthen the case of the petitioner.

57. The above discussion brings me to hold that in the absence of any cogent, reliable and trustworthy documentary or physical evidence, the oral evidence comprising of depositions of mostly interested witnesses cannot be safely relied upon to annul the verdict given by the electorate in favour of respondent No. 1, the returned candidate. In order to arrive at this inference I seek support from the pronouncements of law on the subject made by the Hon"ble Supreme Court in the aforesaid precedents referred to in paras 38 to 43 of this judgment, particularly Rahim Khan vs. Khurshid Ahmed and others, supra (paras 9 and 10), Pradip Buragohain vs. Pranati Phukan, supra, which also refers to the case of Rahim Khan vs. Khurshid Ahmed and others, supra and Joseph M. Puthussery vs. T.S. John and others, supra (para 21).

58. Thus, it is not proved that respondent No. 1, who belongs to Koli caste had appealed to the voters of his caste for furtherance of his prospects in the election and is thus guilty of commission of corrupt practice within the meaning of sub section (3) of Section 123 of the Act.

59. Accordingly issue No. 1 is answered in negative.

60. Since issue No. 1 is decided in negative, issue No. 2, decision whereof is dependant upon the former, would as a natural corollary, also meet the same fate.

61. Both the issues stand decided accordingly.

Issue No. 3

62. This issue stands already decided vide paras 33 to 35 of the judgment dated 6.12.2013, on preliminary issue No. 4, as is apparent from operative part of the said judgment contained in para 48, which goes thus:-

The above discussion brings me to hold that the election petition except the corrupt practice under sub section (3) of Section 123 of 1951 Act regarding the alleged appeal by respondent No. 1 to vote for him and against the petitioner on caste basis, lacks in material facts within the meaning of clause (a) of sub

section (1) of Section 83 of 1951 Act and is as such liable to be struck off to that extent and put to trial only for the corrupt practice under sub section (3) of Section 123 of 1951 Act. Ordered accordingly.

63. Admittedly no challenge has been laid against the judgment dated 6.12.2013, on the preliminary issue.

Issue No. 5

64. As already noticed, the contesting parties have not led any evidence nor addressed any arguments on this issue. In view of decision on preliminary issue No. 4 vide judgment dated 6.12.2013, partly in favour of the petitioner, pursuant to which the petition has been partly tried on merits, issue No. 5 also stands already decided accordingly.

Issue No. 6.

65. No evidence has been led on behalf of the contesting parties on this issue as well, as already noticed. Neither any arguments were advanced on behalf of the contesting parties on this issue nor respondents No. 1, 3 and 4 have been able to establish as to how the petition has not been properly verified and the affidavit in support thereof is vague, as alleged. To the contrary the verification as also the affidavit on the face of it are in accordance with Order 6, Rule 15 CPC and Rule 94A of the Conduct of Election Rules 1961. Accordingly, the issue is held in negative.

Issue No. 7.

66. The contesting parties have neither led any evidence nor addressed any arguments on this issue also. Even otherwise, it is not substantiated that copy of the petition supplied to respondent No. 1 is not a true copy of the election petition and has also not been properly verified, as required u/s 123 of the Act, as alleged. Above all, copy of the petition supplied to respondent No. 1 has also not been brought on record and proved in evidence in accordance with law. The issue is accordingly held in negative.

67. In the result the petition fails and is accordingly dismissed with costs of Rs. 25,000/- (rupees Twenty Five thousand) payable by the petitioner to respondent No. 1.

68. Let follow up action in terms of Section 103 of the Representation of People Act, 1951, read with Rule 28 of the "Rules of Procedure and Guidance in the matters of trial of Election Petitions under Part-VI of the Representation of People Act, 1951" as amended, contained in Appendix-II to "the High Court of Himachal Pradesh Original Side Rules, 1997", be taken by the Registry forthwith.

69. PW-1, Shri Tejinder Singh, Senior Assistant, District Election Office, Sirmaur District at Nahan, H.P., was examined on 6.1.2014. He had produced the return of election expenses filed by respondent No. 1. The following note was appended below his statement in chief examination:-

(The record produced by the witness is ordered to be retained on records of the election petition till final disposal of the same. Orders as to return thereof or otherwise shall be passed at the time of final disposal of the objection (sic. petition)).

70. Now since the petition stands finally disposed of, the record produced by PW-1, Shri Tejinder Singh, which has not been exhibited and as such does not form part of the record of the election petition, is ordered to be returned to him against receipt forthwith by the Registry through Regd. A.D. post after retaining duly attested copies thereof on the record of the case.