

(2013) 11 MAD CK 0190

In the Madras High Court

Case No : Election Petition No. 2 of 2009

P. Mohan (deceased) and A. Lazar

APPELLANT

Vs

M.K. Azhagiri and Others

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0190

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : M.S. Krishnan and Ms. P.T. Asha for Sarvabhauman Associates, for the Appellant; T.R. Rajagopalan, for Mr. K. Azhagu Raman and Mrs. Meera Ramesh for Respondent 1, Mr. C. Kanagaraj for Respondent 9 and Mr. M.R. Raghavan for Respondent 12, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—This Election Petition has been filed, praying: to declare the election of the first respondent as returned candidate from No. 32, Madurai Parliamentary Constituency at the election held on 13.05.2009 as null and void; to declare the deceased petitioner as duly elected as the returned candidate of No. 32, Madurai Parliamentary Constituency for the election held on 13.05.2009 and to direct the respondents to pay the cost of the Election Petition. Case of the petitioner:

1.1. He is the substituted petitioner in this Election Petition in place of the deceased petitioner P. Mohan, who contested the election for Member of Parliament in the 15th Lok Sabha, held on 13.05.2009, and he also had filed the nomination paper along with the deceased petitioner as a substitute and thereafter withdrew from the poll before the withdrawal date, as the nomination filed by the deceased petitioner was accepted. Thereafter, since he worked for the deceased petitioner through out the Madurai Parliamentary Constituency, he was well aware of all the events that took place during the campaign for the 15th Lok Sabha election held on 13.05.2009. Election Commission of India, in short,

"ECI", had notified the election by notification, dated 17.04.2009, which is filed as Document No. 1. The date of polling was fixed as 13.05.2009 from 07.00 a.m. to 05.00 p.m. The date of counting was fixed as 16.05.2009. The deceased petitioner contested as the candidate of Communist Party of India (Marxist) in which the substituted petitioner is also an active cadre and a State Committee Member. The first respondent had contested as the candidate of Dravida Munnetra Kazhagam (DMK) political party.

1.2. ECI had issued a code of conduct rules to be followed by all the candidates and officials at the time of conduct of election, in exercise of power under Article 324 of the Constitution of India. The code of conduct is also contained in the "Handbook for Candidates". The code of conduct, dated 07.01.2007, which had been followed in the year 2009 has been filed as Document No. 2.

1.3. First respondent had been declared elected by the Returning Officer on 16.05.2009. It was declared that the first respondent secured 4,31,295 votes and the deceased petitioner secured 2,90,310 votes. The total number of votes in Madurai Constituency is 10,22,421 votes and the total votes polled was 9,90,902. These particulars were published in Dinamalar, Tamil Daily, Madurai Edition, dated 17.05.2009, which is marked as Document No. 3. The election of the first respondent is liable to be declared void as per Sections 100(1)(b), 100(1)(d)(ii), 100(1)(d)(iv) read with Section 123(1)(A), 123(1)(B) and 123(1)(7) of the Representation of the People Act, 1951, in short, "the Act". The substituted petitioner also has personal and informed knowledge about the documents that have been filed by the deceased petitioner in support of the Election Petition.

1.4. First respondent had indulged in bribing the electors by distribution of money. He also committed bribery within the meaning of Section 123(1)(A) and 123(1)(B) of the Act. The following members acted as agents of the first respondent and with his knowledge and consent offered gratification by way of cash to the electors in the Madurai Parliamentary Constituency by paying a sum of Rs. 500/- each, inducing the electors to exercise their franchise in favour of the first respondent for 15th Lok Sabha Election, held on 13.05.2009 at Madurai:

Date of Bribery Name of the complainants (the persons who have given the complaints of bribery) Abbas 3509 A.R.Chandrasekar, VAO Alagar, DMK 3509 C.Rajamanickam, CPM Raman, Sikkandhar Batcha 3509 A.K.Bose, ADMK, MLA Vijayakumar 3509 Senthil Kumar Musthafa, Allavudeen 3509 Adaikki Veeranan Selvaraj Dheenadhayalan 3509 Kannan Kannan 3509 Balasubramani Bose and 13 others 30.04.2009 P.Rasool DMK Party Members 3509 T.R.Kalimuthu Misa Pandian, Gpinathan Ulaikumar, Rafique, N.Kumar, Auto Nagarajan, K.Kaveri, Muniyasami, Durairaj, Bhawar Singh, P.U.Saravanan, Loganathan Thangaraj, Abimanyu, James Bombay Velu, Silver Pattraai Ravi, Veni, Panchavaram, Saroja, Kumar, Thadi Suresh, Pulli Sekhar and Ors. 4509 K.Mariappan(Table)

1.5. Based on the complaints given by the complainants, the First Information

Reports (FIRs) had been filed under Sections 171(b) and 188 of the Indian Penal Code. The said FIRs have been filed as Document Nos. 4 to 13.

1.6. The complaint, dated 03.05.2009, given by R. Anna Durai, District Committee Secretary of Communist Party of India (Marxist) to the Chief Election Commissioner, New Delhi, is enclosed as Document No. 14. Thus, the substituted petitioner has furnished the material particulars regarding the names of the persons who have committed the corrupt practice of bribery under the Act.

1.7. The first respondent appointed various persons to act as his agents in such a way that each agent will cover 50 electors in order to induce the electors to vote in favour of the first respondent for the symbol "Rising Sun". The agents printed various types of slips, which are filed as Document Nos. 15, 16, 17 and 18. These facts will establish that the first respondent is guilty of corrupt practices and this has materially affected the result of the election. Dinamani, Tamil Daily, Madurai Edition, dated 05.05.2009, which carried this news item, has been filed as Document No. 19. The Indian Express, English Daily, Madurai Edition, dated 04.05.2009, which also carried a news item regarding money distribution has been filed as Document No. 20. The vehicles with covers having cash have also been recovered from those persons acting as agents of first respondent bribing in favour of first respondent. The vehicles bearing Nos. TN-41 F 9338 and TN-59 R 7294 have also been seized by the police.

1.8. During the course of the campaigning by the first respondent seeking vote in his favour in the election from Madurai Parliamentary constituency, the women folk took "Aarthy" to the first respondent. DMK Union Secretary one Raghupathy distributed tokens to such persons who took aarthy. It was on 10.04.2009 when the first respondent sought votes from Melur Assembly Constituency, particularly in A. Vallalapatti Town Panchayat. The said Raghupathy acted as agent of the first respondent and acting with his consent and knowledge distributed Rs. 100/- for each token distributed by him through one V. Mohan, DMK Branch Secretary, inducing the electors to exercise their franchise in favour of the first respondent by polling for "Rising Sun" symbol. The Rural District Secretary V. Sundaram has also made a complaint, dated 11.04.2009, to Mr. Naresh Gupta, Chief Election Commissioner, Tamil Nadu, enclosing a xerox copy of the token. The said token, the representation dated 11.04.2009 and the newspaper reports are filed as Document Nos. 21, 22 and 23. The said incident has been covered through a cell phone and a CD in this regard is filed as Document No. 24.

1.9. One Cable Kannan, DMK Councillor, his father-in-law Gurusamy and Kandasamy, DMK 62nd Ward President, who were acting as the agents of first respondent, with his consent and knowledge, bribed the electors by supply of sarees and dhotis to the electors of Madurai Parliamentary Constituency. On complaint, the election observers along with police inspected the place at Jaihindpuram. The special election observers for Madurai Lok Sabha Constituency seized sarees in six bundles from two houses in Jaihindpuram. This is also reported in The Hindu, English Daily, Madurai Edition, dated 07.05.2009. It is

filed as Document No. 25. One Anna Durai, District Secretary of Communist Party of India (Marxist), has also lodged a complaint to the Chief Electoral Officer, Tamil Nadu, on 05.05.2009; on 06.05.2009 to Chief Election Observers in Madurai; on 06.05.2009 to Chief Election Commission, New Delhi, and on 06.05.2009 to Chief Election Officer/District Collector, Madurai. The copies of complaints have been filed as Document Nos. 26, 27, 28 and 29. The Chief Election Agent of the deceased petitioner has also given a complaint on 08.05.2009 to Chief Election Officer, Tamil Nadu and also to Election Observer, Madurai East and Melur Constituency. The complaints are filed as Document Nos. 30 and 31. Thus, the first respondent has committed corrupt practices of not only distributing cash to the electors but also by kind, by way of distributing sarees and dhotis to the electors through his aforesaid agents and thereby induced the electors to exercise their franchise in favour of the first respondent.

1.10. The Public Relation Officer of Government of Tamil Nadu has abused his official position and acted as agent of first respondent and canvassed and sent communications through e-mail to all newspapers with photographs. Complaints in this regard have been lodged with the Chief Election Commissioner, New Delhi, State Chief Election Officer and the State Chief Election Officer, which are filed as Document Nos. 32, 33, 34, 35 and 36. Pursuant to the above complaints, Anna Durai received a letter from K. Sathya Gopal, I.A.S., Additional Chief Electoral Officer, stating that a discreet enquiry was made by the District Collector, Madurai, and a disciplinary action against the responsible persons for the mis-happening was in the process. The said letter has been filed as Document No. 37.

1.11. The first respondent, using his influence has made the Government/Tamil Nadu State Transport Corporation, Madurai Division, buses to ply in different routes to induce the electors from the villages to cast their votes in his favour. A complaint in this regard was lodged to Tamil Nadu State Election Officer on 15.04.2009 and the same has been filed as Document No. 38. The Central Committee Member of Communist Party of India (Marxist) T.K. Rengarajan has also lodged a complaint dated 05.05.2009, to Chief Election Commissioner and the same has been filed as Document No. 39. Based on the aforesaid representation, the then Madurai Police Commissioner, Nandabalan, who has abused his official position to procure votes in favour of first respondent, has been transferred, after the mischief has been done. The first respondent, thus, obtained and attempted to obtain, procure votes in his favour by misusing, with the assistance of the then Commissioner of Police and police force for his prospects in the election. The transfer of the then Madurai Police Commissioner of Police was reported in Daily Thanthi on 06.05.2009; Dinamani on 06.05.2009; Deccan Chronicle on 06.05.2009 and The Hindu on 06.05.2009. The aforesaid paper reports have been filed as Document Nos. 40, 41, 42 and 43.

1.12. The particulars of corrupt practice committed by first respondent through his men who acted as his agents to vote in his favour have been detailed in the representation dated 03.05.2009 given by one N. Varadarajan, State Secretary

of Communist Party of India (Marxist) addressed to the press, the copy of the said complaint has been published in newspapers and the same is filed as Document No. 44. On 02.05.2009, one N. Nanmaran, Madurai East Assembly Constituency, MLA, has also lodged a complaint regarding the distribution of money by the first respondent through his agents to the IG of Police, South Zone, Madurai, marking a copy to the State Election Officer, Election Observers, Returning Officer, DIG of Police, Madurai Range and the Commissioner of Police, Madurai City. The said complaint has been filed as Document No. 45.

1.13. The photographs of the persons belonging to the Communist Party of India (Marxist) who have been attacked by the first respondent through his men when they were protesting the distribution of money by them to the electors to induce them to exercise their franchise in favour of first respondent have been filed as Document Nos. 46, 47, 48 and 49.

1.14. The first respondent used his influence through Media TV and Krishna TV which are private local TV channels while broadcasting Meenakshi Amman Temple Kumbabishekam direct relay to canvass the electors to vote in his favour for "Rising Sun" symbol in the election. The local television channels were acting as agents of first respondent, to induce the voters in favour of first respondent. The matter was communicated to the Chief Electoral Officer of Tamil Nadu by way of a complaint, dated 08.04.2009, and the same were forwarded to District Election Officer and Collector, Madurai District, for report. These documents have been filed as Document Nos. 50 and 51. The compact disc containing the telecast of Meenakshi Amman Temple Kumbabishegam by Media TV on 08.04.2009 has been filed as Document No. 52. The above acts of first respondent had materially affected the election and amounted to violation of code of conduct also.

1.15. Hence, this Election Petition, for the relief stated above.

2. First respondent has filed a counter affidavit, stating as follows:

2.1. He has been declared as the successful candidate in the 15th Lok Sabha held in 2009 from Madurai Parliamentary constituency, in which the petitioner was also one of the candidates. He assumed office as a Member of the Lok Sabha and also functioned as a Minister in the Union Cabinet. The substituted petitioner has amended almost the entire petition to suit his convenience. The Election Petition filed against him only exposes the political vendetta and political conspiracy to put an end to his political career. The petition is filed by a contestant of another political party who could not succeed in the election and the documents filed in support of the petition do not in any authentically prove his misconduct, as alleged in the petition. Election Petition is vague and the petitioner does not have direct knowledge of the so called incidents which are said to have happened. Neither the deceased petitioner nor the substituted petitioner has given any complaint to any official or authority in his personal capacity nor was he directed by the party to give any complaint nor was he at least a person who signed the complaint along with other party men.

2.2. u/s 83(1)(c) of the Act, an Election Petition shall be signed by the petitioner and verified in the manner as laid down in the Code of Civil Procedure, 1908, for the verification of the pleadings, provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. The said provision is not complied with even though the Supreme Court granted liberty to file an affidavit as required under the above proviso within the time. Therefore, the amended Election Petition is not proper and not validly presented in accordance with Section 83(1)(c) of the Act in spite of the liberty given by the Supreme Court of India. Therefore, the amended Election Petition is also defective in material respect and non-compliance of this requirement amounts to dismissal of the amended Election Petition. The dates mentioned in the Election Petition as well as in the amended Election Petition filed subsequently that the cause of action arose on 13.05.2006 and 16.05.2006 are imaginary dates and no cause of action arose on those dates as alleged, as the election took place in the year 2009 and not 2006, as mentioned in the petition. Since the election petitioner as also the substituted petitioner have not properly mentioned the date of cause of action this amended election petition is liable to be dismissed for want of cause of action.

2.3. The documents filed along with the Election Petition were based on the information given by the petitioner's party secretaries and agents belonging to his party to the original petitioner late Mohan. Hence, the authenticities of the allegations are doubtful and also questionable and cannot be used by the substituted petitioner. There were 10 other contestants belonging to different parties; some were independent candidates; no other party or candidate has given any complaint or has expressed any grievance against him nor anybody other than the representatives of the election petitioner has given any complaint to the Election Commission for the alleged money distribution or gross misconduct committed by the first respondent or the members of his party. The popularity the first respondent had with the people has made him victorious in the election and sensing the possible defeat the deceased petitioner has levelled false and baseless charges against him by giving false complaints to the Election Commission and to the police. No paper clipping mentions or accuses him or his party men of any misconduct. No credibility can be given to the newspaper clippings, as they are not authoritative pieces of evidence. The authenticity of the documents marked is questionable as the original petitioner is not alive to substantiate the documents, as he had attested the documents during his life time. Nowhere, the deceased petitioner has shown with solid proof that neither the first respondent nor his party men were involved in the election misconduct. The deceased petitioner has given a tabular column, in which he has furnished the names of some persons who were alleged to have acted on behalf of the first respondent and against whom the complaints were lodged and the dates of occurrence of misconduct, which are all false. All the complaints which are marked as documents do not show the complicity of the first respondent either

directly or indirectly.

2.4. The persons of the party functionaries of the first respondent mentioned in the election petition have not done anything against the model code of conduct. Their names are unnecessarily dragged in to create a case. The vehicles and covers seized during the election have nothing to do with the first respondent and there is no evidence to show that the said vehicles belonged to the first respondent or to his party functionaries. Neither he nor his party functionaries were involved in the act of distribution of slips. The substituted petitioner does not have direct knowledge for the alleged happenings.

2.5. The newspaper clippings which are marked as documents cannot be construed as genuine documents or authenticated documents, as it is routine or usual for all the newspapers to report about the day-to-day happenings. The allegation that women folks took aarthy and one Raghupathy belonging to the party of the first respondent distributed tokens to the persons who took aarthy and later Rs. 100/- was distributed to people who took aarthy and the deceased petitioner was able to get one such token from his party workers is false as no such incident has happened and it is created for the purpose of this case. Document No. 18, marked along with the petition, is nothing but a slip given by the booth agent for easy identification of the names of the voters. This is adopted by all the political parties in all the elections as it is a routine one and therefore this document cannot be taken as a piece of evidence. The allegation that the party functionaries of the first respondent distributed tokens to some section of the people when the first respondent was campaigning in the Melur Assembly Constituency is absolutely baseless and there is no proof to establish the same. This respondent or his men have nothing to do with all other documents, as they were not involved in such acts and they are created for the purpose of this case and, therefore, the said documents cannot be taken as pieces of evidence against this respondent. The alleged complaint of distribution of sarees and dhotis is only imaginary. It is also not established that the bundle of sarees and dhotis were meant for distribution to the voters by the first respondent or by his party men.

2.6. The accusations of the petitioner against the Public Relations Officer of Tamil Nadu are baseless and mischievous. The petitioner has accused the first respondent of using his influence to make the State Transport Corporation to ply buses on various routes in and around Melur and the complaint to this effect to the Tamil Nadu State Election Officer is diabolical in nature. The decision to operate buses to new places is a decision taken by the officials of the Transport Department to fulfill the needs of the people and it is the usual method adopted for the convenience of the people and hence this respondent cannot be made culpable for this happening by levelling the allegations. Regarding the statement made in the petition that the then Commissioner of Police, Madurai, misused his official position and canvassed for the first respondent to procure votes and later he was transferred, it is common that the Election Commission, at the time of

election, transfers and appoints officers and bureaucrats on their own accord and the said transfer was a routine one and does not carry any basis and that the said event does not establish any alleged corrupt practice of the first respondent. Even the other contestants, who lost their deposits, did not adopt any cheap mode to accuse the victorious candidate of any irregularity as nothing of that kind had happened in the constituency.

2.7. The photographs marked of the injured party workers belonging to the communist party have nothing to do with the first respondent or with his party men. A piece of evidence was created in order to show that the first respondent was involved in the alleged vandalism and was disturbing the election process. The Election Commission, functioning as an independent body, which was closely monitoring the entire election process with assiduity, had declared his candidature as elected. The chief opposition candidate, who has secured only half the number of votes and was unable to endure or accept the victory of the first respondent in the election, has come forward with this frivolous petition with baseless and weak charges in order to harass him and denigrate his party image by filing this frivolous petition. Since the original petitioner is a departed soul, the petitioner will not be able to prove the allegations levelled against this respondent and also the substituted petitioner had not cared to amend the prayer as he was required to do. The second prayer in the election petition that after the election of the first respondent is declared invalid, he be declared as elected is untenable as the original petitioner is deceased and the substituted petitioner was not the contestant in the election. At the time of election, anybody can give any complaint against anybody and can be accused of any misdeed and that the time of election is usual for the political parties to adopt this tactics to defame the popular candidate. The deceased petitioner kept accusing the candidate of a major political party with whom he had a straight contest and when his defeat was certain he began to adopt other mode and defaming the proposed victorious candidate and began to give complaint after complaint excluding the other nine candidates, accusing the first respondent for each and every misdeed. The allegation that the first respondent had influenced the local TV channels and directed them to canvass for him when Sri Meenakshi Temple Kumbabishekam was directly aired does not in any way establish the involvement of the first respondent. Even assuming that TV channels telecast such news, the first respondent cannot be directly or indirectly held responsible, instead of giving complaint and taking action against the TV channels during that period. The compact Discs filed along with the petition are nothing to do with the first respondent, as they are created for the purpose of this case. The deceased petitioner had found fault with each and every authority and thus questioned the functioning of the government agency, by not sparing even the Election Commission. After being unsuccessful in his endeavour to tarnish the good image of the first respondent and after all his efforts to get the first respondent lose the election failed, the frustration of the petitioner is clearly revealed in the mode adopted by him by furnishing false, misleading and fabricated statements. The

prayer of the substituted petitioner to declare the election of the first respondent as null and void and declare the deceased petitioner as duly elected is quite perplexing and illogical and this Court cannot entertain and grant any relief to the defunct petitioner as he is a departed soul and not existing on the earth with flesh and blood and that the prayer of the petitioner sought ought to have been amended. In the amendment of verification, the substituted petitioner has clearly laid down that he did not have any personal knowledge and was not directly involved or a witness to the so called happenings and he has clearly stated that the information he relied upon was passed on to him by his party cadres. Therefore, it can be comprehended that the substituted petitioner has raised a new set of facts in the amended petition. A person who himself is opprobrious does not have a clear track record and whose assembly election is itself in dispute and a person who is alleged to have furnished wrong information about his religion and got elected in a reserved constituency, where an enquiry about his misdeeds is in progress, and such a person who does not possess a clean image, is pursuing this petition, stating that the first respondent has committed election misconduct and played fraud.

3. Ms. P.T. Asha, learned counsel for the petitioner, would contend that the first respondent had resorted to corrupt practices and violated model code of conduct during the election held on 13.05.2009 and got elected to the Madurai Parliamentary Constituency and, therefore, the election of the first respondent as the returned candidate from No. 32, Madurai Parliamentary Constituency in the election held on 13.05.2009 has to be declared as null and void and, consequently, the deceased petitioner has to be declared as duly elected. The learned counsel has focussed her arguments mainly on two grounds, the first of which being that for the corrupt practices of the first respondent in giving money and distributing sarees and dhoties, there are material evidences to prove the case. Secondly, she would contend that the first respondent has procured the assistance of Government officials, such as, Public Relations Officer for canvass and misused the official machinery for his success in the election; there was a scroll of advertisement on TV channels, seeking votes for the first respondent; the Commissioner of Police, Madurai, was transferred, as he acted as his agent and that several buses were plied on various routes during the election and, therefore, all these acts of the first respondent are in violation of the provisions of Sections 100 and 127 of the Representation of the People Act, 1951. She would cite the following decisions:

(i) R.M. Seshadri Vs. G. Vasantha Pai, :

16. The power of a civil court to summon court witnesses is contained in Order 16 Rule 14 of the Code of Civil Procedure. Now the representation of People Act enjoins that all the powers under the Code can be exercised and all the procedure as far as may be applicable to the trial of civil suits may be followed in the trial of election petitions. It would appear therefore that in the absence of any prohibition contained in the law, the Court has the power to summon a court

witness if it thinks that the ends of justice require or that the case before it needs that kind of evidence. It must be remembered that an election petition is not an action at law or a suit in equity. It is a special proceeding. The law even requires that an election petitioner should not be allowed to withdraw an election petition which he has once made and that the election petition may be continued by another person, so long as another person is available. The policy of election law seems to be that for the establishment of purity of elections, investigation into all allegations of malpractices including corrupt practices at elections should be thoroughly investigated. Here was a case where a large number of cars were used presumably for the purpose of carrying voters to the booths. The question is in the face of this voluminous evidence was it not open to the judge if evidence was available to establish who had procured or hired vehicles, to summon witnesses who could depose to the same? In our opinion, such a power was properly exercised by the learned Judge.

(ii) Shaikh Mahamad Umarsaheb Vs. Kadalaskar Hasham Karimsab and Others, :

9. As regards the last point, it was for the learned Judge to have come to his own conclusion as to the period of disqualification. The maximum penalty which the Act allowed him to impose was disqualification for six years and we see no reason to take any exception to the disqualification actually imposed. As noted above, the allegations of corrupt practice were of a serious nature and if the appellant was found guilty of the commission thereof, the period of five years disqualification would certainly not be inappropriate.

(iii) P.C. Purushothama Reddiar Vs. S. Perumal, :

12. It is true that in election cases oral evidence has to be examined with great deal of care because of the partisan atmosphere continuing even after the election. But it will be wrong on the part of courts to just brush aside the oral evidence even when the evidence is highly probable and the same is corroborated by unimpeachable documentary evidence. As mentioned earlier, according to the appellant, the respondent started his election campaign with a well attended meeting on February 23, 1969 at Ariyankuppam. In support of that version he examined PWs 3, 4, 7, 13, 16 and 19. Their evidence was corroborated by Exhibits P-15 and P-35. But the learned trial Judge rejected this evidence without examining them. He came to the conclusion that the witnesses examined are partisan witnesses. Therefore much reliance cannot be placed on their testimony. But he failed to attach sufficient importance to the tell-tale evidence afforded by Exhibits P-17 and P-35. Ex. P-15 is an application made by the respondent to the Inspector of Police, C Circle, Pondicherry.

14. Before proceeding further, we may at this stage mention that though in his written statement, respondent denied having held any meeting at all a statement which on the face of it cannot be true in his evidence he admitted having arranged seven meetings. This he had to admit in view of the receipts that he had produced along with his return. In his evidence he admitted that he held

meetings on February 27, 1969, March 5, 1969 and March 6, 1969 at Ariyankuppam. He also admitted that he held a meeting on March 5, 1969 at Poornamukuppam and on March 6, 1969 at Manaveli and again on the same day at Veerampatinam. Hence admittedly he held seven meetings. Let us now proceed to see whether the appellant has satisfactorily proved that the respondent had held any more meetings. We have earlier come to the conclusion that he had held a meeting at Ariyankuppam on February 23, 1969.

16. In his evidence the respondent admitted as having arranged a meeting at Ariyankuppam on March 6, 1969. According to him he arranged that meeting but curiously the learned Trial judge came to the conclusion, despite that admission of the respondent that PW 6 arranged that meeting as that witness in his evidence claimed that he arranged that meeting and spent for the same. The learned Trial judge overlooked the fact that no such plea was taken by the respondent in his written statement nor was it his case in his evidence that that meeting was arranged for PW 6.

20. It was next urged that even if the reports in question are admissible, we cannot look into the contents of those documents. This contention is again unacceptable. Once a document is properly admitted, the contents of that document are also admitted in evidence though those contents may not be conclusive evidence.

(iv) Pratap Singh Vs. Rajinder Singh and Another, :

3. We will deal with these objections in the reverse order, starting with the last mentioned ground of attack on the High Courts judgment. The judgment rests largely on appreciation of oral evidence. It could not therefore, be easily disturbed by us as has been repeatedly pointed out by this Court even in first appeals on facts in election cases. If the High Court overlooks serious infirmities in the evidence adduced to support the case accepted by it or misreads evidence or ignores the principle that a charge of corrupt practice, in the course of an election, is a grave one which, if established, casts a serious reflection and imposes a disability upon the candidate held guilty of it, so that the Court must be satisfied beyond reasonable doubt about its veracity, this Court will not hesitate to interfere.

10. The fifth ground of objection set out above seems to proceed on the erroneous assumption that oral testimony cannot be accepted when a corrupt practice is set up to assail an election unless it is corroborated by other kinds of evidence in material particulars. We are not aware of any such general inflexible rule of law or practice which could justify a wholesale condemnation or rejection of a species of evidence which is legally admissible and can be acted upon under the provisions of Evidence Act in every type of case if it is, after proper scrutiny, found to be reliable or worthy of acceptance. There is no presumption, either in this country or anywhere else, that a witness, deposing on oath in the witness box, is untruthful unless he is shown to be, indubitably, speaking the truth. On

the other hand, the ordinary presumption is that a witness deposing solemnly on oath before a judicial tribunal is a witness of truth unless the contrary is shown.

11. It is not required by our law of evidence that a witness must be proved to be a perjurer before his evidence is discarded. It may be enough if his evidence appears to be quite improbable or to spring from such tainted or biased or dubious a source as to be unsafe to be acted upon without corroboration from evidence other than that of the witness himself. The evidence of every witness in an election case cannot be dubbed as intrinsically suspect or defective. It cannot be equated with that of an accomplice in a criminal case whose testimony has, according to a rule of practice though not of law, to be corroborated in material particulars before it is relied upon.

12. This Court pointed out in Rahim Khan case that there are no golden rules for appraising human testimony. In assessing its worth Judges can err honestly just as witnesses can make honestly mistaken statements under oath. The extraction of what should constitute the credible foundation of judicially sound judgment is an art which nothing except sound commonsense and prudence combined with experience can teach. A sound judgment must disclose a fair attempt to separate the grain from the chaff as it has often been said.

14. Hence, it has sometimes been argued that the same standard of proof applies to all types of cases. Such a contention seems plausible. But, what has to be borne in mind is that, in judging the evidence of a grave charge, prudence dictates that the belief in its correctness should form the basis of a judicial verdict of guilt only if that belief reaches a conviction beyond reasonable doubt. If prudence is the real test, it prescribes differing standards of proof in differing circumstances. Its requirements preclude any Procrustean bed of uniformly rigid rules for each type of case.

15. The circumstances under which reasonable doubt may or may not exist in a case cannot possibly be exhaustively catalogued. All that one can say is that in deciding whether the stricter standard of proof is satisfied in a case of alleged corrupt practice, resting upon oral evidence only, the Court should be particularly astute and not omit to examine fairly the effect of every existing substantial ground which could introduce a reasonable doubt in a case. In doing so, the Court has also to beware of bare suspicion, based on popular prejudices or beliefs sought to be introduced merely to bias the Court against a witness or a party of a particular type.

(v) S. Harcharan Singh Vs. S. Sajjan Singh and Others, :

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

Krishna Iyer, J. in *Rahim Khan v. Khurshid Ahmed*.

64. Taking into account the totality of the evidence in the background of the fact that some communications from Akal Takht call it Hukamnama or any other name were issued and the issues of editorials of Akali Times, which were mentioned by Shri Parkash Singh Badal as stated by the witness on behalf of the appellant and which is not denied by Shri Parkash Singh Badal, we are of the opinion that in this case appeal in the name of religion was made on behalf of Respondent 3. Though some facts stated in the oral evidence about the meetings had not been stated in the petition, but when evidence was tendered and was not shaken in cross-examination and the versions have a ring of truth in the background of other facts, we are of the opinion that the case of appeal to religion by Respondent 3 has been proved in this case. This conclusion becomes irresistible in view of absence of any express denial by Shri Parkash Singh Badal and in the absence of any explanation for not calling him as a witness on this point. Several decisions of this Court have laid down various tests to determine the standard of proof required to establish corrupt practice. While insisting on standard of strict proof, the Court should not extend or stretch this doctrine to such an extreme extent as to make it well-nigh impossible to prove an allegation of corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process.

(vi) *C. Narayanaswamy Vs. C.K. Jaffer Sharief and Others*, :

4. In the case of *Rajendra Prasad Jain v. Sheel Bhadra Yajee* this Court said:

In our opinion, when considering the scope of the words offer of bribery in the Election Law, we should not place a narrow construction on that expression. In fact, the scope of that expression should be extended in order to ensure that elections are held in an atmosphere of absolute purity, and a wide meaning should be given to the expression offer of bribery.

The Explanation to sub-section (1) of Section 123 says specifically that the term gratification includes all forms of entertainment. Even Explanation to Section 171E of the Indian Penal Code says that treating means that form of bribery where the gratification consists of food, drink, entertainment, or provision.

5. In view of the Explanation to Section 123(1) of the Act, there should be no difficulty in holding that after the process of election has commenced and before the electors have exercised their right of franchise, mass feeding of electors arranged by the candidate or his agent or any other person with the consent of the candidate or his election agent in order to induce directly or indirectly the electors to vote, shall be a corrupt practice within the meaning of the said section. Particularly with the existing economic conditions prevailing in the country feeding of electors may induce them to vote in favour of the candidate arranging it. As such if the Court is satisfied that the mass feeding had been arranged in order to directly or indirectly induce the electors to vote for the

candidate in question, the charge of bribery shall be deemed to have been established.

6. The next aspect which needs examination is as to whether before arranging any such mass feeding, or in course thereof, the factum of any negotiation between the electors on one side, and candidate or his agent or any person arranging such mass feeding on behalf and with the consent of the candidate or his election agent on the other side has to be proved. The framers of the Act while specifying as to what shall be deemed to be bribery, did not provide that the negotiation between the candidate or his agent or any other person with the consent of such candidate or his election agent on the one hand and the electors on the other should be proved. Section 123(1)(A) says that any gift, offer or promise by a candidate or his agent or any other person with the consent of such candidate or his election agent, of any gratification made to the elector with the object, directly or indirectly of inducing such an elector to vote, shall be deemed to be bribery. Section 123(1)(A) does not require the electors to express or convey their acceptance or assurance that they shall vote for such candidate. On the material on record, of course the court has to be satisfied that such gift, offer or promise of any gratification has been made to the electors with the object directly or indirectly to induce the electors to vote in favour of such candidate. A nexus between the gift, offer or promise of gratification and the inducement to vote has to be established. This can be established even by circumstantial evidence. The election petitioner is not required to prove any direct negotiation between the candidate or his agent on the one hand and the electors on the other.

7. In the case of *S.B. Adityan v. S. Kandaswami*, it was said:

The words gift, offer or promise by a candidate or his agent or by any other person clearly show that what is contemplated is the making of a gift. These words are wholly inappropriate to describe the acceptance of a gift. The words with the object, directly or indirectly, of inducing also indicate that only the making of a gift is contemplated, for the object is of the person making the gift, and clearly not of the person accepting it.

A three-Judge Bench in the case of *B. Rajagopala Rao v. Appayya Dora Hanumanthu* said: (SCC p. 507, para 5)

It was urged by Mr. Rao, learned counsel for the appellants that in the impugned judgments, the High Court has incorrectly taken the view that in order to amount to bribery within the meaning of the said term in Section 123(1)(A), the transaction must amount to a bargain by the candidate with a view to get votes. It was pointed out by him that the said view has been taken in the impugned judgments, relying upon the decision of a Bench comprising two learned Judges of this Court in *Ghasi Ram v. Dal Singh*. We have gone through the relevant portion of that judgment [at pages 109 and 110 (of SCR): (at p. 1196 of AIR) of the said report]. A careful perusal of the said judgment shows that what has

been really held in that case is that if the promises given or made amount to a bargain entered into by a candidate for a vote or votes, that would amount to a corrupt practice, but it has not been held there that unless the act alleged amounts to such a bargain, it could not amount to a corrupt practice. In our view, that judgment does not lay down that in order to amount to a corrupt practice, the transaction must amount to a bargain for getting a vote. It was pointed out by Mr. Rao, however, that such a view seems to have been taken in two other decisions rendered by two Benches, each comprising two learned Judges of this Court in *Bhanu Kumar Shastri v. Mohan Lal Sukhadia* and *Harjit Singh Mann v. S. Umrao Singh* and these judgments need to be overruled. We do not propose to go into the correctness or otherwise of this view because, even on the footing that in order to amount to a corrupt practice under the aforesaid provision the alleged acts need not constitute a bargain, the acts established in the present case, in our opinion, do not amount to a corrupt practice.

8. Mr. Prashant Bhushan, learned counsel appearing for one of the appellants rightly pointed out that in the case of *Laxmi Narayan Nayak v. Ramratan Chaturvedi*, the attention of the two learned Judges of this Court, was not drawn to the case, referred to above and because of that an observation was made, viz., element of bargaining is completely absent in the present case. If an election petitioner is required to prove that the gift, offer or promise of gratification was accepted by the electors by assuring to vote in favour of such a candidate, the provisions of Section 123(1)(A)(b) shall become redundant and shall have to be read as a pious wish of the framers of the Act to eliminate the role of bribery in the elections. The framers of the Act were quite conscious that in many cases it will be difficult to get direct evidence of inducement to the electors to vote, and because of that they have provided that inducement to voter may be indirect as well. This is so even where before poll, cash, clothes, cycles, blankets etc., are distributed amongst the electors, by the candidate or his agent. Once the Court comes to the conclusion that such gifts were made to induce the electors to vote in favour of the candidate concerned, a corrupt practice within the meaning of Section 123(1)(A) shall be deemed to have been committed.

19. It is true that right to elect or to be elected is a pure and simple statutory right and in the absence of the statutory provision neither a citizen has a right to elect nor has he a right to be elected, because such right is neither a fundamental right nor a common law right. The same is the position so far as the right to challenge an election is concerned. It flows from the provisions of the Act itself. As such, the right of a person to question the validity of an election is dependent on the conditions prescribed in the different sections of the Act and the rules framed thereunder. It was open to Parliament to say that any expenditure incurred by a political party or by any other association or body of persons or by any individual other than the candidate or his election agent, shall not be deemed to be expenditure in connection with the election, incurred or authorised by the candidate or his election agent for the purpose of sub-section

(1) of Section 77 read with Rule 90 aforesaid.

22. As the law stands in India today anybody including a smuggler, criminal or any other anti-social element may spend any amount over the election of any candidate in whom such person is interested, for which no account is to be maintained or to be furnished and any such expenditure shall not be deemed to have been expenditure in connection with the election, incurred or authorised by the candidate or by his election agent for the purpose of sub-section (1) of Section 77, so as to amount to a corrupt practice within the meaning of sub-section (6) of Section 123. It is true that with the rise in the costs of the mode of publicity for support of the candidate concerned, the individual candidates cannot fight the election without proper funds. At the same time it cannot be accepted that such funds should come from hidden sources which are not available for public scrutiny. According to us, sub-section (6) of Section 123 declaring incurring or authorising of expenditure in contravention of Section 77 a corrupt practice has lost its significance and utility with the introduction of the Explanation 1 aforesaid which encourages corruption by underhand methods. If the call for purity of elections is not to be reduced to a lip service or a slogan, then the persons investing funds, in furtherance of the prospect of the election of a candidate must be identified and located. The candidate should not be allowed to plead ignorance about the persons who have made contributions and investments for the success of the candidate concerned at the election. But this has to be taken care of by Parliament.

(vii) R. Puthunainar Alhithan, etc. Vs. P.H. Pandian and others, :

7. In Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi (SCC at p. 748, para 37), this Court had held that:

Inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial, from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture.

Therefore, we hold that to draw an inference that a fact in dispute has been established, there must exist, on record, some direct material facts or circumstances from which such an inference could be drawn. The standard of proof required cannot be put in a strait-jacket formula. No mathematical formula can be laid on the degree of proof. The probative value could be gauged from the

facts and circumstances in a given case.

8. An inference from the proved facts must be so probable that if the court believes, from the proved facts, that the facts do exist, it must be held that the fact has been proved. The inference of proof of that fact could be drawn from the given objective facts, direct or circumstantial.

9. Under these circumstances, the necessary conclusion would be that he had also used that vehicle and its expenditure was deliberately withheld by him. He suppressed that fact in his expenditure return. From these facts, the High Court has reasonably arrived at the finding that had he produced the account, the expenditure would have been shown to be in excess of the limit prescribed under the Act. An adverse inference was drawn from the omission to produce the account that the appellant had committed corrupt practice u/s 123(6) of the Act. This conclusion, on the basis of the evidence on record, cannot be said to be vitiated by any error of law. It is true that the charge of corrupt practice u/s 123 is treated akin to a charge in a criminal trial. The trial of an election petition is like a trial in the criminal case and the burden to prove corrupt practice is on the election petitioner. The doctrine of preponderance of probabilities in a civil action is not extended for proof of corrupt practice. It is not, like a criminal trial, that the accused can always keep mum. In a criminal trial the accused need not lead any defence evidence. It is an optional one. The burden of proof of charge in a criminal case is always on the prosecution. The guilt of the accused beyond reasonable doubt should be established by the prosecution. But in an election petition when the election petitioner had adduced evidence to prove that the returned candidate had committed corrupt practice, the burden shifts on the returned candidate to rebut the evidence. After its consideration, it is for the court to consider whether the election petitioner had proved the corrupt practice as alleged against the returned candidate. In view of the findings recorded earlier, it must be concluded that the respondent had established that the appellant had committed corrupt practice u/s 123(6) of the Act and thereby the declaration of the result of the election of the appellant as void is not vitiated by any error of law warranting interference.

(viii) P.C. Thomas Vs. P.M. Ismail and Others, :

16. In Razik Ram, speaking for the Bench, Sarkaria, J. observed thus: (SCC p. 776, para 15)

15. It is well settled that a charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. Thus, the trial of an election petition being in the nature of an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial. Just as in a criminal case, so in an election petition, the respondent against whom the charge of corrupt practice is levelled, is

presumed to be innocent unless proved guilty. A grave and heavy onus therefore, rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt. It is true that there is no difference between the general rules of evidence in civil and criminal cases, and the definition of proved in Section 3 of the Evidence Act does not draw a distinction between civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainty amounting to demonstration is rarely to be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the definition, is that of a person of prudence and practical good sense. Proof means the effect of the evidence adduced in the case. Judged by the standard of prudent man, in the light of the nature of onus cast by law, the probative effect of evidence in civil and criminal proceedings is markedly different. The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is requisite for a conviction. The same is largely true about proof of a charge of corrupt practice, which cannot be established by a mere balance of probabilities, and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the mind of the court is left rocking with reasonable doubt not being the doubt of a timid, fickle or vacillating mind as to the veracity of the charge, it must hold the same as not proved.

4. On the other hand, Mr. T.R. Rajagopalan, learned Senior Counsel appearing for the first respondent, would contend that the first respondent is nothing to do with the irregularities alleged in the petition. He would further contend that the prayer of the substituted petitioner to declare the election of the first respondent as null and void and also to declare the deceased petitioner as duly elected is quite perplexing and illogical and this Court cannot entertain and grant any relief to the defunct petitioner, without there being any amendment of the prayer. The learned Senior Counsel has denied the allegations of corrupt practices of giving money and distributing sarees and dhoties by the first respondent; procuring of assistance of Government officials; misusing of official machinery for his success in the election; scrolling of advertisement on TV channels, seeking votes for the first respondent; transferring of Commissioner of Police, Madurai, as he acted as his agent, and plying of several buses on various routes during the election, as are not supported by any material evidence; that they are all matters to be regulated by rule of law and, therefore, the same cannot be a factor for declaring the election of the first respondent as void. He would rely on the following authorities:

(i) *Guruji Shrihari Baliram Jivatode Vs. Vithalrao and Others*, :

23. The witnesses who spoke in support of the said allegation are the first respondent (PW 2). PW 9, Arjan Kashinath Masirkar and PW 12, Nazir Hussain

Akbar Ali. So far as PW 2 is concerned he is undoubtedly an interested witness. In the circumstances mentioned above, his evidence can have very little persuasive value. So far as PW 9 is concerned on his own showing he was highly interested in the first respondent and the Congress Party. As elicited during his cross-examination he was a Congress candidate for election as Sarpanch and as a member of the Panchayat Samiti. The appellants cousin was his rival in that election. Admittedly during the last election he canvassed for the first respondent. Under these circumstances much reliance cannot be placed on the testimony of this witness. Then we come to the evidence of PW 12. During his cross-examination this is what he stated:

I have not received a summon. Vithalrao had asked me to produce the register where the hire of cycles is noted and that is how the chits which I have filed came with the register.

24. His evidence is to the effect that the appellant while presiding over the meeting at Rajura on February 13, 1967, stated that the first respondent had a share in the contract for fixing of border stones which was procured for him by Vithalrao. When he was cross-examined about that meeting this is what he stated:

I don't remember who was the President of the meeting. I will not be able to name at this distance of time the names of persons from the town or the villagers who were listening at the meeting. I will not be able to name a single person from amongst these.

25. Obviously he is a procured witness. No reliance can be placed on his evidence.

(ii) Mahani Shreo Nath v. Choudhry Ranbir Singh, (1970) 3 SCC 647 :

4. A plea in an election petition that a candidate or his election agent or any person with his consent has committed a corrupt practice raises a grave charge, proof of which results in disqualification from taking part in elections for six years. The charge in its very nature must be established by clear and cogent evidence by those who seek to prove it. The Court does not hold such a charge proved merely on preponderance of probability: the Court requires that the conduct attributed to the offender is proved by evidence which establishes it beyond reasonable doubt.

(iii) Ch. Razik Ram Vs. Ch. Jaswant Singh Chouhan and Others, :

15. Before considering as to whether the charges of corrupt practice were established, it is important to remember the standard of proof required in such cases. It is well settled that a charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. Thus, the trial of an election petition being in the nature of an accusation,

bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial. Just as in a criminal case, so in an election petition, the respondent against whom the charge of corrupt practice is levelled, is presumed to be innocent unless proved guilty. A grave and heavy onus therefore, rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt. It is true that there is no difference between the general rules of evidence in civil and criminal cases, and the definition of proved in Section 3 of the Evidence Act does not draw a distinction between civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainty amounting to demonstration is rarely to be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the definition, is that of a person of prudence and practical good sense. Proof means the effect of the evidence adduced in the case. Judged by the standard of prudent man, in the light of the nature of onus cast by law, the probative effect of evidence in civil and criminal proceedings is markedly different. The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is requisite for a conviction. The same is largely true about proof of a charge of corrupt practice, which cannot be established by mere balance of probabilities, and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the mind of the Court is left rocking with reasonable doubt not being the doubt of a timid, fickle or vacillating mind as to the veracity of the charge, it must hold the same as not proved.

16. We have reiterated the above principles not as a ceremonial refrain of what has been said by this Court again and again but to emphasise their importance as a guide in the matter. A court embarking upon an appreciation of evidence, without this rudder and compass, is apt to find itself at sea, mistaking every flotsam for shore, suspicion for proof and illusion for reality. Since these principles were not constantly kept in mind, the approach of the High Court in this case to the issues involved, and the treatment of evidence, appears to have gone awry. It is therefore, necessary to reappraise the evidence from the standpoint indicated above.

28. For instance, in the verification, Bhagwan Singh was mentioned as one of the omnibus informants (named therein) of the various facts alleged in paras 12, 13 and 15 of the petition. But in the affidavit, he was indicated as the sole informant of the allegations in para 15 only. The allegations in paras 12 and 15 have nothing to do with the issues under consideration. In the list, Bhagwan Singh was not cited as a witness of any of the facts alleged in para 15, but of the hiring and use of the truck and for that purpose also, he was not examined. We are therefore of the opinion that the citation of Tara Ghand in the list of witnesses for proving facts other than the hiring and use of Truck No. HRR 5167, was not the

result of a mere clerical error. The fact remains that originally he was not marked out to testify regarding the hiring of this truck.

(iv) Daulat Ram Chauhan Vs. Anand Sharma, :

14. Even if this allegation is taken at its face value, there is no mention at all about Sood or Batish having taken the consent of the appellant for indulging in corrupt practices. Strong reliance was placed on the second part of the recitals which disclose that there was a catalogue of corrupt practices committed by the appellant, his election agent and other persons as detailed in the petition. The learned counsel for the appellant wants us to read para 4 in conjunction with para 16 and then to arrive at the conclusion that libelous slogans were shouted by Sood and Batish with the consent of the appellant. We are however not in a position to accept this somewhat complex process of reasoning. In our opinion, such a disjointed scheme of averring particulars so that one has to read one part of the allegation with another and then by joining the two produce a particular result to infer an allegation of corrupt practice is not contemplated by Section 123 of the Act and is in fact foreign to the principle of giving all necessary particulars and statement of facts viz. time, place, manner, mode and the consent of the candidate or his election agent. Such an approach would naturally suffer from the vice of vagueness. It is even against the well settled rules of pleadings to interpret or read such a serious allegation as that of fraud by joining one portion of the allegation with another and then connect the head of one with the tail of the other in order to present a composite picture. The danger of making such an approach would really amount to basing the decision of the court on pure conjectures or speculation and is against the very spirit and tenor of Section 82(b) of the Act. This section contains a salutary provision which is that nobody should be condemned unheard so as to amount to an infraction of the well settled practice of audi alteram partem (rules of natural justice) and requires that an allegation must be proved to the hilt in the presence of the person affected, failing which the election petition would stand dismissed. If such a consequence were to follow, it is obvious that the allegations must be interpreted as they are and not by adding or subtracting one from the other.

18. We must remember that in order to constitute corrupt practice, which entails not only the dismissal of the election petition but also other serious consequences like debarring the candidate concerned from contesting a future election for a period of six years, the allegations must be very strongly and narrowly construed to the very spirit and letter of the law. In other words, in order to constitute corrupt practices, the following necessary particulars, statement of facts and essential ingredients must be contained in the pleadings:

- (1) Direct and detailed nature of corrupt practice as defined in the Act;
- (2) Details of every important particular must be stated giving the time, place, names of persons, use of words and expressions, etc.;
- (3) It must clearly appear from the allegations that the corrupt practices alleged

were indulged in by (a) the candidate himself, (b) his authorised election agent or any other person with his express or implied consent.

19. A person may, due to sympathy or on his own, support the candidature of a particular candidate but unless a close and direct nexus is proved between the act of the person and the consent given to him by the candidate or his election agent, the same would not amount to a pleading of corrupt practice as contemplated by law. It cannot be left to time, chance or conjecture for the court to draw an inference by adopting an involved process of reasoning. In fine, the allegation must be so clear and specific that the inference of corrupt practice will irresistibly admit of no doubt or qualm.

20. As a logical consequence of the principles enunciated by us, it follows that where the allegation of fraudulent practice is open to two equal possible inferences, the pleading of corrupt practice must fail. For instance, A, or in this case Sood or Batish, joined or participated or was present in an election rally or crowd and may have shouted slogans on his own without taking the consent of the candidate concerned, this would not be a corrupt practice within the meaning of Section 123(2) because the element of consent is wholly wanting.

(v) A. Younus Kunju Vs. R.S. Unni and Others, :

7. There is total consensus of judicial opinion that a charge of corrupt practice under the Act has to be proved beyond reasonable doubt and the standard of proof is the same as in a criminal case. See Mahant Shreo Nath v. Choudhary Ranbir Singh. This proposition has even not been disputed by counsel for the appellant. We, therefore, do not propose to refer to the catena of decisions affirming the aforesaid view. The High Court applied the right standard in the matter of appreciation of the material placed before it and has come to hold that the allegations of corrupt practice within the meaning of Section 123(4) of the Act has not been proved. In such a situation as pointed out by this Court in the case of Boddepalli Rajagopala Rao v. N.G. Ranga this Court would not re-appreciate the evidence. Shah, J. as he then was observed thus: (SCC p. 582, para 10)

The finding of the learned Trial Judge is based upon appreciation of evidence of the witnesses in the light of probabilities. A charge of corrupt practice under the Representation of the People Act must be established by clear and cogent evidence. When the Court of first instance on a consideration of the evidence of the witnesses has refused to place any reliance upon their testimony the burden lying upon the party setting up a plea of corrupt practice becomes no lighter in appeal. The charge cannot be held established merely upon suspicion, or preponderance of probabilities. Unless the appellant establishes that the appreciation of evidence was vitiated by gross misreading or misconception of the evidence or because of failure to consider important pieces of evidence which had a bearing on the charge or because of serious irregularities in procedure which amount to a denial of a fair trial the appellate court will not proceed to re-

appreciate the evidence on which the findings are recorded by the Court of first instance on the credibility of witnesses.

(vi) Manmohan Kalia Vs. Yash and Others, :

7. Coming now to the second category of allegations, as the appellant has confined his arguments only to the averments made regarding the application of Section 123(4) of the Act, the ambit of the case is greatly reduced. Before examining the allegations, we might mention that the learned Election Judge of the High Court had dealt with all the allegations and has given convincing and cogent reasons for holding that they had not been proved either by oral or documentary evidence. It is now well-settled by several authorities of this Court that an allegation of corrupt practice must be proved as strictly as a criminal charge and the principle of preponderance of probabilities would not apply to corrupt practices envisaged by the Act because if this test is not applied a very serious prejudice would be caused to the elected candidate who may be disqualified for a period of six years from fighting any election, which will adversely affect the electoral process.

8. Keeping in view, therefore, the strict standard of proof required in such cases, we proceed to consider the evidence on which the appellant has relied in order to determine whether or not the corrupt practice alleged has been proved. In this connection, the first circumstance stressed before us was that a meeting was convened in Gopal Nagar, Ward No. 22, on May 18, 1980 where Respondent 1 and, with his consent, his friend Sansar Chand, delivered fiery speeches connecting the appellant with the murder of Asa Ram, which was deposed to by PWs 8 and 13. PW 8 has stated that he attended a meeting on May 18, 1980 at Basti Guzan. The learned Judge disbelieved his evidence as being wholly improbable. Moreover, there is a contradiction in his evidence because at one place he says that Yash (Respondent 1) spoke first and was followed by Sansar Chand and yet at another place he says that Sansar Chand spoke first and was followed by Yash. It is impossible to conceive of such a contradiction if the witness apart from being interested and partisan, had been present in the meeting throughout, he would not forget the sequence of such an important matter. Another witness relied upon by the appellant was PW 13 who has also been disbelieved by the learned Judge, and he had admitted in his cross-examination that he did not make a note of what Yash had spoken and yet he was able to give full and grotesque details of the speech when he was examined in the Court, after more than a year and a half. Furthermore, he states that when he talked to the appellant he was told that the respondent already knew about the meeting. This shows that the appellant himself did not take this witness very seriously. We, therefore, entirely agree with the appreciation of the evidence of these two witnesses made by the learned High Court Judge.

9. The evidence of PWs 8 and 13, however, is alleged to have been corroborated by a news item published in an Urdu daily Milap whose Chief Sub-Editor (PW 5) was examined by the appellant. But the witness far from supporting his case has

deposed that he had absolutely no personal knowledge of the report made by Prashar which was published on May 24, 1980. Moreover, it is very difficult for a court to rely on news items published on the information given by correspondents because that may not represent the true state of affairs. In *Samant N. Balakrishna v. George Fernandez* while dwelling on the relevance and credibility of such type of news items this Court made the following observations: (SCC p. 261, para 47)

The best proof would have been his own speech or some propaganda material such as leaflets or pamphlets etc. but none was produced. . . . A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well-known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible.

10. In the instant case, there is no evidence to show the actual record of the speech made by Respondent 1 or Sansar Chand and, therefore, the said news item does not advance the case of the appellant any further, particularly when it has been stoutly denied by Respondent 1 and PW 5.

(vii) *Mohan Singh Vs. Bhanwarlal and Others*, :

12. Counsel for Mohan Singh challenged the finding of the High Court that Mohan Singh was instrumental in Publishing the leaflets annexures D" and E". He urged that in the trial of an election petition approach to the evidence must be as in a criminal trial and no fact may beheld proved unless it is established beyond reasonable doubt. The onus of establishing a corrupt practice is undoubtedly on the person who sets it up, and the onus is not discharge on proof of mere preponderance of probability, as in the trial of a civil suit: the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous. But the testimony of Rameshchandra corroborated by the circumstances set out in detail in the judgments of the Tribunal and the High Court was accepted and the testimony of witnesses for Mohan Singh who claimed that other persons without his consent or connivance were responsible for getting the leaflets printed was disbelieved. The evidence about the distribution of the leaflets in question by the appellant and his agents was also accepted by the Tribunal and the High Court. It was also found that these leaflets were distributed simultaneously. In recording their conclusions the Tribunal and the High Court did not proceed on mere grounds of probability. The findings recorded by the Tribunal and the High Court are therefore concurrent findings of fact founded on appreciation of oral evidence and no ground is made out for departing from the settled practice of the Court against interference with those concurrent findings of fact.

(viii) *Surinder Singh Vs. Hardial Singh and Others*, :

16. We shall now turn to the other submission of Mr. Shanti Bhushan. By a catena of decisions of this Court it has by now been very well settled that allegations of corrupt practice are quasi-criminal charges and the proof that would be required in support of such allegations would be as in a criminal charge. Mr. Shanti Bhushan has canvassed that the standard of proof required in such a case would be dependent upon the gravity of the charge and there is no justification to adopt the rule that in every case of allegation of corrupt practice the standard applicable to a criminal trial involving a grave charge like murder should be adopted. He has drawn support from the observations of this Court in *M. Chenna Reddy v. V. Ramachandra Rao*. It may be pointed out here that the ratio in Chenna Reddy case runs counter to the current of judicial thought on the point. In fact, quite close in point of time after Chenna Reddy case came the case of *Magraj Patodia Vs. R.K. Birla and Others*,

It is true that as observed in *M. Chenna Reddy v. V. Ramachandra Rao* that a charge of corrupt practice cannot be equated to a criminal charge in all respects. While the accused in a criminal case can refuse to plead and decline to adduce evidence on his behalf and yet ask the prosecution to prove its case beyond reasonable doubt such is not the position in an election petition. But the fact remains that burden of proving the commission of corrupt practice pleaded is on the petitioner and he has to discharge that burden satisfactorily. In doing so he cannot depend on preponderance of probabilities. Courts do not set at naught the apparent verdict of the electorate except on good grounds.

23. It is thus clear beyond any doubt that for over 20 years the position has been uniformly accepted that charges of corrupt practice are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in criminal trials. We are bound by the decision of the larger Bench in *Mohan Singh* case as also by decisions of coordinate benches and do not feel inclined to take a different view. We also find no warrant for the contention of Mr. Shanti Bhushan that a fresh look is necessary in the matter. On the other hand we feel advised to follow the dictum of Lord Devlin when he observed:

Precedents keep the law predictable and so more or less ascertainable.

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Lord Chancellor Hailsham very appropriately summed up the English practice when he said in *Cassell and Co. Ltd. v. Broome*:

Their Lordships regard the use of precedents (1) as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules.**

24. A Judge-made change in the law rarely comes out of a blue sky. Rumblings from Olympus in the form of obiter dicta will give warning of unsettled weather. Unsettled weather is itself, of course, bound to cause uncertainty, but inevitably it precedes the acceptance of a change. Such a situation has not arisen yet and, therefore, a rethinking as suggested by Mr. Shanti Bhushan is not warranted.

25. One more aspect should be referred to here before we proceed to examine the facts of the case. A five-Judge Bench of this Court in *Jagan Nath v. Jasvant Singh* indicated that election disputes are not cases at common law or equity but are strict statutory proceedings and result of an election is not available to be interfered with lightly. It was said:

It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law.

(ix) *Ramakant Mayekar and Others Vs. Smt. Celine D'Selva*, :

32. The requisite consent of the candidate cannot be assumed merely from the fact that the candidate belongs to the same political party of which the wrongdoer was a leader since there can be no presumption in law that there is consent of every candidate of the political party for every act done by every acknowledged leader of that party. The corrupt practice for which a candidate can be held vicariously guilty for an act of any other person who is not his agent in whose favour general authority is presumed, must be pleaded and proved to be with the consent of the candidate. Obviously, it is so because the penal consequences resulting from the finding of a corrupt practice against the candidate are visited on the candidate including the setting aside of his election. The High Court assumed for the purpose of pleading as well as proof that no specific pleading or proof of consent of the candidate was necessary if the act was attributed to any leader or even a member of the same political party. The distinction between the ground in Section 100(1)(b) on which the election petition was allowed and that u/s 100(1)(d)(ii) was completely missed. Admittedly, the ground u/s 100(1)(d)(ii) is neither the basis of the election petition nor is it of the judgment of the High Court.

(x) *Borgaram Deuri Vs. Premodhar Bora and Another*, :

10. The allegations of corrupt practices are viewed seriously. They are considered

to be quasi-criminal in nature. The standard of proof required for proving corrupt practice for all intent and purport is equated with the standard expected in a criminal trial. However, the difference between an election petition and a criminal trial is, whereas an accused has the liberty to keep silent, during the trial of an election petition the returned candidate has to place before the court his version and to satisfy the court that he had not committed the corrupt practice as alleged in the petition. The burden of the election petitioner, however, can be said to have been discharged only if and when he leads cogent and reliable evidence to prove the charges levelled against the returned candidate. For the said purpose, the charges must be proved beyond reasonable doubt and not merely by preponderance of probabilities as in a civil action. (See *Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe*, *Surinder Singh v. Hardial Singh*, *R.P. Moidutty v. P.T. Kunju Mohammad and Mercykutty Amma v. Kadavoor Sivadasan*.)

13. Even otherwise, the manner in which the alleged corrupt practice has taken place does not inspire confidence. Normally a candidate would not commit an offence in presence of another candidate. It is also wholly unlikely that such statements would be made openly. Even if it had been done, it is expected that independent witnesses would come forward to testify the veracity thereof.

14. In *Quamarul Islam v. S.K. Kanta* this Court held: (SCC p. 27, para 48)

48. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled.

17. In *Birbal Singh* this Court while holding that the court should be on its guard while evaluating the testimony of interested witnesses, observed that they must be subjected to a closer scrutiny.

18. This Court in no uncertain terms stated that in a given case the court would be justified in rejecting that evidence unless it is corroborated from an independent source. Applying the said test also, the evidence of PW 7 and PW 8 cannot be believed.

(xi) *Govind Singh Vs. Harchand Kaur*, :

56. At this stage, it would be worthwhile to recollect the well-settled legal position that a charge of corrupt practice is in the nature of a quasi-criminal charge, as its consequence is not only to render the election of the returned candidate void but in some cases (as in the instant one) might incur disqualification from contesting even the next election. The evidence led in support of the corrupt practice must therefore, not only be cogent and definite but if the election petition has to succeed, it must establish definitely and to the satisfaction of the Court, the charge of corrupt practice which the defeated candidate levelled against the returned candidate. The onus lies heavily on the election petitioner to establish the charge of corrupt practice and in case of doubt the benefit goes to the returned candidate. It is well acknowledged that in the

case of an election petition, based on allegations of commission of corrupt practice, the standard proof generally speaking is that of a criminal trial, which requires strict proof of the charge beyond reasonable doubt and the burden of proof is on the candidate who alleges corrupt practice and that burden does not shift. This was the view expressed by Their Lordships in *Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe* wherein Their Lordships had placed reliance also on *Nihal Singh v. Rao Birendra Singh*, *Om Prabha Jain v. Charan Dass*, *Daulat Ram Chauhan v. Anand Sharma* and *Quamarul Islam v. S.K. Kanta* wherein the same view had been taken. However, the courts have been cautioned to hold that even though the burden is on the petitioner to prove the charge of corrupt practice, it should not be understood to mean or imply that the returned candidate is absolved from his liability to bring forth the evidence on the record to revert the case of the petitioner and particularly prove such facts which are within the special knowledge of the elected candidate.

57. It was further held in *Surinder Singh v. Hardial Singh* that the charges of corrupt practice are to be equated with criminal charges and proof thereof would not be preponderance of probabilities, as in civil action, but proof beyond reasonable doubt and if after balancing the evidence adduced, there still remains little doubt in proving the charge, its benefit must go to the returned candidate. Various tests have been laid down by the High Courts and by the Supreme Court to determine the burden of proof required to establish a corrupt practice. The most well-accepted test however is that the charge must be established fully to the satisfaction of the Court. But while insisting upon the standard of strict proof beyond reasonable doubt, the Courts are not required to extend or stretch the doctrine to such an extreme extent as to make it well-nigh impossible to prove any allegation of corrupt practice as was observed in *S. Harcharan Singh v. S. Sajjan Singh* wherein it was held that such approach would defeat and frustrate the very laudable and sacrosanct object of the Act for maintaining purity of the electoral process.

71. All the aforesaid witnesses, namely, PWs 1, 4, 5, 6 and 7, therefore, who can clearly be treated as non-partisan witnesses and were competent to depose as to how the pension applications were sanctioned, have not supported the case of the respondent that any illegality had been committed by the appellant while distributing pension which started from the year 2001 and continued up to March 2002. In spite of this, the High Court has not given any weightage to the depositions of these witnesses but has chosen to rely only on the evidence of PW 9, Ram Singh, PW 10, Jaspal Singh, PW 11, Devinder Singh and PW 12, Harchand Kaur who can clearly be treated as interested witnesses. The depositions of these witnesses clearly stand contradicted by the evidence of PW 1, Child Development Project Officer, Dhuri who had deposed and stated the procedure and the manner in which the application for grant of pension had to be approved. As indicated hereinabove, she has stated that the application had to be submitted to the Child Development Project Officer for grant of pension and the same was forwarded to the Sub-Divisional Magistrate who is the sanctioning

authority and after sanction was accorded by the Sub-Divisional Magistrate, the pensions are issued. It is difficult to appreciate as to how the statement of this witness can be treated less trustworthy than PW 10 Jaspal Singh who was the Sarpanch and claims to have identified the signature of the appellant herein when the competent authority, PW 1, Child Development Project Officer could not recognise the signature of the appellant. PW 1, Child Development Project Officer, Dhuri in comparison to PW 10 was more competent who is a Sarpanch and cannot be treated to be the competent authority to sanction the application for grant of pension who could be relied upon by the High Court when the competent authority, Child Development Project Officer has not supported the evidence of PW 10. The Sarpanch, PW 10 Jaspal Singh as per his own version was a supporter of the Party to which the respondent belonged and hence the credibility of this witness cannot be more weighty than the credibility of PW 1, Child Development Project Officer who was competent to approve the application after which it was forwarded to the Sub-Divisional Magistrate for grant of pension. The value of the evidence of PW 10 definitely, therefore, cannot be treated to be more weighty and worthy of credence than the evidence of PW 1.

75. Thus, we have noticed serious infirmities, inconsistencies in the evidence of the three witnesses i.e. PW 9, PW 10 and PW 11 relied upon by the High Court in support of the case of the respondent herein who could not be treated as independent and trustworthy witnesses as against PW 1, PW 2, PW 4, PW 5 and PW 6 discussed hereinbefore who were the competent authorities/officials to sanction pension applications as also in regard to grant of appointment to Anganwadi workers in the year 2001 when the appellant was a Social Security Minister and not a candidate in the election so as to brush aside their evidence and prefer to rely upon the evidence of PW 9, PW 10 and PW 11 which were extremely shaky, subjective and fragile. Besides this, the High Court has clearly mixed up the alleged charge of corrupt practice which pertains to the period prior to the filing of nomination of the appellant which was on 25-1-2002 and had been pleased to set aside the election of the appellant not after a careful and meticulous scrutiny of the evidence but on an overall view that the appellant had indulged in corrupt practice on the evidence primarily of three witnesses only whose testimony were neither independent nor free from inconsistencies and at the most were general in nature.

76. Thus, on a threadbare scrutiny of the evidence which we have carefully analysed, it is not difficult to notice that the election of the appellant could not have been set aside only on the testimony of PW 9, PW 10, PW 11 who had failed to stand the test of scrutiny to the extent that even though the appellant was alleged to have indulged in corrupt practice, the same for the reasons assigned hereinbefore do not lead to the irresistible conclusion that the appellant had indulged in corrupt practice merely on account of the fact that he had distributed old age pension or handicapped and widow pension to the voters of his constituency although he was the Minister holding the portfolio of Social Security Minister within whose domain lay the approval and distribution of pension which

was in clear discharge of official duty. The alleged case that this was done even after he ceased to be a Minister and after he had filed his nomination for contesting election, could not be proved with unimpeachable evidence since there was no reason for the appellant to ensure compliance with formality of filling pension forms for distribution of cash as he had ceased to be a Minister on those dates.

(xii) L.R. Shivaramagowda, Etc. Vs. T.M. Chandrashekar Etc., :

18. We shall now proceed to the second limb of the argument of the appellants counsel. The High Court has held that the appellant had not maintained a true and correct account of expenditure incurred or authorised and the same amounted to corrupt practice. Corrupt practices have been set out in Section 123 of the Act. According to the first respondent, the appellant is guilty of a corrupt practice described in sub-section (6) of Section 123. Under that sub-section, the incurring or authorising of expenditure in contravention of Section 77 of the Act is a corrupt practice. Section 77 provides that every candidate at an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent and that the accounts shall contain such particulars as may be prescribed. Rule 86 of the Conduct of Elections Rules, 1961 sets out the particulars to be contained in the account of election expenses. Sub-sections (1) and (2) of Section 77 deal only with the maintenance of account. Sub-section (3) of Section 77 provides that the total of the election expenses referred to in sub-section (1) shall not exceed such amount as may be prescribed. Rule 90 of the Conduct of Elections Rules prescribes the maximum limit for any Assembly Constituency. In order to declare an election to be void, the grounds were set out in Section 100 of the Act. Sub-section (1)(b) of Section 100 relates to any corrupt practice committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. In order to bring a matter within the scope of sub-section (1)(b), the corrupt practice has to be one defined in Section 123. What is referred to in sub-section (6) of Section 123 as corrupt practice is only the incurring or authorising of expenditure in contravention of Section 77. Sub-section (6) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section (3) of Section 77, i.e., the incurring or authorising of expenditure in excess of the amount prescribed. It cannot by any stretch of imagination be said that non-compliance with Sections 77(1) and (2) would also fall within the scope of Section 123(6). Consequently, it cannot fall u/s 100(1)(b). The attempt here by the first respondent is to bring it within Section 100(1)(d)(iv). The essential requirement under that sub-section is that the result of the election insofar as it concerns the returned candidate has been materially affected. It is needless to point out that failure on the part of the returned candidate to maintain accounts as required by Sections 77(1) and (2) will in no case affect, and much less materially, the result of the election.

(xiii) Sri Uma Ballav Rath Vs. Sri Maheshwar Mohanty and Others, :

7. The above finding, however, does not end the matter. For the appellant to succeed in the election petition u/s 100(1)(d)(iv) of the Act, he had to establish that the result of the election insofar as it concerns the returned candidate had been materially affected by non-compliance with any of the provisions of the Constitution or of the Act or of any rules or orders made under the Act. Indeed, there has been non-compliance with the provisions of the Constitution and of the Act and the Rules and Orders made under the Act but the evidence led by the appellant at the trial of the election petition falls absolutely short of establishing that the result of the election insofar as it concerns the returned candidate had been materially affected thereby. The evidence on the record does not show that the result of the election had been materially affected by allotment of the symbol wheel to Respondent 1. The appellant failed to establish the allegation that the result of the election had been materially effected insofar as the returned candidate is concerned by the action of the Election Commission and the Returning Officer. The learned Single Judge found that the statements of the witnesses were vague, general and conjectural in nature and did not establish the charge made by the appellant. We have been taken through the evidence of the witnesses by learned counsel for the parties and we are not persuaded to take a different view than the one taken by the High Court either. To avoid an election, it is necessary that cogent evidence is led in support of the charge. An election cannot be set aside on presumptions, surmises or conjectures. Clear and cogent proof in support of the allegations is essential. In the instant case, the evidence led by the appellant runs hopelessly short of establishing the charge u/s 100(1)(d)(iv) of the Act. In this view of the matter, the finding recorded by the learned Single Judge of the High Court on Issue 1 against the appellant cannot be found fault with. We, therefore, do not find any merit in this appeal. The appeal consequently fails and is hereby dismissed but without any order as to costs.

(xiv) Mangani Lal Mandal Vs. Bishnu Deo Bhandari, :

11. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate u/s 100(1)(d)(iv). The sine qua non for declaring the election of a returned candidate to be void on the ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(d)(iv). For the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the

three decisions of this Court in: (1) Jabar Singh v. Genda Lal; (2) L.R. Shivaramagowda v. T.M. Chandrashekar; and (3) Uma Ballav Rath v. Maheshwar Mohanty.

12. Although the impugned judgment runs into 30 pages, but unfortunately it does not reflect any consideration on the most vital aspect as to whether the non-disclosure of the information concerning the appellants first wife and the dependent children born from that wedlock and their assets and liabilities has materially affected the result of the election insofar as it concerned the returned candidate. As a matter of fact, in the entire election petition there is no pleading at all that the suppression of the information by the returned candidate in the affidavit filed along with the nomination papers with regard to his first wife and dependent children from her and non-disclosure of their assets and liabilities has materially affected the result of the election. There is no issue framed in this regard nor is there any evidence let in by the election petitioner. The High Court has also not formed any opinion on this aspect.

13. We are surprised that in the absence of any consideration on the above aspect, the High Court has declared the election of the returned candidate to the 15th Lok Sabha from Jhanjharpur Parliamentary Constituency to be void. The impugned judgment of the High Court is gravely flawed and legally unsustainable. As a matter of law, the election petition filed by the election petitioner deserved dismissal at the threshold yet it went into the whole trial consuming Courts precious time and putting the returned candidate to unnecessary trouble and inconvenience.

(xv) Jabar Singh Vs. Genda Lal, :

10. It would be convenient if we take a simple case of an election petition whether the petitioner makes only one claim and that is that the election of the returned candidate is void. This claim can be made u/s 100. Section 100(1)(a), (b) and (c) refer to three distinct grounds on which the election of the returned candidate can be challenged. We are not concerned with any of these grounds. In dealing with the challenge to the validity of the election of the returned candidate u/s 100, it would be noticed that what the election petition has to prove is not only the existence of one or the other of the grounds specified in clauses (i) to (iv) of Section 100(1)(d), but it has also to establish that as a result of the existence of the said ground the result of the election insofar as it concerns a returned candidate has been materially affected. It is thus obvious that what the Tribunal has to find is whether or not the election insofar as it concerns the returned candidate has been materially affected, and that means that the only point which the Tribunal has to decide is has the election of the returned candidate been materially affected? And no other enquiry is legitimate or permissible in such a case. This requirement of Section 100(1)(d) necessarily imports limitations on the scope of the enquiry. Confining ourselves to clause (iii) of Section 100(1)(d), what the Tribunal has to consider is whether there has been an improper reception of votes in favour of the returned candidate. It may

also enquire whether there has been a refusal or rejection of any vote in regard to any other candidate or whether there has been a reception of any vote which is void and this can only be the reception of a void vote in favour of the returned candidate. In other words, the scope of the enquiry in a case falling u/s 100(1)(d) (iii) is to determine whether any votes have been improperly cast in favour of the returned candidate, or any votes have been improperly refused or rejected in regard to any other candidate. These are the only two matters which would be relevant in deciding whether the election of the returned candidate has been materially affected or not. At this enquiry, the onus is on the petitioner to show that by reason of the infirmities specified in Section 100(1)(d)(iii), the result of the returned candidate's election has been materially affected, and that, incidentally, helps to determine the scope of the enquiry. Therefore, it seems to us that in the case of a petition where the only claim made is that the election of the returned candidate is void, the scope of the enquiry is clearly limited by the requirement of Section 100(1)(d) itself. The enquiry is limited not because the returned candidate has not recriminated u/s 97(1); in fact, Section 97(1) has no application to the case falling u/s 100(1)(d)(iii); the scope of the enquiry is limited for the simple reason that what the clause requires to be considered is whether the election of the returned candidate has been materially affected and nothing else. If the result of the enquiry is in favour of the petitioner who challenges the election of the returned candidate, the Tribunal has to make a declaration to that effect, and that declaration brings to an end the proceedings in the election petition.

(xvi) Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi, :

28. In para 53(1)(E) of the election petition the appellant stated that as per Section 123(7) of the Representation of People Act, Rajiv Gandhis workers with his consent took help from the government officers and high police officers and people of government departments for securing votes of the electors. These officials flouted all rules and laws particulars of which are as under. Thereafter particulars of the help taken from the government officers are detailed in sub- paras (1) to (8). A corrupt practice as contemplated by Section 123(7) contemplates obtaining or procuring by a candidate or his election agent, assistance from the government servants belonging to the classes specified in sub-section (7) of Section 123 for the furtherance of the prospect of the candidates election. In order to constitute a corrupt practice u/s 123(7), it is essential to clothe the petition with a cause of action which would call for an answer from the returned candidate and it should therefore plead mode of assistance, measure of assistance and all facts pertaining to the assistance. The pleading should further indicate the kind or form of assistance obtained and in what manner the assistance was obtained or procured or attempted to be procured by the candidate for promoting the prospect for his election. The election petitioner must state with exactness the time of assistance, the manner of assistance and the persons from whom assistance was obtained or procured by the candidate as held by this Court in Hardwari Lal v. Kanwal Singh and Azhar

Hussain v. Rajiv Gandhi. Allegations contained in sub-paras 1, 2 and 3 of para 53(1)(E) raise a grievance that though the appellant had not appointed any counting agent but still certain persons acted as his counting agents and the Returning Officer did not hold any inquiry into his complaint. Sub-para 4 states that in the Amethi Constituency, there was fear psychosis and it looked as if the police and other government officials wanted to help Rajiv Gandhi. Sub-paras 5 to 8 refer to certain illegalities and irregularities alleged to have been committed by certain persons on the polling day in helping voters to cast their votes and it further alleged that some persons cast votes 100 to 200 times and their signatures were not obtained. These allegations do not make out any charge of corrupt practice within the provisions of Section 123(7) of the Act. As regards para 53(1)(G) it purports to allege a corrupt practice u/s 123(6) of the Act on the ground that Rajiv Gandhi spent Rs. 3,15,500 in excess of the amount permitted under the law. We have already discussed this matter earlier.

(xvii) Jeet Mohinder Singh Vs. Harminder Singh Jassi, :

26. It was submitted by the learned Senior Counsel for the appellant that the respondent had summoned Rajkumar Gupta, Tehsildar along with the record but the witness was given up without being examined. He submitted that an adverse inference should be drawn against the respondent for non-examination of witness summoned by him. The learned Senior Counsel for the respondent has pointed out that the witness was given up as being unnecessary. We have already observed that the onus of proving the averments made in the election petition did lay on the appellant. It was for the appellant to have examined Rajkumar Gupta. If the appellant has failed in discharging his own onus, he cannot bank upon the plea of non-examination of a witness by the respondent which witness was essentially a witness to be examined by the appellant in the facts and circumstances of the case. The appellant cannot be permitted to derive strength from the weakness, if any, of the respondent.

(xviii) Quamarul Islam Vs. S.K. Kanta and others, :

48. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and Publisher, PW 4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act. The learned trial Judge could not treat the newspaper reports as duly proved only by the production of the copies of the newspaper. The election petitioner also examined Abrar Razi, PW 5, who was the polling agent of the election petitioner and a resident of the locality in support of the correctness of the reports including advertisements and messages as published in the said newspaper. We have carefully perused his testimony and find that his evidence

also falls short of proving the contents of the reports of the alleged speeches or the messages and the advertisements, which appeared in different issues of the newspaper. Since, the maker of the report which formed basis of the publications, did not appear in the court to depose about the facts as perceived by him, the facts contained in the published reports were clearly inadmissible. No evidence was led by the election petitioner to prove the contents of the messages and the advertisements as the original manuscript of the advertisements or the messages was not produced at the trial. No witness came forward to prove the receipt of the manuscript of any of the advertisements or the messages or the publication of the same in accordance with the manuscript. There is no satisfactory and reliable evidence on the record to even establish that the same were actually issued by IUML or MYL, ignoring for the time being, whether or not the appellant had any connection with IUML or MYL or that the same were published by him or with his consent by any other person or published by his election agent or by any other person with the consent of his election agent. The evidence of the election petitioner himself or of PW 4 and PW 5 to prove the contents of the messages and advertisements in the newspaper in our opinion was wrongly admitted and relied upon as evidence of the contents of the statement contained therein.

(xix) Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, :

43. From this case it follows that to prove a corrupt practice in an agent is not enough, the belief of the candidate himself must be investigated with a view to find out whether he made a statement which he knew to be false or did not believe to be true. When we come to the facts of the case in hand we shall find that most of the statements were made by a newspaper editor in the normal course of running a newspaper. Some of the passages which are criticised before us were made as news items and some others were put in the editorial. It is to be remembered that the newspaper ran a special column called George Fernandez's Election Front. No article or comment in that column has been brought before us as an illustration of the corrupt practice. A newspaper publishes news and expresses views and these are functions normal to a newspaper. If the same news appeared in more than one paper, it cannot be said that each editor acted as agent for Mr. Fernandez and by parity of reasoning a line must be drawn to separate the acts of Mr. Atrey in running his newspaper and in acting as an agent. Mr. Atrey was not a wholetime agent of Mr. Fernandez so that anything that he said or did would be treated as bearing upon the belief of Mr. Fernandez as to the truth of the statements made by Mr. Atrey. Therefore, every act of Mr. Atrey could not be attributed to Mr. Fernandez so as to make the latter liable. We have therefore to analyse these articles to find out which of them answers the test which we have propounded here. But the fact remains that the case was pleaded on the basis of corrupt practices on the part of an agent but by the amendment the candidate was sought to be charged with the corrupt practices personally. As there was no such charge or ground in the original petition and as the application for amendment was made long after the

period of limitation was over the amendment could not be allowed. Accordingly we ruled out the amendments concerning the personal speeches of Mr. Fernandez and the article in the Blitz.

47. ... It is well-known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible.

(xx) Azhar Hussain Vs. Rajiv Gandhi, :

17. The High Court observed:

The contention of the learned counsel for the respondent is that there is no pleading that Mr. Beg was a person in the service of the government as, according to the learned counsel, the Chairman of the Minorities Commission is not a person in the service of the government. Learned counsel for the petitioner says that the petitioner had specifically pleaded that Mr. Beg was a gazetted officer which implies a pleading that he was in the service of the government. Learned counsel for the respondent says that simply because a person is a gazetted officer, it is not necessary that he must also be a government servant because the appointment of so many persons is gazetted and yet some of them may not be government servants. Be that as it may, the fact remains that the petitioner had not stated in the pleading that Mr. Beg was a person in the service of the government as specifically required by Section 123(7) of the Act. This requirement is a requirement of the statute and is, therefore, a material fact within the meaning of Section 83(1)(a) of the Act. Similarly, the statement that the services of Mr. Beg were procured and obtained by the respondent, his agents and other persons with the consent of the respondent is clearly vague as discussed above. It was incumbent upon the petitioner to specify which of the three alternatives he meant to plead; in particular it was necessary for him to indicate the names of the respondents agents and other persons to enable the respondent to know that what was the case which he was expected to meet. Learned counsel for the respondent further contended that the petitioner has not set out the exact words used by Mr. Beg in his speech; the expression a speech praising the respondent and comparing his entry into politics as the birth of new Arjuna is not what Mr. Beg might have said. In the case of K.M. Mani v. P.J. Antony the speech made by a police officer exhorting the electors in an election meeting to support a candidate was questioned. It was held that a mere statement of the making of the speech or exhortation was not enough, and that transcript of the alleged speech or contemporaneous record of the points or at least substance of the speech should have been made available. In these circumstances the proposed pleading in this paragraph does not set out the material facts and, therefore, constitutes an incomplete cause of action u/s 123(7) of the Act.

Whether the High Court was right in taking the aforesaid view

18. The averments contained in para 4 pertaining to Ground I do not satisfy the test prescribed in *Manubhai Amorsey v. Popatlal Manilal Joshi* and *Hardwari Lal v. Kanwal Singh*. The most important test which remained unsatisfied is as regards the omission to satisfy in what manner the assistance was obtained and procured by the election candidate for promoting the prospects of his election. All that has been stated is:

His services were procured and obtained by the respondent, his agents and other persons with the consent of the respondent with a view to assist the furtherance of the prospects of the respondents election....

It is not mentioned as to who procured or obtained the services of Shri Beg, in what manner he obtained the services and what were the facts which went to show that it was with the consent of the respondent. Unless these essential facts which would clothe the petition with a cause of action and which will call for an answer from the returned candidate are pleaded as per the law laid down in *Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi* it cannot be said that the petition discloses a cause of action in regard to this charge. In the absence of these material facts and particulars court could not have rendered a verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition. It is not sufficient to show that a government servant had appeared on the public media to praise one of the candidates. It must also be shown that the assistance of the government servant was obtained either by the respondent or his agent or by any other person with the consent of the election candidate or his election agent. The averments made in the petition do not show (i) who had obtained or procured the assistance of Shri Beg; (ii) how he had obtained or procured the assistance of Shri Beg; and (iii) how it was said that it was with the consent of the respondent or his election agent. Nor is it shown which, if any, facts went to show that it was in furtherance of the prospects of the respondents election. In the absence of material facts and particulars in regard to these aspects, the petition would not disclose the cause of action. The High Court was therefore, perfectly justified in reaching this conclusion. The petition also does not disclose the exact words used in the speech; or the time and date of making such a speech. Now, unless the relevant or offending passage from the speech is quoted, it cannot be said what exactly Shri Beg had said, and in what context, and whether it was calculated to promote the election prospects of the respondent. Be that as it may, inasmuch as these material facts and particulars to show that the services of Shri Beg were procured by someone with the consent of the respondent or his election agent are not there, the averments pertaining to the charge do not disclose a cause of action. Unless the nexus between the appearance of Shri Beg on the media and the prior consent of the respondent or his election agent in regard to what he was going to say and the purposes for which he was going to say is set out in the material particulars it cannot be said that it disclosed a cause of action and the

test laid down in Manubhai Nandlal case as also Hardwari Lal case is satisfied. The High Court was therefore justified in taking the view that it has taken. We may, in passing, mention a point made by learned counsel for the respondent. It was submitted that the averment must also mention whether the interview was a live one telecast after the date of filing of the nomination. If it was one recorded prior to the said date it may not be of any consequence. This argument also requires consideration but we do not propose to rest our conclusion on this aspect as it is not necessary to do so.

(xxi) Hardwari Lal Vs. Kanwal Singh, :

16. It has to be noticed that the different expressions obtaining, procuring, abetting or attempting to obtain or procure are various forms of corrupt practices. It has to be found as to whether the allegation of obtaining assistance amounts to an allegation of fact. It will be well settled that general expressions like fraudulently, negligently or maliciously in pleadings do not amount to any allegation of fact. A fact is after all not a mere word.

17. The provisions of the aforesaid section indicate these heads of corrupt practices. First, the obtaining by a candidate or his agent or by any other person any assistance (other than the giving of vote) for the furtherance of the prospects of that candidates election from any person in the service of the Government as mentioned in the section. Second, the procuring by a candidate or his agent or by any other person with the consent of the election petitioner any assistance (other than the giving of vote) for the furtherance of the prospects of that candidates election. Third, the abetting by a candidate or his agent or by any other person with the consent of the candidate or his election agent any assistance (other than the giving of vote) for the furtherance of the prospects of that candidates election as mentioned. Fourth, the attempting to obtain or procure by a candidate or his agent, or by any other person with the consent of a candidate or his election agent any assistance (other than the giving of vote) for the furtherance of the prospects of that candidates election. Fifth, the assistance that is forbidden or prohibited by the statute is any assistance other than the giving of vote. It is clear that the four different heads of corrupt practices are (a) obtaining, (b) procuring, (c) abetting, and (d) attempting to obtain or procure assistance.

18. Therefore material facts are to be alleged as to whether the candidate obtained or procured or abetted or attempted to obtain or procure any assistance other than the giving of vote. In para 16 of the election petition it is alleged that the appellant committed the corrupt practice of obtaining and procuring or attempting to obtain and procure assistance for the furtherance of the prospects of his election from the persons mentioned there. Reading para 16 of the election petition one will search in vain to find out as to whether the allegations against the appellant are in regard to the assistance under both heads or either head from each of the six persons mentioned there. One will speculate as to whether the appellant obtained and procured or attempted to obtain and procure

assistance from each or some of the persons mentioned there. Obtaining or procuring or attempting to obtain or procure assistance are separate and independent forms of corrupt practice. One will guess as to whether the allegations are that the appellant committed all or one or more of the corrupt practices of obtaining, procuring, attempting to obtain or procure assistance from each of the persons mentioned there. One will also conjecture and hazard as to what assistance was obtained or procured or attempted to obtain or procure from each of the persons mentioned there, for the furtherance of the prospects of that candidates election. The giving of vote is not within the mischief of corrupt practice. It cannot be understood from the petitioner whether the giving of vote is the assistance alleged. It is, therefore, apparent that the appellant who was charged by the election petitioner with corrupt practice should be told in the election petition as to what assistance he sought. The type of assistance, the manner of assistance, the time of assistance, the person from whom assistance is sought are all to be set out in the petition. There is no allegation in the petition about the actual and the specific assistance with which the appellant can be charged in violation of the provisions of the Act. Nor is there any statement in the election petition describing the manner in which the prospects of the election were furthered and the way in which the assistance was rendered. The allegations against the appellant were in relation to six persons. Therefore, it was essential and imperative for the election petitioner to set out with exactitude and precision the type of assistance as also the manner in which assistance was obtained or procured from each person. The time, the date and the place of the assistance were also required to be set out in the particulars. Thus it had to be alleged as the material facts as to what assistance the appellant obtained or procured or abetted or attempted to obtain or procure from which person and how the assistance furthered the prospects of the appellants election. If all the four variants and ingredients were to be charged against the appellant these had to be set out as statements of material facts in relation to each person.

24. In the present case, it is not necessary to go to the question as to whether the High Court was justified in disallowing the particulars and in refusing to recall the witnesses for the reasons given in the order, because para 16 of the election petition on which the High Court relied to declare the election of the appellant void does not amount to an election petition on the grounds mentioned in Section 123(7) of the Act.

(xxii) K.M. Mani Vs. P.J. Antony and Others, :

32. In arriving at this conclusion we have not so far taken into account the statement of Joseph Thomas (PW 6) who also has been examined on behalf of the election petitioner. He has said that while he and the Chancellor Priest were talking, someone from the laymen asked for his own view about Manis election and he said that he had heard that he would succeed. He has further stated that when another person asked him to say something as he was in the Police department, he said that if anything had to be said about it, he will have to give

up his cap and uniform. This version of Joseph Thomas (PW 6) is substantially in accord with the statement of Dr. Sebastian Vayalil (PW 2). We have no reason to discard it merely because it emanates from a person who has been named for the commission of the corrupt practice in the order u/s 99 of the Act. Joseph Thomas was subjected to a very long cross-examination, but nothing has been elicited to shake his testimony. It may be that his explanation that he happened to be present at the meeting because he had gone there to have a talk with the Chancellor Priest about the proposal for his brothers marriage, may not be quite satisfactory, but his mere presence at that meeting, or expression of his personal views there, to which reference has been made above, could not possibly amount to the commission of a corrupt practice under sub-section (7) of Section 123 of the Act by the appellant.

41. But as has been shown earlier, there is no satisfactory evidence to prove that Joseph Thomas spoke anything at the meeting for furtherance of the appellants electoral prospects or that he went there and spoke at his instance. It will be recalled that the Bishop has categorically stated that he never said to whom votes should be cast and he did not even intend that votes should be cast for the appellant. Dr. Joseph Chovethuikunnel (PW 4) has also stated that the Bishop did not even say who among the candidates (who were all Roman Catholics) should succeed. The trial court was not therefore justified in reaching the conclusion that Joseph Thomas intentionally took the great risk of committing an offence u/s 129(2) and of losing his job out of fear or favour of the appellant. But even if all the premises set up by the trial court in this connection were accepted as correct, it would not follow, as an inevitable conclusion that they would establish a nexus between the two, for it may well be that Joseph Thomas did all that at the instance of someone else, or out of his own desire to curry favour with the appellant in the hope of some future advantage some time. At any rate that possibility could not be excluded, and the trial court erred in basing its finding on a mere probability. It will be enough to make a reference to Mohan Singh v. Bhanwarlal and Samant N. Balakrishna v. George Fernandezbin this connection. In Mohan Singh case it has been held that the onus of proving the commission of a corrupt practice is not discharged on proof of mere preponderance of probability as in a civil suit, and it must be established beyond reasonable doubt by evidence which is clear and unambiguous. In Balakrishna it has been held that while consent may be inferred from circumstantial evidence, the circumstances must point unerringly to the conclusion and must admit of no other explanation, for a corrupt practice must be proved in the same way as a criminal charge. Out of the other decisions of this Court to the same effect reference may be made to R.M. Seshadri v. G. Vasantha Pai; Bhagwan Datta Shastri v. Ram Ratanji Gupta and Balwan Singh v. Prakash Chand. The election petitioner must therefore exclude every hypothesis except that of guilt on the part of the returned candidate or his election agent, and the trial court erred in basing its finding on a mere probability.

(xxiii) M.K. Azhagiri Vs. A. Lazar and Others, :

28. This Court cannot step into the prohibited area of considering the correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition is to be rejected.

36. The above issues are to be decided only after trial and based on evidence. Considering the aforesaid circumstances, this application has been filed with an ulterior motive of avoiding the regular proceedings of the Election Petition, especially when no substantial grounds are available to the applicant to strike off the pleadings and reject the Election Petition, as the paras 8 to 17 in the Election Petition do not disclose any pleadings to be struck out, which are unnecessary, scandalous, frivolous or vexatious, or which may tend to prejudice, embarrass or delay the fair trial of the suit, or which are otherwise an abuse of the process of the Court, as alleged. Instead, the said paras are the material facts coupled with full particulars, as stated above, which are to be tested during the course of trial. The decisions relied upon by the learned Senior Counsel for the applicant are not relevant for consideration in view of my findings as above.

Mr. C. Kanagaraj, learned counsel for the ninth respondent, has adopted the arguments of the learned Senior Counsel for the first respondent.

5. I have heard the learned counsel for the parties and gone through the voluminous records, coupled with the decisions relied upon.

6. On 15.07.2011, upon hearing the learned counsel for the parties, this Court framed the following issues, for trial:

1. Whether the Election Petition is maintainable and can be taken up for disposal when the substituted petitioner was not a contestant in the election and does not have any direct knowledge about the alleged facts raised by the deceased original petitioner when all the documents filed in support of the petition are attested to be true by the substituted petitioner?

2. Whether the Election Petition is maintainable when the petitioner has not complied with the procedure laid down u/s. 83(1)(c) of the Representation of the People Act, 1951, and, if so, whether the Election Petition is defective?

3. Whether the first respondent, through his agents, has indulged in bribing the electors of Madurai Parliamentary Constituency, by distributing money to the electors and also to women folk, who gave "Aarthy" to the first respondent during his election campaigning, coupled with supplying sarees and dhotis, to exercise their franchise in his favour, and, if so, whether such act amounted to a "corrupt practice" u/s 123 of the Representation of the People Act, 1951.

4. Whether the first respondent, in furtherance of prospects of his election, obtained and procured the assistance of the Public Relations Officer of the Government of Tamil Nadu, who was in service and had canvassed for the first respondent by sending communications through e-mail to newspapers with

photographs, and, if so, whether that amounted to a corrupt practice u/s 123(7) of the Representation of the People Act, 1951?

5. Whether the first respondent, with his influence, obtained and procured the assistance of the Government of Tamil Nadu, in furtherance of prospects of his election and made the State Transport Corporation to ply its buses in the routes covering villages within the Madurai Parliamentary Constituency, to induce the electors from those villages to cast their votes in his favour?

6. Whether the first respondent obtained and procured the assistance of the Madurai Police Commissioner Mr. Nandabalan, in furtherance of prospects of his election, to abuse his official position to woo the voters?

7. Whether the first respondent has canvassed the electors of Madurai Parliamentary Constituency to vote in his favour for "Rising Sun" symbol in local private TV Channels viz., Media TV and Krishna TV, at the Meenakshi Amman Temple Kumbabishekam on 08.04.2009, after the code of conduct for the election has come into force, and, if so, whether it amounted to non-compliance of the code of conduct of election?

8. Whether the documents filed along with the Election Petition are sufficient to prove the alleged involvement of the first respondent in the election misconduct and corrupt practice?

9. Whether the election of the first respondent as returned candidate from No. 32, Madurai Parliamentary Constituency, for the election held on 13.05.2009, is liable to be declared as null and void on the grounds of corrupt practice committed by him and his men and also for non-compliance of the code of conduct of election?

7. During the course of trial, on the side of petitioner, P.Ws. 1 to 9 are examined and Exs. P-1 to P-29 filed. On the side of respondents, R.Ws. 1 to 6 are examined and Ex. R-1 is marked. On behalf of the Court, C.W. 1 is examined and Exs. C-1 to C-7 are filed.

8. As the contentions of the learned counsel for the parties are also based on the above issues, let me examine the issues, one after another.

9. Issue No. 1:

In view of the order of this Court in O.A. No. 1358 of 2009, dated 06.09.2010, allowing the application, substituting the applicant therein in place of the deceased election petitioner late P. Mohan, the Election Petition is maintainable.

10. Issue No. 2:

Following the order of the Supreme Court in SLP (Civil) No. 110 of 2012, dated 16.08.2012, the petitioner has complied with the procedure laid down u/s. 83(1) (c) of the Representation of the People Act, 1951, and, hence, the Election Petition is maintainable.

11. Issue Nos. 3 to 9:

11.1. Since the Issues 3 to 9 pertain to "corrupt practices" as contemplated u/s 123 of the Act, they are being dealt with altogether.

11.2. u/s 123, the following shall be deemed to be the corrupt practices for the purposes of the Act:

(1) Bribery, that is to say

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation. For the purposes of this clause the term gratification is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in Section 78.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.

(3-A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

[(3-B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation. For the purposes of this clause, sati and glorification in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987.]

(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidates election.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided u/s 25 or a place fixed under sub-section (1) of Section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation. In this clause, the expression vehicle means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The incurring or authorising of expenditure in contravention of Section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidates election, from any person whether or not in the service of the Government and belonging to any of the following classes, namely:

(a) gazetted officers;

(b) stipendiary judges and magistrates;

(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and

(g) such other class of persons in the service of the Government as may be prescribed:

(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections:

Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason to the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidates election.

(8) Booth capturing by a candidate or his agent or other person.

Explanation. (1) In this section the expression agent includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidates election if he acts as an election agent of that candidate.

(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union Territory) or of a State Government shall be conclusive proof

(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service such person ceased to be in such service with effect from the said date.

(4) For the purposes of clause (8), booth capturing shall have the same meaning as in Section 135A.

12. In order to determine the above issues regarding the alleged corrupt practices by the first respondent, it is a sine qua non for this Court to appreciate the evidence.

13. According to P.W. 1, A. Lazar, the substituted petitioner, who is a Member of the Communist Party of India (Marxist), he is personally aware of the events that took place during the Parliamentary Elections in 2009; the first respondent, his

party men and his persons divided the voters in a group of 50 and deputed a person for each group to distribute Rs. 500/- kept in an envelope and distributed the same to each voter; the first respondent also distributed tokens to each house; by handing over the tokens by the voters to their party's election office or to the house of DMK members, the money was distributed to those voters who handed over the tokens and, apart from that, the first respondent also distributed dhotis and sarees to the voters in their houses. He has also stated that his party men, who tried to prevent the said illegal distribution by the first respondent, the first respondent's party men attacked his party cadres with sticks, as a result of which they were seriously injured and hospitalised; on 03.05.2009, the first respondent and his party men distributed cash to the voters throughout the Parliamentary Constituency and some of the envelopes containing cash were seized by his party men and were handed over to the police; after coming to know of this malpractice, one Sundaram lodged a complaint to the Election Commissioner; the Public Relations Officer of the Government of Tamil Nadu misused the official machinery of the Government and canvassed for the first respondent. P.W. 1 would further depose that a few days prior to the election, the first respondent, being the son of the then Chief Minister, misused his influence by introducing new bus routes in the mofussil areas. The petitioner, in his cross-examination, to a suggestion put forth to him, admits that the complaints viz., Exs. P-2 and P-4 to P-8 are office copies and are without acknowledgement from the addressees. To a question, the petitioner answers that in the said complaints, the name of the first respondent is not mentioned, but says that DMK Party means the first respondent. The petitioner also adds that there was also a newspaper report that pursuant to his complaint, the Commissioner of Police, Madurai, was transferred. In this connection, it is to be stated that the petitioner was not the complainant with regard to any case. Therefore, it is a discrepancy.

14. The examination of P.W. 2, R. Annadurai, who is the State Committee Member of Communist Party of India (Marxist), would indicate that he gave a complaint to the Chief Election Commissioner on 03.05.2009 under Ex. P-2; he has also given complaints to Chief Electoral Officer and Election Observers under Exs. P-4 to P-7; in his complaint, Ex. P-5, to the Chief Electoral Officer, he has stated about the occurrence of the incidents and those incidents were informed to him by his party leaders. From this, it is to be understood that he has not personally witnessed the incidents, which he mentioned in the complaint, but the same are at the instance of some third parties. This witness further states that pursuant to his complaints Exs. P-4, P-6 and P-7, the officers informed him that they have taken steps; the Election Observers also seized sarees from certain places; the Public Relations Officer of Madurai released photographs and news reports in the newspapers about the support given by a Christian Organisation to the first respondent; the PRO of Madurai also sent e-mails to various newspapers; the Kumbabishekam of Madurai Meenakshi Amman Temple was directly telecast by local TV channels and during the said telecast, a message

seeking votes in favour of the first respondent was relayed; on two days viz., 02.05.2009 and 03.05.2009, the first respondent and his party were distributing money to the voters at Keezhvalavu, Othakkadai, P.P. Kulam, P.P. Chavidi, A.A. Road and Alavainagar and when his party men informed about the same to the police, several DMK men were arrested by the police and due to the same, the DMK men attacked his party men with sickles and caused injuries; one of the DMK party men by name Azhagar was arrested by Karimedu Police Station with money and, therefore, this witness says that the first respondent was involved in the election misconduct and he has been elected by indulging in such malpractice. In his cross-examination, this witness adds that Exs. P-11 to P-13 were the slips distributed to the voters on behalf of the first respondent and the voters handed over the same to his local leaders, who, in turn, handed over the same to one R. Vijayarajan. Though this witness says that the voters in Ex. P-14 are those mentioned in Part No. 134 in Serial Nos. 1365 and 1366, he admits that through his party local leader he came to know that Ex. P-14 was given to a voter and he did not know about the same personally. It only means that he had no direct knowledge about the slip being given to a voter and encashment of the same subsequently. To a question, this witness also says that he does not know English language and hence he cannot read Ex. P-2 complaint and it was drafted and prepared as per his instructions by his assistant. He states that he has given complaint to the Election Commission on 03.05.2009 in Ex. P-2 because the first respondent distributed money i.e., Rs. 500/- note to the voters, dhotis and sarees and also there were violent attacks carried out by the DMK party men and that he does not have any proof of sending the complaint in Ex. P-2 to the Election Commission. Though he states that pursuant to his complaint, necessary action was taken, he did not mention what action was taken and against whom it was taken. Though he denied the suggestion that his statement that one DMK worker was deputed for distributing money to every 50 voters is false, he has not proved the same by sufficient evidence, so also P.W. 1, the substituted petitioner. In the cross-examination, P.W. 2 has admitted that in the Election Petition it is not stated that the first respondent distributed money to the voters, but he states the first respondent and DMK party are one and the same and they distributed money to the voters. Significantly, this witness asserts to a question that he has not seen the distribution of money or tokens.

15. The evidence of P.W. 3, B. Vikaraman, would point out that he is the Chief Election Agent of the deceased Mohan, the original election petitioner. This witness states that on 02.03.2009, the Election Commission of India notified the election to the fifteenth Lok Sabha and announced the election schedule and it also notified the Code of Conduct for the election; the President of India issued a Notification on 17.04.2009, notifying the date of filing of nominations, date of scrutiny, date of withdrawal of nominations and the date of issuing final list of candidates. He would add that even before the announcement of the election, the name of first respondent was declared as the candidate of DMK party and he organised several functions including his birthday during which several articles

like sarees and stainless steel pots were distributed to the people in the functions. One aspect to be noted in this regard is that even assuming the first respondent distributed articles as mentioned above before the announcement of the election, it would not be a violation of code of conduct, as the said code would come into effect only after the election schedule is announced and the said code is notified. This witness also spoke to the effect that during the election campaigning money was distributed to the voters on behalf of the first respondent through out Madurai constituency and similarly, sarees and dhotis were also distributed; whenever the people performed aarthy to first respondent, a token was put in the aarthy plate by him and the said token was exchanged for money. He would further depose that he had personally seized 40 covers containing money and handed over the same to B-1 Vilakuthun Police Station along with the boy who was distributing such covers. In this connection, he has not examined the police, to whom he handed over the covers and also the boy, who was handed over, to prove the allegation. The said fact is also not mentioned in the election petition. It would indicate that there is no material pleading to that effect in the election petition.

16. The evidence of P.W. 4, R. Vijayarajan, who was the Area Committee Secretary of Communist Party of India (Marxist) for Jaihindpuram, would be that the first respondent started campaigning from January, 2009, and distributed articles like stainless steel pots, sarees and dhotis; while canvassing votes for him, the first respondent put tokens in the aarthy plates and the said tokens were exchanged for money from the DMK party leaders; he personally witnessed the exchange of tokens for money; putting of Rs. 500/- notes in the covers and distributing the same to the voters; he seized the tokens from the voters and handed over the same to his party leaders and the said seized tokens are Exs. P-11 to P-14. Though this witness says that he has personally witnessed the above incidents, he has not given any complaint to the authorities, instead, it is P.Ws. 2 and 3 that gave the complaints to the authorities. He would also say that right from the beginning of the election process till the end of the same, the malpractices like distribution of tokens, cash and articles like stainless steel pots, sarees, and dhotis were done as per the instruction of the first respondent. While in chief examination this witness deposes that he has seized tokens from the house of one Mallika Selvaraj and he has not given any complaint to the authorities, in cross-examination, he says that he gave a complaint to Jaihindpuram Police Station, but they refused to receive the same. So, there is an inconsistency in the statement of this witness.

17. P.W. 5, P. Radhakrishnan, in his evidence, states that he was a Member of the Election Working Committee of the Communist Party of India (Marxist), and his party started campaigning from 02.03.2009 whereas the DMK Party from 30.01.2009, which was the birthday of first respondent; whenever the first respondent went for door-to-door canvassing for votes, the voters performed aarthy to him and in the aarthy plate, the party leaders, who accompanied the first respondent, put tokens in the aarthy plates and the said tokens were

exchanged by the voters with the Ward Secretary of DMK Party by receiving Rs. 100/- note from him and that the DMK Party deputed one agent for every 50 voters and those agents distributed Rs. 500/- note in covers to each family by visiting door-to-door. In this context, it is to be pointed out that while some witnesses say that it was the first respondent himself put tokens in the aarthy plates, some others say that the party leaders, who accompanied the first respondent, put tokens in the aarthy plates. This is also a discrepancy. He would further depose that in Krishnapuram, one Jagannathan and two others were carrying bundle of covers containing money for distribution to the voters and after seeing that, he seized that bundle containing 26 covers and handed over the same to B-5 Police Station and lodged a complaint, but the police refused to register the same and that Ex. P-14 token is seized by him. This witness also states that when the sarees and dhotis were being distributed in Jaihindpuram, it was brought to the notice of the election officials and the same were seized by them. But, unfortunately, the said election officials were not examined to substantiate the statement. In the absence of examination of the said election officials, who seized the materials, though this witness personally witnessed the incident, no credence can be given to the mere statement of this witness. In the cross-examination, though this witness adds that he handed over only one token, it is not known as to which token he handed over and to whom it is handed over.

18. P.W. 6, R. Lenin, who was a Member of the Election Committee of the Communist Party of India (Marxist), speaks of aarthy, distribution of tokens and exchange of the same for cash of Rs. 100/-, but he states that he did not witness the distribution of tokens by the first respondent. He says that silver plates were distributed in the 35th Ward, Thirumalai Rayar Padithurai Road, and when they protested the same, they were attacked by the first respondent's men and that his party worker Rasool and AIADMK Ward Secretary Devadoss were injured and that the said Rasool lodged a complaint at Vilaku Thoon Police Station. But, the said Rasool and Devadoss are not examined.

19. According to P.W. 7, K. Thilagar, he was the Area Committee Member of the Communist Party of India (Marxist) for Selloor. He spoke about the starting of campaigning by first respondent from 30.01.2009 and distribution of freebies and aarthy tokens. He stated when he and other party workers objected for the same, the DMK party men brutally attacked him and his other party workers C. Thilagar and Muruganandham, by using deadly weapons, namely, knife, aruval and steel pipe and they were all seriously injured and admitted to Madurai Rajaji Hospital for two days; the police came to hospital and enquired with him; he also gave a statement to them and signed the same, but, no action was taken by the police and that his party leaders gave a complaint to the Election Commission of India. In this regard, the doctors, who gave treatment to this witness and other party workers, have not been examined. In addition, the complaint, which is stated to have been given to the Election Commission of India, has not been marked and, pursuant to the said complaint, what is the action taken by the Election Commission is not known.

20. P.W. 8, Periyavar, was a Committee Member of Melur Taluk of Communist Party of India (Marxist). He would depose that at the time of election to the 15th Lok Sabha, he was assigned the election work in the areas in A. Vallalapatti Town Panchayat and Kadaripatti Village Panchayat. He too spoke on similar lines with that of other P.Ws. as to the distribution of money and aarthy tokens. He stated that he seized one of the tokens given to one of his relatives and handed over the same to his party leaders; the token seized by him and the video recording done through mobile phone were recorded on a compact disc and both were handed over to his party leader Mohan; Ex. P-27 is the token seized by him and that he has not filed any complaint with regard to the election malpractice.

21. The examination of P.W. 9, Adakki Veeranan, who was a Member of Election Working Committee of the Communist Party of India (Marxist) for Melur Constituency, would show that the first respondent started his election campaigning from his birthday i.e., 30th January and he distributed sarees, dhotis and vessels and sought for votes for him. He also stated about the distribution of money, aarthy tokens and that voter slips were also distributed at the behest of the first respondent; he has witnessed the putting of tokens in the aarthy plates in his village Padhinettangudi. He further deposed that in Kottampatti Union, he along with his party's alliance parties' workers caught the persons travelling in Tata Sumo vehicle carrying money for distribution to the voters and when they questioned them, they identified themselves as Allaudin and Musthafa and stated that they are distributing money to the voters as directed by Pugazhendhi, who is DMK Union Secretary; thereafter, they took both of them along with the Tata Sumo vehicles to the Police Station and he gave a complaint to the Kottampatti Police; there were totally 32 covers; they opened two covers in front of the police and it contained Rs. 500/- note in each; the police seized those 30 covers as well as the two covers were opened and two Rs. 500/- notes and the above said two persons were arrested and Tata Sumo vehicle was also seized and kept in the Police Station; he pressed for registration of FIR and the police registered FIR upon his complaint. In the cross-examination, this witness has stated that he did not know the date on which the first respondent distributed sarees, dhotis and vessels. Though this witness stated in his chief examination that he seized Tata Sumo vehicle and handed over the same to police, there is no reference to the same in the FIR, Ex. P-28.

22. C.W. 1, Seetharaman, the only Court Witness, in his evidence, would depose that at the time of election to Madurai Parliamentary Constituency in May, 2009, he was the District Collector of Madurai and he was also the District Election Officer for the said election. He produced the relevant records pertaining to the election to Madurai Parliamentary Constituency, held in May, 2009. He would state that on 02.03.2009, the Press Note was issued by the Election Commission of India and, therefore, from that date onwards, the code of conduct came into force. To a question whether did the election see widespread violation of the code of conduct, this witness answers that there were complaints from both sides and the said complaints were forwarded to the Assistant Election Returning Officer

concerned, Tahsildar and Flying Squad and the enquiries were conducted. When this witness was put to a question "Did you receive complaint dated 06.05.2009 and what was the action taken?", he replied that on 06.05.2009, a complaint addressed to the Chief Election Commissioner, New Delhi, had been marked to the District Election Officer, Madurai, and the same was duly forwarded to the Special Deputy Collector, Complaint Monitoring Cell, Madurai, for necessary action. In this regard, he stated that since it was addressed to the Chief Election Commissioner, New Delhi, he did not have the report. To another query. On 18.04.2009, there was a complaint given by the petitioner's party addressed to the District Collector/District Election Officer for the misuse of Public Relation Office functioning in the District Collector Office, Madurai, wherein certain advertisements for the first respondent were issued and what was the action taken upon the said complaint?, this witness would answer that: on receipt of this complaint, Assistant Collector, Madurai, an IAS Officer was appointed to enquire into the allegations; on receipt of the enquiry report from him, it was forwarded to the Chief Electoral Officer and Additional Chief Secretary to Government, Public Elections Department, Chennai, recommending disciplinary action against the officers concerned. When this witness was questioned as to: On 20.04.2009, you received a letter from the Chief Electoral Officer, enclosing a letter received from the District Secretary of the petitioner's party, regarding advertisement in TV Channels and cable network and what was the action taken upon this request, he has stated that the aforesaid letter dated 20.04.2009 is not traceable in the records brought by him. In the cross-examination, this witness stated that based on the complaint dated 18.04.2009, he sent a report dated 19.04.2009 to the Chief Electoral Officer and also on 30.04.2009. In this regard, it is crucial to note that this witness did not say anything about the contents of the reports. So, the said reports too are obscure. To a question as to: What was the action taken pursuant to Ex. P-24, letter, dated 20.04.2009, regarding scrolls running across T.V. Channels during the live telecast of Kumbabishekam of Madurai Meenakshi Amman Temple, this witness answered that on 22.04.2009, a detailed report was sent to the Chief Electoral Officer and the Additional Chief Secretary to Government, Public Election Department. Here again, neither the contents of the said report are mentioned nor are the said reports available for perusal of this Court. When he was put to another question as to: In your letter dated 30.04.2009 addressed to Mr. Naresh Gupta based on the complaint of Annadurai, dated 18.04.2009, against whom action was initiated by you?, this witness stated that action was against the official photographer S. Sekar, an officer of the P.R.O. Office, Madurai, and not against the Public Information Officer. This witness would also add that with regard to the said complaint, an Enquiry Officer was appointed i.e., the Assistant Collector of Madurai, an I.A.S. Officer, and based on his report, appropriate disciplinary action was recommended against the Official Photographer, who misused the password. He would further state that a copy of the communication, dated 08.04.2009, by Naresh Gupta to the Managing Director, Media T.V., was marked to him in the capacity of District Election Officer. Also, it is not mentioned as to the nature of

communication in this regard.

23. R.W. 1 is M.K. Azhagiri, who is the first respondent/returned candidate. He has denied all the allegations levelled by the election petitioner throughout his 36 page long deposition. He also denied of having knowledge with regard to the alleged incidents. However, he admitted that during the campaigning, he visited several places in the constituency and aarthies were performed by women as a welcome gesture. He stated that the District Collector did not issue any general instruction that the candidates should not issue any slip or token and should not distribute money; he did not receive any notice or letter from the Election Commission or the Chief Electoral Officer with regard to any of the complaints and that the Public Relations Officer did not act as agent on his behalf and also did not do any propaganda for the election. He denied of having introduced new buses on various routes from 15.04.2009. He also denied that the local TV Channels acted as his agents in telecasting the scrolls running across the TVs., asking to vote for the symbol "Rising Sun". He further deposed that he had not violated any model code of conduct during the election. However, to a question whether in Ex. C-2 the Returning Officer has specifically stated that issuance of tokens and slips bearing the name of the voter and serial numbers should not be indulged in, this witness has answered in the affirmative. To another query, do you know the persons belonging to Dravida Munnetra Kazhagam referred to in the first column of the tabular statement in paragraph 8 of the amended Election Petition, this witness stated that except Misa Pandian, I did not know other persons. He deposed that he was not aware of the withdrawal of nomination by A. Lazar to enable Mohan to contest the election. The alleged complaint with regard to violation of Code of Conduct for election was denied by stating that no notice was served upon him. It was further deposed that there might be transfer of officials deputed for the Election duty by the Election Commission of India, but it was incorrect to state that the said transfer had taken place pursuant to the complaint lodged by the election petitioner against him. He denied of having distributed money to the voters by carrying the same in vehicle bearing Nos. TN-41-F-9338 and TN-59-R-7294. The testimony of P.Ws. 5 to 7 in respect of canvassing of votes accompanied by several DMK leaders was stated to be false, that the testimony of P.Ws. 1 and 2 regarding brutal attack on them at his instance was denied and that the allegations made by P.Ws. 2 and 3 of deputing one DMK cadre for every 50 voters for distribution of money were also stated to be untrue. The witness denied the testimony of P.W. 9 to the effect that in Padhinettangudi Village, voter slips were distributed at the instance of 1st respondent and later those voter slips were exchanged by giving money. To a question as to the seizure of large number of sarees and dhotis, which were kept in the house of party functionaries at Jaihindpuram for the purpose of distribution to the voters, his answer was in negative. It was deposed that since his son was an income tax Assessee in the year 2004 itself and had been earning his own independent income, he was not dependent on him, which was the only reason for non furnishing of the particulars of his son's Directorship and shareholding in

M/s. Olympus Granites, in the affidavit filed along with the nomination papers, which was prepared by his lawyer and auditor for the year 2009 Parliamentary Election and the same was submitted to the Lok Sabha Secretariat and thereafter, to the Prime Minister's Office on becoming a Minister. The witness also pleaded his innocence of videography shot by one Sundaram with regard to issuance of slips, token and distribution of money and copied it into a compact disk, which was subsequently forwarded to the Chief Electoral Officer Naresh Gupta. The witness added that he did not know of the news reports given by the Public Relation Officer in the newspapers, namely, Dinakaran, Madurai Edition and other newspapers that he had the support of All India Christian Rights Movement and it was stated to be the fabricated version of the election petitioner that the said Public Relation Officer acted as his agent. Ultimately, he would state that the election was contested by other party candidates as well as independent candidates and nobody filed any case against him, but this election petition has been filed by the election petitioner and it is politically motivated.

24. According to R.W. 2, Abbasralli, he was a Member of the DMK Party. Though this witness was called by the police and enquired with regard to distribution of money, nothing was elicited during the said enquiry as to the alleged malpractice. Even as a case was registered against this witness, the same came to be dismissed by the Court of Judicial Magistrate at Melur.

25. The evidence of R.W. 3, Musthafa, would indicate that he was a DMK Party worker. He was taken by the police on the allegation that he distributed money in covers; he was produced before the Magistrate and later was released. He is named in the FIR filed by Kottampatti police, but he was discharged by the Court of Judicial Magistrate at Melur, by an order dated 11.06.2013 in Criminal M.P. No. 3659 of 2013. This witness denied the statement of Adakki Veeranan, P.W. 9, that he and Alauddin distributed money as instructed by one Pugazhendi, DMK Secretary.

26. R.W. 4 is V. Mohan. He was the Branch Secretary of DMK Party at A. Vellalapatti. He has deposed that he did not accompany the first respondent when came to his village and he also did not know as to who accompanied the first respondent when he came to his village for campaigning.

27. The examination of R.W. 5, Raghupathy, would show that he was the Secretary of the DMK Party for Melur Union. He denied the statement of the election petitioner in the election petition that when aarthi was performed to the first respondent, he put tokens in the aarthi plates and the said tokens were exchanged for Rs. 100/- by handing over the same to his Party Branch Secretary, Mohan. But, no complaint has been registered against him on the allegation of distribution of money.

28. R.W. 6 is P.M. Mannan. He was the Youth Wing Secretary of the DMK Party. He denied the testimony of P.W. 5 Radhakrishnan that he and one Ravindran and 30 others were found to be distributing money put in covers at Nethaji Main

Road, B.B. Kulam. Similarly, he also denied the testimony of P.W. 7 K. Thilagar that he and his party men attacked P.W. 7 and his party men and others with knife, aruval and steel pine and that they were admitted to Madurai Rajaji Hospital, Madurai. No complaint has been filed against him for the said incident. Though, in the cross-examination, he admitted to have accompanied the first respondent during election campaigning, he denied the allegations of malpractices. He also admitted that there are criminal cases pending against him, which are with regard to Assembly constituency, but not to Parliamentary constituency.

29. Let me now examine the exhibits marked in this case. Ex. P-1, dated 17.05.2009, is the original of election result published in Dinamalar, Tamil Daily, Madurai edition, declaring the election of first respondent from Madurai Parliamentary Constituency for the 15th Lok Sabha. Ex. P-2, dated 03.05.2009, is a copy of complaint given by P.W. 2, Annadurai, to the Chief Election Commissioner, New Delhi, regarding distribution of money to voters by DMK Party in Madurai Lok Sabha Constituency. Ex. P-3, dated 07.05.2009, is the original of the news item published in The Hindu, English Daily, Madurai edition, indicating "Election observers seize saris from houses of DMK men in Madurai". I have gone through the news item. It is stated therein that Special Election Observer for Madurai Lok Sabha constituency Madanagopal seized six bundles of saris from two houses in Jaihindpuram, reportedly meant for free distribution to voters in Madurai. It is also stated therein that Madanagopal, along with another Observer, M. Mathew Jolly, handed over the seized materials to the Jaihindpuram police. Further, it is mentioned that the Observers, accompanied by Assistant Collector (Training) K. Veeraraghava Rao, went to Netaji Nagar and seized more bundles from a house belonging to another ruling party worker and that the DMK men had told the observers that the sarees were stocked for distribution on the occasion of the birthday of Madurai Lok Sabha constituency candidate M.K. Azhagiri, who is the first respondent herein.

30. It is important to mention here that when it is specifically mentioned that the Election Observers viz., Madanagopal, Mathew Jolly and Veeraraghava Rao seized the materials, it is not known to this Court as to why the petitioner has not chosen to examine the said important witnesses. Non-examination of the said witnesses in this regard is fatal to the case of the petitioner.

31. Ex. P-4, dated 06.05.2009, is a copy of the complaint given by P.W. 2 to the Chief Election Commissioner, regarding distribution of money and sarees. It is stated therein that the entire stock of sarees are in the custody of the friends of the DMK candidate, namely, V.K. Gurusamy and Attack Pandi. Ex. P-5, dated 05.05.2009, is the complaint given by P.W. 2 to the Chief Electoral Officer, Tamil Nadu. Ex. P-6, dated 06.05.2009, is the complaint given by P.W. 2 to the Central Election Observer, Madurai. Ex. P-7, dated 05.05.2009, is also a complaint given by P.W. 2 to the District Election Officer/District Collector. Exs. P-4 to P-7 are all the complaints pertaining to storing of sarees in the residences of particular

persons and distribution of the same. Here also, the petitioner has not examined the persons, named in the said complaints.

32. Ex. P-8, dated 05.05.2009, is the complaint given by one T.K. Rengarajan to the Central Election Commissioner, pertaining to violation of model code of conduct by the DMK Party. However, the said Rengarajan is also not examined with regard to the said complaint. Ex. P-9 is the news item, dated 06.05.2009, published in Daily Thanthi, Tamil daily, which is with regard to transfer of Madurai Police Commissioner. Though it is stated therein that the said police officer was transferred by the Election Commission of India for not taking any action on the alleged irregularities during the election process, no official from Election Commission of India is examined to substantiate the news. Ex. P-10 is another news item, dated 06.05.2009, published in Deccan Chronicle, English daily, titling "EC promises action on cash-for-vote". In this regard also, no one is examined to prove the same.

33. Exs. P-11 to P-14 are the slips/tokens issued to the voters, with an indication of the symbol "Rising Sun". These tokens were said to be seized from Mallika and Selvaraj, but they are not examined to strengthen the case. Ex. P-15 is the news item, dated 05.05.2009, published in Dinamani, Tamil daily, Madurai edition. Ex. P-16 is another news item, dated 04.05.2009, published in Indian Express, English daily, Madurai edition. Though the said exhibits report distribution of money, they cannot be taken as sufficient evidence, in the absence of examination of proper persons, who witnessed the same.

34. Ex. P-17 is a copy of e-mail, dated 17.04.2009, from Public Relations Officer, Madurai, to all newspapers with a campaign photograph of the first respondent. To substantiate this document, the Public Relations Officer, Madurai, is not examined. In this regard, I have also gone through the records produced by C.W. 1. On going through the records, it is seen that an enquiry was conducted on this aspect and, upon the said enquiry, it is revealed that one S. Sekar, Official Photographer of the Public Relations Officer, Madurai, had misused the e-mail ID and password of PRO by sending the e-mail. For this, C.W. 1, as the District Collector and District Election Officer, had sent a report, dated 19.04.2009, to the Chief Electoral Officer, instructing the PRO to initiate disciplinary action against the said Official Photographer and recommending his transfer out of the district through the Department of Information and Tourism.

35. Ex. P-18, is the letter, dated nil, from All India Christian Movement to the Editor, Dinakaran, Tamil daily, Madurai edition, indicating the support of the Christian Movement to the first respondent, from which, no adversity could be drawn against the first respondent for the alleged malpractices. Exs. P-19 and P-20 are the complaints, dated 18.04.2009, from P.W. 2 to the District Election Officer, Madurai, and Chief Election Commissioner, New Delhi, respectively, complaining against the Public Relations Officer, Madurai, and the message sent by a religion based organisation to the Tamil Daily Dinakaran. Ex. P-21, dated 27.04.2009, is the reply from K. Sathyagopal, Additional Chief Electoral Officer,

Public Relations Department, Chennai, to P.W. 2 to his letter, dated 18.04.2009, Ex. P-19, stating that a discreet enquiry was made by the District Collector, Madurai, and disciplinary action against the responsible person for the mis-happening was under process.

36. Ex. P-22 is the Compact Disc, regarding the telecast of Meenakshi Amman Koil Kumbabishekam. This Court has tried to view the contents of the CD in order to ascertain the truth. But, when the CD is tried for visual, though it is shown to have contained five files, none of the said files could be open to draw any inference. Ex. P-23, dated 08.04.2009, is the complaint from P.W. 2 to Chief Electoral Officer, Tamil Nadu, regarding the advertisements on TV channels and cable networks. Ex. P-24 is the letter, dated 20.04.2009, from the Chief Electoral Officer, Tamil Nadu, to the District Election Officer and District Collector, requesting to send a report on the subject.

37. Exs. P-25 and P-26 are the complaints, dated 08.05.2009, given by P.W. 3 B. Vikaraman, Chief Election Agent of the petitioner, to the Chief Electoral Officer, Tamil Nadu, and to the Election Observer respectively, with regard to distribution of sarees and dhotis to the voters of Madurai Parliamentary Constituency. Ex. P-27 is the token said to be issued for aarthy, from which nothing could be found out.

38. Ex. P-28 is the certified copy of FIR registered by the Kottampatti Police Station, pursuant to the complaint given by P.W. 9, Adakki Veeranan, The said document was not verified by the election petitioner and, hence, the same was objected to by the first respondent, to be marked. Though P.W. 9 has stated in his evidence that he caught the persons travelling in Tata Sumo vehicle carrying money for distribution to the voters, seized the vehicle and handed over the same to police, there is no reference to the same in the FIR, Ex. P-28. Ex. P-29 is the Election Brochure issued by DMK Party, wherein no irregularity is found.

39. Ex. R-1 is the certified copy of the order, dated 11.06.2013, passed in Crl.M.P. No. 3659 of 2013 by the Court of Judicial Magistrate, Melur, closing the case against the accused Musthafa and Alavudheen, who are named in the FIR, registered by Kottampatti Police Station.

40. Ex. C-1 is the copy of subpoena issued to C.W. 1. Ex. C-2, dated 27.04.2009 is the Press Note issued by C.W. 1, regarding the code of conduct. Ex. C-3 is the letter, dated 15.04.2013, from the District Election Officer to the Chief Electoral Officer, Chennai, requesting to furnish the election records. Ex. C-4 is the letter, dated 15.04.2013, from Chief Electoral Officer, Chennai, to the District Election Officer, along with the records. Ex. C-5, dated 17.04.2009, is the Notification issued by the Election Commission of India in Tamil Nadu Government Gazette, with regard to the Parliamentary Elections. Ex. C-6, dated 07.01.2007, is the Code of Conduct. Ex. C-7, dated 02.03.2009, is the Press Note issued by the Election Commission of India, containing the Schedule for General Elections, 2009.

41. Though it is consistently pleaded in the petition and deposed by all the witnesses on the side of the petitioner as to the distribution of sarees and dhotis and also the seizure of the same, they are not marked as exhibits. At this juncture, it cannot also be lost sight of, that, from the records produced by C.W. 1, this Court could see that pursuant to the complaints given by P.W. 2, Annadurai, the Special Deputy Collector (SSS) Madurai, conducted discreet enquiries with the public and submitted a report, dated 10.05.2009, to the District Collector, stating that a case had been registered in Crime No. 242 of 2009 on 03.05.2009 on the file of Oomachikulam Police Station under Sections 171(b) and 188 of IPC and a sum of Rs. 14,500/- was seized. But, in the said report, it is not mentioned against whom the case was registered and from whom the money was seized. It was also stated in the report that the complaint referred to in the petition could not be justified. Therefore, bereft of a clear finding in the report, the same cannot be taken advantage of by the petitioner.

42. The following facts also are forthcoming from the records. The Chief Electoral Officer, by his letter dated, 08.04.2009, addressed a letter to the Managing Director, MTV (Madhura TV), Madurai, directing him to offer explanation with regard to telecast of scroll along with the telecast of Kumbabishekam ceremony of Madurai Meenakshi Amman temple, soliciting vote for DMK without the permission of the Commission, which was a violation of the order of the Election Commission and the Supreme Court. On 22.04.2009, the Returning Officer and District Collector sent a report to the Chief Electoral Officer, stating that as soon as it was noticed, he instructed the Managing Director to stop the advertisement, which was obliged at once. To ascertain this incident, nothing has emanated from the examination of the Returning Officer i.e., C.W. 1 nor is the Managing Director examined. On 07.05.2009, the Returning Officer addressed a letter to the Election Observer, Madurai North and South Assembly Segments, stating that the Special Deputy Collector (SSS), Madurai, rushed and raided the houses of one Santhanakrishnan and Gurusamy of Jaihindpuram and seized 6 bundles of sarees by the observer and 5 bundles of sarees by the Election Complaint Cell of District Collectorate respectively. Though the said goods are stated to have been seized, the same are not marked for evidence to find out the truth as to who is involved in the said process. Hence, the said factors cannot be attributed against the first respondent. Similarly, even as it is alleged that buses were plied on different routes at the instance of the first respondent, it is not proved that official machinery has been misused. Further, no document filed along with the Election Petition would establish that the first respondent or his men were involved in the corrupt practices. The complaints given to the Election Commission and District Collector were not by the petitioner directly, instead, they were drafted and given by one Annadurai, who is not the petitioner herein. No credibility can also be given to the newspaper clippings, as they are not supported by material evidence.

43. It is a settled proposition of law that while examining the witnesses, the oral evidence has to be dealt with great care because of the partisan atmosphere continuing even after the election. But, it will be wrong on the part of courts to

just brush aside the oral evidence even when the evidence is highly probable and corroborated by unimpeachable documentary evidence. Further, while evaluating the testimony of the interested witnesses, they must be subjected to a closer scrutiny and the Court would be justified in rejecting the evidence if it is not corroborated by independent source.

44. Inference from the evidence and circumstances must be carefully distinguished from conjectures or speculations. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue and there could be no inference unless there are objective facts direct or circumstantial, from which to infer the other fact which is sought to establish. The other facts can be inferred, as much as is practical, as if they had been actually observed. If there are no positive proved facts, oral, documentary or circumstantial, from which the inferences can be made, the method of inference fails and what is left is mere speculation or conjecture. Therefore, there must exist on record some direct material facts or circumstances from which such inference could be drawn and the standard of proof required cannot be any straightjacket formula. The probative value could be cadged from the facts and circumstances.

45. In order to constitute a corrupt practice, which entails not only the dismissal of the election petition but also other serious consequences like debarring the candidate concerned from contesting a future election for a period of six years, the allegations must be very strongly and narrowly construed to the very spirit and letter of the law. For constituting a corrupt practice, the following necessary ingredients, such as, direct and detailed nature of corrupt practice as defined in the Act; details of every important particular, giving the time, place, names of persons, use of words and expressions, etc.; the allegations that the corrupt practices alleged were indulged in by (a) the candidate himself, (b) his authorised election agent or any other person with his express or implied consent must be put in the pleadings. A person may, due to sympathy or on his own, support the candidature of a particular candidate but unless a close and direct nexus is proved between the act of the person and the consent given to him by the candidate or his election agent, the same would not amount to a pleading of corrupt practice as contemplated by law. In fine, the allegation must be so clear and specific that the inference of corrupt practice will irresistibly admit of no doubt or qualm.

46. The requisite consent of the candidate cannot be assumed merely from the fact that the candidate belongs to the same political party of which the wrongdoer was a leader since there can be no presumption in law that there is consent of every candidate of the political party for every act done by every acknowledged leader of that party. The corrupt practice for which a candidate can be held vicariously guilty for an act of any other person who is not his agent in whose favour general authority is presumed, must be pleaded and proved to be with the consent of the candidate. It is so because the penal consequences

resulting from the finding of a corrupt practice against the candidate are visited on the candidate including the setting aside of his election. It is wrong to assume that for the purpose of pleading as well as proof, no specific pleading or proof of consent of the candidate is necessary if the act is attributed to any leader or even a member of the same political party.

47. It is true that the allegations of corrupt practices are to be viewed seriously, as they are also to be considered quasi-criminal in nature. The standard of proof required for proving corrupt practice for all intent and purport is equated with the standard expected in a criminal trial. However, the difference between an election petition and a criminal trial is, whereas an accused has the liberty to keep silent, during the trial of an election petition the returned candidate has to place before the court his version and to satisfy the court that he had not committed the corrupt practice as alleged in the petition. The burden of the election petitioner, however, can be said to have been discharged only if and when he leads cogent and reliable evidence to prove the charges levelled against the returned candidate. For the said purpose, the charges must be proved beyond reasonable doubt and not merely by preponderance of probabilities as in a civil action.

48. Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the court, the stakes of the constituency as a whole are on trial. Whichever way the lis terminates, it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of overenthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes.

49. At this point, I would like to refer to Section 100 of the Representation of the People Act, 1951, which deals with grounds for declaring election to be void. The said Section reads as under:

100. Grounds for declaring election to be void. (1) Subject to the provisions of sub-section (2) if the High Court is of opinion

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected

- (i) by the improper acceptance of any nomination, or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
 - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
 - (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.
- (2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied
- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;
 - (b) [Omitted];
 - (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
 - (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void.

50. Section 100 of the Act needs to be read with Article 329(b), the former being a product of the latter. The sweep of Section 100 spelling out the legislative intent would determine the span of Article 329(b) though the fact remains that any legislative enactment cannot curtail or override the operation of a provision contained in the Constitution. Section 100 is the only provision within the scope of which an attack on the validity of the election must fall so as to be a ground available for avoiding an election and depriving the successful candidate of his victory at the polls. Sub-clause (iv) of clause (d) of sub-section (1) of Section 100 is a residual catch-all clause. Whenever there has been non-compliance with the provisions of the Constitution or of the Act or of any Rules or Orders made thereunder if not specifically covered by any other preceding clause or sub-clause of the section, it shall be covered by sub-clause (iv). The result of the election insofar as it concerns a returned candidate shall be set aside for any such non-compliance as the above said subject to such non-compliance, also satisfying the requirement of the result of the election having been shown to have been materially affected insofar as a returned candidate is concerned. The conclusions which inevitably follow are: in the field of election jurisprudence, ignore such things as do not materially affect the result of the election unless the requirement of satisfying the test of material effect has been dispensed with by the law; even if the law has been breached and such breach satisfies the test of

material effect on the result of the election of the returned candidate, postpone the adjudication of such dispute till the election proceedings are over so as to achieve, in larger public interest, the goal of constituting a democratic body without interruption or delay on account of any controversy confined to an individual or group of individuals or single constituency having arisen and demanding judicial determination.

51. Mere non-compliance or breach of the Constitution or the statutory provisions, by itself, does not result in invalidating the election of a returned candidate u/s 100(1)(d)(iv). The sine qua non for declaring the election of a returned candidate to be void on the ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void u/s 100(1)(d)(iv). For the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election in so far as it concerned the returned candidate has been materially affected.

52. One more important aspect is that newspaper reports by themselves are not evidence of the contents thereof and they are only a hearsay evidence. Law is well settled that in order to depend on newspaper reports, the same have to be proved by letting in proper evidence. The said reports have to be proved in the manner, by examining the reporter as to the contents of the reports and also by taking his evidence. Without examining the concerned editor or reporter, it is impermissible to give credence to the newspaper reports, as they are not admissible without proper proof under the Indian Evidence Act.

53. As already stated by me earlier, Section 123 contemplates corrupt practices. A corrupt practice, as contemplated by Section 123(7), denotes obtaining or procuring by a candidate or his election agent, assistance from the government servants belonging to the classes specified in sub-section (7) of Section 123 for the furtherance of the prospect of the candidates election. To constitute a corrupt practice u/s 123(7), it is essential to clothe the petition with a cause of action which would call for an answer from the returned candidate and it should therefore plead mode of assistance, measure of assistance and all facts pertaining to the assistance. The pleading should further indicate the kind or form of assistance obtained and in what manner the assistance was obtained or procured or attempted to be procured by the candidate for promoting the prospect for his election. The election petitioner must state with exactness the time of assistance, the manner of assistance and the persons from whom assistance was obtained or procured by the candidate and the same have to be proved by taking evidence of the persons concerned and thereby substantiating the corrupt practice. Also, in order to get the benefit of not having to prove the

effect of the corrupt practice upon the election, the consent of the candidate or his election agent to the alleged offence is to be established. In this case, in the absence of any such proof to establish the case by discharging his burden, the petitioner cannot be permitted to derive the strength from the hearsay evidence.

54. Election cannot be set aside on presumptions and surmises or conjectures. Clear and cogent proof in support of the allegations is essential. In this case, the evidence let in by the petitioner runs well short of establishing the charges levelled against the returned candidate, namely, the first respondent.

55. Keeping the above principles in mind and applying the ratio to the present case, it could be seen that the authors of newspaper reports viz., Exs. P-3, P-9, P-10, P-15 and P-16 are not called into the witness box for examination on the issue of seizure of materials, such as, sarees and dhotis, based on the newspaper reports. Further, the author of Ex. P-8, which was a complaint given by one T.K. Rengarajan to the Central Election Commissioner, pertaining to violation of model code of conduct by the DMK Party, was not examined to prove what would be the nature of violation of code of conduct and to get the truth to that effect. On the aspects of procuring assistance from the Public Relations Officer and plying of buses on various routes, the apposite persons thereto have not been put into box to ascertain the corrupt practice. Therefore, the point of misuse of official machinery also has not been proved. With regard to telecast of scroll along with the telecast of Kumbabishekam ceremony of Madurai Meenakshi Amman temple on TV channels, soliciting votes for DMK, the media persons, who telecast the said item, have not been examined. Coming to the point of issuing of tokens to the women folk, who performed aarthi to the first respondent, and subsequent encashment of the same, the persons, who issued the tokens or the persons who received same, are not subjected to examination by the petitioner before this Court to prove the same. The petitioner, having happened to be substituted in place of the original deceased petitioner, if he is having knowledge and material information of the corrupt practices as alleged, has to establish the same by proper oral and documentary evidences to claim that the election of the first respondent has to be declared void, but, it has not happened in this case. Though P.Ws. have deposed on certain incidents of distribution of money, sarees and dhotis, issuance of tokens and slips to the voters, their failure to examine the persons who received the same is fatal to the case of the petitioner.

56. In the absence of any concrete, cogent and clinching evidence coupled with supporting documents and in view of non-examination of crucial witnesses and inconsistencies in the statements of the witnesses and also the fact having remained that the petitioner herein is only the substituted petitioner, who has no direct knowledge of the malpractices alleged by the original petitioner in the election petition, it is highly difficult for this Court to conclude that the first respondent had resorted to corrupt practices, as alleged by the election petitioner, during the election to the Madurai Parliamentary Constituency in the year 2009.

57. Election Petition is, therefore, dismissed. No costs. While parting with, I place on record my appreciation to Mr. T.V. Ramanujam, learned Senior Counsel, who initially argued for the petitioner for a long time and guided the Court on every aspect; Mr. M.S. Krishnan, learned Senior Counsel, who also argued for the petitioner on a number of occasions in this matter; Ms. P.T. Asha, learned counsel, who argued the Election Petition finally in an appreciable manner, who, by her hard work, put forth the legal principles for consideration before this Court; and also my accolades to Mr. T.R. Rajagopalan, learned Senior Counsel, who is ably assisted by Mr. K. Azhagu Raman, learned counsel appearing for the first respondent, whose enlightenment on the legal principles has enabled this Court to come to a clear conclusion and render this judgment. Mr. R. Shanmugasundaram, learned Senior Counsel, who initially appeared for the first respondent, and, Mr. M.R. Raghavan, learned counsel for the Election Commission of India, also deserve appreciation.

(Table) This judgments has been sourced from the court website. The tables in the judgment may not be aligned.