
(2010) 12 AP CK 0033

In the Andhra Pradesh High Court

Case No : Election Petition No. 12 of 2009

Putta Madhukar

APPELLANT

Vs

Duddilla Srihdar @ Duddilla Sridhar Babu Rao, Minister for
Higher Education, Govt. of A.P. and Others

RESPONDENT

Date of Decision : 24-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 4, Order 19 Rule 1, Order 19 Rule 3, Order 6 Rule 15, Order 6 Rule 2
Conduct of Elections Rules, 1961 — Rule 66, 85, 90, 94A
Criminal Procedure Code, 1973 (CrPC) — Section 102
Evidence Act, 1872 — Section 106, 114
General Clauses Act, 1897 — Section 3
Income Tax Act, 1961 — Section 13A, 77
Penal Code, 1860 (IPC) — Section 171, 188
Representation of the People Act, 1951 — Section 100, 100(1), 107, 123, 123(1)

Citation : (2010) 12 AP CK 0033

Hon'ble Judges : K.C. Bhanu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.C. Bhanu, J.—This Election Petition is filed under Sections 81 read with 77, 100(1)(b)(d)(ii) and 123(1)(A) of the Representation of the People Act, 1951 (for short, RP Act, 1951) praying (i) to declare election of the first Respondent to the 24 Manthani Assembly Constituency as null and void and set aside the same; (ii) to declare the Petitioner as duly elected as member of the 24 Manthani Assembly Constituency, u/s 84 of the RP Act, 1951 and (iii) to award costs of the Election Petition.

2. The averments of the Election Petition, in brief, may be delineated as follows:

The Petitioner is one of the contesting candidates of 24 Manthani Assembly Constituency in the general elections held on 16.4.2009. The Petitioner was fielded from Praja Rajyam Party whereas the first Respondent was fielded from

Indian National Congress party. In the results declared on 16.5.2009, the first Respondent was declared elected as member of said constituency having polled 63, 770 votes, and the Petitioner stood second having polled 50, 561 votes. Father of the first Respondent also belonged to Indian National Congress party and he represented from Manthani Assembly Constituency to the Legislative Assembly and held the post of Speaker of the Legislative Assembly. After demise of his father, the first Respondent contested from the said Assembly Constituency from the same party and was elected in the general elections held in the years 1999 and 2004. As was done earlier also, the first Respondent got his photograph and the photograph of his father prominently printed in all the material published and used by him viz. banners, posters, pamphlets, door stickers, badges, etc., during the 2009 elections. In the letter addressed to voters of the constituency and also on the tilak sheet used by women, the first Respondent used his father's name and photograph respectively, and no other candidate fielded from the said constituency used name or photograph of father of the first Respondent.

The first Respondent got elected from the said constituency by using and indulging in corrupt practices, and made expenditure much over and above the upper limit of the election expenditure fixed by the Ministry of Law & Justice (Legislative Department), Government of India Notification No. H-11-19 (6)/2003, dated 24.10.2003, which is Rs. 10,00,000/- for an Assembly Constituency in Andhra Pradesh State. As per the initial estimate of the Petitioner, the material printed and used by the first Respondent and upon the material seized by the police from either the custody of the first Respondent or his election agents or his supporters or members of his political party, the expenditure incurred by the first Respondent exceeded Rs. 35,00,000/-. As per Section 77 of the RP Act, 1951, every candidate in an election shall keep a separate and correct account of all expenditure in connection the election incurred or authorized by him or by his election agent. The first Respondent exceeded the maximum limit of election expenses basing on the suggested rates for election related items of expenditure issued by the District Election Officer/ District Collector, Karimnagar. The materials used by the first Respondent during election campaign are banners, cotton flags, flexis, caps, wall posters, hand bills, pamphlets, face masks, door stickers and badges, and other material prepared by him for the purpose of using in the said election as gifts to voters includes cricket kits, T-shirts and Drums. On most of the material used by the first Respondent, either photograph of the first Respondent or his father, or name of the first Respondent was printed.

On 5.4.2009, Manthani police seized an Eicher van bearing No. AP 23T 9440 carrying Congress-I party canvassing material and registered crime No. 53 of 2009 against the driver Challoji Ravi, s/o. Mallesam, and a panchanama was conducted whereunder the election material was seized containing photographs of first Respondent and his father with "hand" symbol and a slogan "I Love Manthani". The election material seized are as follows: (1) 10, 162 Nos. banners;

(2) 11, 374 Nos. cotton Flags; (3) 620 Flexis; (4) Multi-coloured wall posters (weight of the bundles containing the wall posters is 359 Kgs); (5) 30, 350 Nos. caps; (6) 384 Nos. T-shirts and (7) Total cost of hand bills, pamphlets, face masks, door stickers and badges comes to Rs. 5,00,000/- as per the suggested rates fixed by the District Election Officer. One G. Satyanarayana Raju, President of Mandal Congress Committee, Manthani made a claim petition before the Mandal Executive Magistrate, on 8.4.2009 and the Petitioner filed objection before the Mandal Executive Magistrate on 9.4.2009. But, the Mandal Executive Magistrate ordered release of the material, except T-shirts, in favour of said G. Satyanarayana Raju, and the said material was used for the purpose of canvassing by the first Respondent.

On 5.4.2009, Sub Inspector of Police, Manthani seized Rs. 6,900/- net cash, which was not explained, and 17 cricket kit bags from the house of one Panakanti Sadashiv, who is relative of the first Respondent, and 12 cricket bags from an adjacent house of one Asgar Hussain, and registered a case in crime No. 54 of 2009 of Manthani police station. The said material was brought to the knowledge of first Respondent for the purpose of using the same during election campaigning. Further, Regonda police of Warangal district seized an Eicher DCM van bearing No. AP36T 7713 on 26.3.2009 and seized

300 drums which carry name of the first Respondent and hand symbol, and registered a case in crime No. 69 of 2009 against the first Respondent and three others, and in this regard, a case in C.C. No. 192 of 2009 is pending before the Judicial Magistrate of First Class, Parkal for the offences under Sections 171(e), 171(f) and 188 IPC.

Name of the printer or publisher or other requirements are not given, as required u/s 127A of the RP Act, 1951, on any of the material seized which was meant for the purpose of election of the first Respondent. This was a device to screen the expenditure incurred either by first Respondent or on his behalf from the account of election expenditure. So, the expenditure incurred by the first Respondent during the election, as per the rates fixed by the District Election Officer or by the witnesses of panchanama, exceeded Rs. 35,00,000/-, which does not include the expenditure incurred by him towards the vehicles used by him or by any other persons towards vehicles. Hence, the election of the first Respondent as a member of 24 Manthani Assembly Constituency is void and liable to be set aside.

3. The first Respondent filed his counter affidavit denying all the material allegations made by the Petitioner and contending that the Election Petition is vague, frivolous, vexatious and did not set out concise material facts and without any pleadings and ingredients for constituting cause of action required under Sections 83, 100 r/w. 77 and 123 of the RP Act, 1951, and the same is liable to be rejected. The first Respondent admitted his election as Member of Legislative Assembly from 24-Manthani Assembly Constituency in the years 1999 and 2004, and also in 2009. In view of the considerable public service rendered by the first Respondent and his family, their family got reputation in Karimnagar district.

Candidates contesting in various elections on behalf of Congress party in Karimnagar district, carried the slogans and photographs of first Respondent and his father along with other State and Central leaders of the party. In view of certainty of success of the first Respondent in the election, from the beginning of the elections, the Petitioner made false complaints to the election authorities to create some cause of action for questioning validity of his election with mala fide and ulterior motive.

It is further stated that, Manthani police seized Congress party Peddapalli Parliamentary Constituency election publicity material and registered case in crime No. 53 of 2009. The first Respondent admitted release of the said material by the Tahsildar and Mandal Executive Magistrate, Manthani in favour of G. Satyanarayana Raju, President of Mandal Congress Committee, Manthani, and also registration of case in crime No. 54 of 2009 by Manthani police. It is further stated that, the first Respondent did not use the said material seized in any of the above three crimes or authorized or consented to any person using the same on his behalf in the election. The first Respondent has not incurred or authorized the election expenditure in contravention of Section 77 of the RP Act, 1951. There is no pleading in the petition that the alleged excessive expenditure was incurred between the date of nomination of first Respondent and the date of declaration of his result, and in the absence of the same, Sub-section (3) of Section 77 and Section 123(6) do not attract.

The first Respondent used election publicity material supplied by the Congress Party for Manthani Constituency viz. banners, posters, pamphlets, door stickers, badges, etc. and the expenses of the said material has been accounted as election expenditure in the return filed by the first Respondent u/s 78 of the RP Act 1951, and the said material has not been printed or published by him is false. The first Respondent has not indulged in any corrupt practices and never incurred expenditure during the said election exceeding the prescribed limit under Rule 90 of Conduct of Election Rules, 1961. No material has been seized by police either from custody of first Respondent or his election agent(s) or supporters or members of political party connected with his election. The first Respondent did not exceed the expenditure even according to the rates suggested by the District Election Officer/Collector, Karimnagar. The first Respondent neither used material viz. banners, cotton flags, flexis, caps, wall posters, hand bills, pamphlets, face masks, door stickers and badges, nor prepared any other material including cricket kits, T-shirts and drums. The Mandal Executive Magistrate, Manthani released the material seized in crime No. 53 of 2009 of Manthani police station stating that the said material is congress party canvassing material pertaining to Peddapalli Parliamentary Constituency sent by Andhra Pradesh Congress Committee to the District Congress Committee, Karimnagar. The Petitioner has not set out any material facts or particulars, names of persons alleged to have used the said material, date and place of the use of the material, the nature of use of mode of the said material. As regards the crime No. 54 of 2009 of Manthani police station, the said accused

are not relatives of first Respondent, and the said material seized was not brought to Manthani to his knowledge for the purpose of using in election campaigning. The first Respondent has no connection with the material seized in crime No. 69 of 2009 of Regonda police station, and the above crime was registered on 26.3.2009 i.e. prior to filing of nomination by the first Respondent and so it is outside the scope of Section 77 of the RP Act, 1951. Printing of name of the printer and publisher on the election material is a legal requirement u/s 127A of the RP Act, 1951.

The Petitioner impleaded the first Respondent as "Duddilla Sridhar @ Duddilla Sridhar Babu, and the Petitioner being one of the contesting candidates, is well aware of name of the first Respondent appearing in the Certificate issued by the Returning Officer, and inspite of the same, he impleaded the first Respondent with wrong description, and so it amounts to non-compliance of Section 82 of the RP Act, 1951. The affidavit filed as required u/s 83 of the RP Act, 1951 read with Rule 94A in Form 25 of Conduct of Election Rules, 1961, is not in accordance with the prescribed form and totally in variance with the election petition. The Petitioner has not specified the name of the corrupt practices in terms of the pleadings of the election petition. The verification made in the Election Petition and its annexures is not in accordance with Order VI Rule 15 Code of Civil Procedure. The allegations of the Petitioner lack material facts and material particulars, and the Petitioner neither made out any case nor pleaded the specified grounds or ingredients as required under Sub-section (1) of Section 100 of the RP Act, 1951, and in the absence of concise facts, the election petition is not maintainable. Hence, he prayed to dismiss the Election Petition.

4. Basing on the above pleadings, the following issues were settled.

(1) Whether R1 incurred expenditure exceeding Rs. 35,00,000/- contrary to the exceeding limit of election expenses fixed by the Rules?

(2) Whether the election petition lacks material facts and particulars, grounds and ingredients within the meaning of Sections 77, 83, 100 and 123 of the Representation of the People Act, 1951 for constituting complete cause of action for declaration of election of the returned candidate, as void ?

(3) Whether joining of returned candidate as first Respondent as Duddilla Sridhar @ Duddilla Sridhar Babu is in conformity with the certificate issued by the Returning Officer under Rule 66 of the Conduct of Elections Rules, 1961, and whether it amounts to noncompliance of Section 82 of the Representation of People Act, 1951?

(4) Whether the affidavit filed by the election Petitioner under Rule 94A of the Conduct of Election Rules, 1961 is in conformity of Section 83(1)(c) of the Representation of People Act, 1951 ?

(5) to what relief ?

5. During trial, P. Ws. 1 to 5 are examined and Exs.P1 to P40 are marked, on

behalf of the Petitioner, and R. Ws. 1 and 2 are examined and Exs.R1 to R8 are marked, on behalf of the first Respondent.

6. The learned senior counsel Sri Bojja Tarakam appearing for the election Petitioner contended that during 2009 elections in relation to 27 Manthani Assembly Constituency, the first Respondent published and used banners, posters, pamphlets, door stickers, badges, etc. in election campaigning, incurring expenditure exceeding Rs. 35,00,000/- (Rupees thirty five lakhs only); that the expenditure limit of election expenses fixed by the Ministry of Law & Justice (Legislative Department) for an assembly constituency in Andhra Pradesh state is only Rs. 10,00,000/- (Rupees ten lakhs only); that the other material prepared by the first Respondent for the purpose of using in the elections contained photographs of first Respondent and his father and most of the materials were seized by the Manthani police, who registered a case in crime No. 53 of 2009, and as per the seizure panchanama, police seized banners, cotton flags, flexis, multi-coloured wall posters, caps and T-shirts, whose value is more than Rs. 35,00,000/- as per the estimation of suggested rates fixed by the District Election Officer; that, on the claim petition filed by one G. Satyanarayana Raju, President of Mandal Congress Committee, Manthani, the Mandal Executive Magistrate, Manthani released all the materials seized, except T-shirts; that, the said materials were used for the purpose of canvassing on behalf of the first Respondent; that the expenditure on entire materials used in the election campaign is incurred by none other than the first Respondent.

It is further contended that though the ground taken for challenging the election of the returned candidate is u/s 100(1)(b) of the RP Act, 1951, which stipulates that corrupt practice has been committed by the returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent, and that though the Section of law as mentioned in the election petition is Section 100(1)(d) of the RP Act, 1951, that the result of the election, in so far it concerns the returned candidate, has been materially affected by any corrupt practices committed in the interests of the returned candidate by an agent other than his election agent, are not applicable and he is not pressing the two grounds viz. Section 100(1)(b) and Section 100(1)(d) of the RP Act, 1951. The learned senior counsel appearing for the Petitioner contends that the only ground on which the Petitioner is seeking for declaration of the returned candidate as void is u/s 123(6) of the RP Act, 1951 as the returned candidate incurred or authorised expenditure in contravention of Section 77 of the Act, which mandates that every candidate at the election shall either by himself or his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent, between the date on which he has been nominated and the date of declaration of result thereof, both the dates inclusive, and that Clause (3) of Section 77 of the RP Act, 1951 contains that the total of the said expenditure in connection with the election shall not exceed such amount as may be prescribed.

The learned senior counsel further contended that it is in the evidence of P.W.1 that R.W.1 got his election materials published and arranged them to be brought to Manthani constituency for the distribution to voters; that, when the said materials were being brought to the Manthani, police seized the same, which contained various election material whose value is more than Rs. 35,00,000/-, and registered crime No. 53 of 2009; that, the Mandal Congress President of Manthani mandal G. Satyanarayana Raju, obtained release of the materials seized in crime No. 53 of 2009 of Manthani police, and the same were used in the election; that, as per the suggested rates issued by the District Collector, the estimated value of the materials seized by police and obtained custody by the said G. Satyanarayana Raju is more than Rs. 35,00,000/-; that the election expenditure submitted by the first Respondent does not show the real expenditure; that, under the RP Act, 1951, name of printer and publisher of pamphlets, flexis and other materials should be displayed; that, even the first Respondent admitted that cotton flags, flexis and multi-coloured wall posters were used during the election campaigning; that, there is no specific denial of using the materials which were obtained by way of custody from the Mandal Executive Magistrate, Manthani, and that the materials are connected with the Manthani Assembly Constituency; that, the said G. Satyanarayana Raju, President of Manthani Mandal Congress Committee, who obtained custody of the seized material, and the person who sent the material to Manthani constituency, are not examined to show that the materials are relating to exclusive use in parliamentary constituency of Peddapalli; that, under Exs.P35 and P36, the expenditure incurred is not as per the suggested rates, and as per Ex.R7, the document filed by the first Respondent, value of the several items as mentioned therein, is calculated as per the suggested rates; the expenditure incurred would definitely exceed Rs. 10,00,000/-; that, even as per the expenditure statement submitted by the first Respondent, the value of the election materials is calculated as per the suggested rates and its value is more than Rs. 26,00,000/-, and therefore, the first Respondent committed corrupt practices within the meaning of Section 123(6) of the RP Act, 1951, and therefore his election has to be declared as void.

7. On the other hand, the learned senior counsel Sri K. Ramakrishna Reddy, appearing for the first Respondent vehemently contended that no concise material facts are pleaded so as to constitute a cause of action and consequently to challenge the election of the first Respondent, the facts in issue are not averred in the election petition; that the averments made in the election petition cannot make out a case of corrupt practice allegedly committed by the first Respondent; that, nowhere in the election petition, it is pleaded that the returned candidate or his election agent or any other person with the consent of the returned candidate or his election agent, committed corrupt practices, and the allegations in the election petition would go to show that the seized materials were used for the purpose of canvassing on behalf of the first Respondent; that Section 100(1)(d) of the RP Act, 1951 is not applicable to the facts of the case;

that, u/s 83(1)(b) of the RP Act, 1951, the election Petitioner shall set forth full particulars of the corrupt practices, including the names of the persons alleged to have committed such corrupt practices and the date and place of commission of each of such corrupt practices, but the same are lacking in this election petition; that, corrupt practices as mentioned in Section 123(6) of the Act must be read with Sub-section (3) of Section 77 of the RP Act, 1951 in so far as this case is concerned, and the allegations in the petition would not attract Section 100(1)(b) of the Act, relating to corrupt practices because it is the specific case of the Petitioner that the expenditure incurred by the returned candidate is more than the prescribed statutory limit of Rs. 10,00,000/-; that the statement of election expenditure as submitted by the returned candidate, is not under challenge before this Court, as there is no pleading and evidence on that aspect; that the entire pleadings in the election petition are vague and inconsistent; that, there is no exactitude of precise material facts and that there is absolutely no pleading and evidence to impeach the correctness or otherwise of Ex.R7, the election expenditure return submitted by the first Respondent; that the materials seized in crime No. 53 of 2009 are not shown to have been used by the first Respondent or his election agent; that the affidavit filed in lieu of the chief-examination filed by P.W.1 is not properly verified as required under the provisions of Code of Civil Procedure, 1908 and therefore the entire chief-examination of P.W.1 has to be eschewed from consideration; that the pleadings have not been verified in the manner required under law; that the source of information viz. from which television or electronic media or person, the materials in crime No. 53 of 2009 were seized, is not pleaded; that the election Petitioner failed to show under which Sub-section of Section 77 of the RP Act, 1951, the case falls so as to declare the election of the returned candidate as void; that there is no allegation in the pleadings that the returned candidate incurred the expenditure exceeding Rs. 10,00,000/- from the date of nomination till the date of election, and hence, he prayed to dismiss the Election Petition.

8. Both the counsel placed reliance on several decisions of the Apex Court, which will be referred to at appropriate time.

9. ISSUE Nos. 2 and 4:

Whether the election petition lacks material facts and particulars, grounds and ingredients within the meaning of Sections 77, 83, 100 and 123 of the Representation of the People Act, 1951 for constituting complete cause of action for declaration of election of the returned candidate, as void ? AND

Whether the affidavit filed by the election Petitioner under Rule 94A of the Conduct of Election Rules, 1961 is in conformity of Section 83(1)(C) of the Representation of People Act, 1951 ?

The Election Petition is filed under Sections 81 read with 77, 100(1)(b)(d)(ii) and 123(1)(A) of the RP Act, 1951. Section 100(1)(b) of the R.P. Act provides that subject to the provisions of Sub-section (2), if the High Court is of the opinion

that the corrupt practice has been committed by the returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent, then the High Court shall declare the election of the returned candidate to be void. Similarly, Section 100(1)(d) of the R.P. Act, 1951 provides that the result of the election in so far as it concerns with the returned candidate, has been material affected by any corrupt practice committed in the interests of returned candidate, by an agent other than his election agent. During the course of arguments, the learned senior counsel appearing for the Petitioner fairly conceded that the case of the election Petitioner does not come either u/s 100(1)(b) or 100(1)(d) of the RP Act, 1951, the reason being that there is no pleading or evidence to show that corrupt practice has been committed by the returned candidate or his election agent or by any other person with the concerned of the returned candidate or his election agent. Similarly, there is also no pleading and evidence to show that the result of the election, in so far as it concerns a returned candidate, has been material affected by any corrupt practice committed in the interests of returned candidate, by an agent other than his election agent. Therefore, the arguments of the learned senior counsel appearing for the Petitioner are only confined to Section 123(6) of the RP Act, 1951.

10. Burden heavily lies on the election Petitioner to prove the charge beyond all reasonable doubt, as held by the Apex Court in *Jagdev Singh Sidhanti v. Pratap Singh Daulta and Ors.*, AIR 1965 Supreme Court 183 wherein it is held thus: (para 12):

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

11. Section 123(6) of the R.P. Act, 1951 is a Code by itself with regard to the corrupt practices. u/s 123(6) of the Act, incurring or authorizing expenditure in contravention of Section 77 of the R.P. Act, 1951, is a corrupt practice. Several instances of corrupt practices have been mentioned in Section 123 of the R.P. Act, 1951. u/s 77(1) of the RP Act, 1951, every candidate at an election shall, himself or by his election agent, keep a separate and correct account of expenditure in connection with the election incurred or authorized by him or by his election agent, between the date on which he has been nominated and the date of declaration of result thereof, both dates inclusive. So, Sub-section (1) of Section 77 mandates that every candidate in the election has to maintain a

separate or correct account of expenditure. Sub-section (2) provides that the account shall contain such particulars as may be prescribed. Sub-section (3) provides that total of said expenditure shall not exceed such amount as may be prescribed.

12. According to the learned senior counsel appearing for the Petitioner, the expenditure incurred by the returned candidate is more than Rs. 10,00,000/- and therefore it would amount to a corrupt practice within the meaning of Section 123(6) of the RP Act, 1951. Sections 80 and 81 of the RP Act, 1951 lay down only method prescribed by law in which validity of election can be impugned which is by way of an Election Petition to this Court. Compliance of Section 83 of the Act is mandatory and it requires concise statement of material facts and fullest particulars supporting the allegations in the Election Petition. In so far as the contents of the petition in respect of the full particulars of any corrupt practices, the Petitioner must aver a full statement as possible the names of parties alleged to have committed such corrupt practice and the date and place of commission of each such practice. There cannot be any dispute that the allegation involving corrupt practice must be viewed very seriously. Therefore, the Court should ensure strict compliance of the provisions of Section 83 of the RP Act, 1951. Section 83(1) of the R.P Act, 1951 makes a distinction between material facts and material particulars. Material facts are those which will go to make out Petitioner's case from the charge levelled against the Respondents. If the material facts constitute a corrupt practice, certain amount of details would be necessary to ensure clearness. Whereas, material particulars are, sufficient details of charge set up so as to give reasonable opportunity to opponent to meet effectively during trial of the case.

13. Before adverting to the corrupt practice under Sections 123(6), read with Section 77 of the RP Act, 1951, certain preliminary points in issue have been raised by the learned senior counsel appearing for the first Respondent with regard to the improper verification of pleading and affidavit. u/s 83(1)(c) of the R.P. Act, 1951 mandates that verification of the Election Petition has to be made in accordance with the manner laid down in the Code of Civil Procedure, 1908. Similarly, schedules or annexures, if any, to the election petition shall also be signed by the Petitioner and has to verify in the same manner as an election petition.

14. The learned senior counsel appearing for the first Respondent relied on a decision reported in Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, with regard to assertion in the election petition the concise statement of material facts with specific reference to Section 83 of the Act, 1951, wherein it was held thus:

The Section is mandatory and requires first a concise statement of material facts and then requires the fully possible particulars. What is the the difference between material facts and particulars? The word "material" shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a

single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet.

It was further held thus:

To begin with it must be realized that as is stated in *Jagan Nam v. Jaswal Singh and Ors.*, the statutory requirement of the law of Election in India must be strictly observed. It is pointed out in that case that an election contest is not an action at law or a suit in equity but a purely statutory proceeding unknown to common law and that the court possesses no common law power.

15. The learned senior counsel appearing for the first Respondent also relied on a decision reported in *Ram Sukh Vs. Dinesh Aggarwal*, as what are the material facts with reference to the election law, wherein it was held thus (para 15):

AT this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice distinction between the phrases "material facts" as appearing in Clause (a) and "particulars" as appearing in Clause (b) of Sub-section (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the Petitioner to prove his cause of action and by the Defendant to prove his defence, "particulars", on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike "material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that opposite party is not taken by surprise.

16. The learned senior counsel appearing for the first Respondent also placed reliance on the decision reported in *Hari Shankar Jain Vs. Sonia Gandhi*, with regard to material facts on which election petition should contain, wherein it was held thus (para 23):

SECTION 83(1)(a) of RPA, 1951 mandates that an election petition shall - contain a concise statement of the material facts on which the Petitioner relies. By a series of decisions of this Court, it is well-settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with

such further information in detail as to make the opposite party understand the case he will have to meet. Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan Vs. P.J. Francis and Another*, this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

17. He also placed strong reliance on the decision reported in *Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi*, wherein it was held thus (para 14):

BEFORE we consider various paras of the election petition to determine the correctness of the High Court order we think it necessary to bear in mind the nature of the right to elect, the right to be elected and the right to dispute election and the trial of the election petition. Right to contest election or to question the election by means of an election petition is neither common law nor fundamental right instead it is a statutory right regulated by the statutory provisions of the Representation of the People Act, 1951. There is no fundamental or common law right in these matters. This is well settled by catena of decisions of this Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, , *Jagan Nath Vs. Jaswant Singh and Others*, , *Jyoti Basu and Others Vs. Debi Ghosal and Others*, These decisions have settled the legal position that outside the statutory provisions there is no right to dispute an election. The Representation of the People Act is a complete and self contained Code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of the Code of CPC are applicable to the extent as permissible by Section 87 of the Act. The scheme of the Act as noticed earlier would show that an election can be questioned under the statute as provided by Section 80 on the grounds as contained in Section 100 of the Act. Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practice. The pleadings are regulated by Section 83 and it makes it obligatory on the election Petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground u/s 100 of the Act it must fail at the threshold. Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to scrutinise the pleadings relating to corrupt practice in a strict manner.

There is no dispute about the proposition of law laid down by the apex Court that election petition shall contain the concise statement of material facts on which the Petitioner relies and if the averments are vague and general, it is not a proper or sufficient compliance within the meaning of Section 83 of the Act, 1951.

18. The contention of the learned senior counsel appearing for the 1st Respondent is that the election petition is not in accordance with Section 83 of the Act, 1951 as the pleadings have not been verified in the manner as laid down under Code of Civil Procedure. As seen from the election petition, the verification of election petition reads as follows:

I, Putta Madhukar, S/o. Raja Lingam, aged about 36 years, Occ: Agriculture, R/o.H. No. 2-42/1, Near Post Office, Manthani Village & Mandal, Karimnagar District do hereby declare that the facts mentioned in paragraphs 1 to 8 are true to the best of my knowledge, belief and information received and believed to be true and facts mentioned in paragraph 9 to 14 are based on legal advise and believed to be correct, hence, verified the same on this the 29th day of June; 2009 at Hyderabad.

Sd/-

PETITIONER

19. Now, it has to be seen whether the said verification is in conformity with Order VI Rule 15 Code of Civil Procedure, which reads thus:

15. Verification of pleadings- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

The object of this provision appears to be to fasten the party verifying or on whose behalf verification is made, the responsibility for the statement that it contains, and to ensure that the party is having full knowledge about the statement of facts stated in the pleadings. The provision ensures that false allegations are not made wantonly or wilfully. Verification of pleadings assures those allegations are made in exercise of due care. Sub-rule 2 of Rule 15 of Order VI Code of CPC provides that in all cases of verification of pleading, the party verifying must state what facts he is verifying on his personal knowledge and what facts he is verifying upon information, which he believes to be true. Verification of pleading is a matter of great significance or importance as possessing fortification of being made under the sanction of a solemn

declaration. A person making false verification will, therefore, render himself liable to prosecution, if an act or omission is made punishable. A defect in verification is merely an irregularity and not an illegality. If the defect in verification is shown, then it is curable. It is not so fatal so as to dismiss a plaint or petition on that ground. New Sub-rule 4 as added by the Code of CPC (Amendment) Act, 1999, which came into force with effect from 01-07-2002 requires the person verifying the pleading to furnish an affidavit in support of his pleading. An affidavit has been filed along with the petition in terms of Sub-rule (4).

20. The verification of election petition shows that the Petitioner verified the paragraphs 1 to 8 in the Election Petition are true to the best of knowledge, belief and information received and believed to be true. Under no stretch of imagination, it can be said that the verification of pleadings by the Petitioner is not in accordance with Order VI Rule 15 Code of Civil Procedure. In other words, election petition shall contain which of the facts are within the own knowledge of the Petitioner and such other facts received on information which believed to be true. This rule does not expressly provide to state the names of persons who give information. In other words, a verification, however, is not faulty merely because it does not disclose the source of information.

21. So, from the above discussion, it is clear that the election Petitioner has to satisfy by reference to the numbered paragraphs of the pleadings, what he verifies on his own knowledge, what he verifies upon the information received and believes to be true. Defect in the verification is pointed out by raising a plea in the written statement as well as objection was pressed and pursued by arguing the same before this Court. There is no allegation that so and so numbered paragraphs are true to his personal knowledge or numbered paragraphs are based upon information received and believed to be correct. There is no segregation of averments based upon personal knowledge of the Petitioner and other averments based upon information received and believed to be true. Similarly, verification does not disclose source of information. Similarly, the election Petitioner, who was examined as P.W.1, did not specifically state as to the source of information about the materials seized by police in three criminal cases. He only stated that he came to know through electronic and print media about the seizure of certain election material relating to three criminal cases and thereafter he obtained certified copies of the documents relating to those three criminal cases and basing on the same he filed the Election Petition. No explanation is forthcoming even in the evidence of P.W.1 as to from which electronic media or from which print media or the names of press persons he received the information.

22. It is contended that, in the verification affidavit, the words "to the best of my knowledge" and "to the best of my information" do not in conformity with Order VI Rule 15 of Code of Civil Procedure. According to the learned senior counsel appearing for the 1st Respondent the verification should have been "true to my

personal knowledge" and the names of persons from whom he received the information to the verification of "best of his information". Order VI Rule 15 Code of CPC contemplates that the person verifying shall specify, by reference to the numbered paragraphs of the pleading what he verifies of his own knowledge and he verifies upon information received and believed to be true. Whether, it is a proper compliance within the meaning of Order VI Rule 15 Code of Civil Procedure.

23. The learned senior counsel appearing for the Petitioner relied on a decision reported in R.P. Moidutty Vs. P.T. Kunju Mohammad and Another, which deals with verification of affidavit, wherein it was held thus (Paras 33 and 35):

The affidavit filed by the Petitioner in support of the election petition as required by Rule 94a also does not satisfy the requirement of proviso to Sub-section (1) of Section 83 of the Act and Form No. 25 appended to the Rules. The several averments relating to commission of corrupt practice by the first Respondent as contained in paragraphs 4 to 12 and 16 of the petition have been verified as true to the best of "my knowledge and information" - both, without specifying which of the allegations were true to the personal knowledge of the Petitioner and which of the allegations were based on the information of the Petitioner believed by him to be true. Neither the verification in the petition nor the affidavit gives any indication of the source of information of the Petitioner as to such facts as were not in his own knowledge.

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

24. He also relied on a decision reported in Regu Mahesh @ Regu Maheswar Rao Vs. Rajendra Pratap Bhanj Dev and Another, wherein it was held thus (Paras 12

to 14):

It is, therefore, a settled position in law that defect in verification or an affidavit is curable. But further question is what happens when the defect is not cured. There is gulf of difference between a curable defect and a defect continuing in the verification affidavit without any effort being made to cure the defect.

In F.A. Sapa's case (supra) it was held that even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lead the Court in a given case to doubt the veracity of the evidence ultimately tendered.

In R.P. Moidutty Vs. P.T. Kunju Mohammad and Another, it was, inter alia, held as follows:

all the averments made in paras 1 to 17 of the petition have been stated to be true to the personal knowledge of the Petitioner and in the next breath the very same averments have been stated to be based on the information of the Petitioner and believed by him to be true. The source of information is not disclosed. As observed by this Court in singora's case (supra) the object of requiring verification of an election petition is to clearly fix the responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time, discouraging wild and irresponsible allegations unsupported by facts. However, the defect of verification is not fatal to the petition, it can be cured (See Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others, and a. S. Subbaraj v. M. Muthiah (5 ELR 21). In the present case the defect in verification was pointed out by raising a plea in that regard in the written statement. The objection was pressed and pursued by arguing the same before the court. However, the Petitioner persisted in pursuing the petition without proper verification which the Petitioner should not have been permitted to do. In our opinion, unless the defect in verification was rectified, the petition could not have been tried.

From the above decisions of the Hon"ble Supreme Court, it is clear that the affidavit shall contain those allegations which are within the personal knowledge of deponent and other allegations are based upon the information received from such and such persons.

25. He also relied on a decision reported in Rajendra Pratap Bhanj Deo Vs. Regu Mahesh @ Regu Maheswar Rao and Another, wherein it was held thus (Para 32):

Verification of pleadings or affirmation of affidavits has a definite purpose to serve. It binds the party to the averments made in it. Apart from putting the opposite party to a definite notice, it circumscribes the parties to the pleadings so that they cannot expand or embellish the same at a later stage. Unverified pleadings or unaffirmed affidavits are not at all acceptable in law. Certain defects as to verification or affirmation are curable, and others, not. It was held by the

Supreme Court in *Shipra v. Shanti Lai Khoiwal*, AIR 1996 SC 1691, that "defective portions can be struck off and other independent issues can be tried.

26. The affidavit filed in support of the petition, according to the learned senior counsel appearing for the 1st Respondent is that verification affidavit does not contain the pleadings as averred in the election petition except mentioning that the facts stated in paragraph 1 of the petition are to the best of his knowledge, that contents mentioned in paragraphs 2 and 3 are correct to the best of his information and contents mentioned in paragraphs 3 to 5 and 7 to 12 are based on legal advice and believed to be true. No doubt, verification affidavit does not contain the same pleadings as averred in the election petition, but in the considered opinion of this Court, it is nothing but redundant or superfluous to reiterate in the affidavit. Since the affidavit forms part of the election petition, there is no obvious reason to reiterate the pleadings again in the affidavit. Therefore, it cannot be said that the verification of affidavit is not in accordance with the manner as provided in the Code of Civil Procedure. Even in the insertion of new rule to Code of Civil Procedure, it does not lay down that the contents of the election petition shall have to be again incorporated or reiterated in the affidavit. Because in the verification, the Petitioner has categorically stated that particular paragraphs are based upon his knowledge and other paragraphs are correct to the best of his information and some other paragraphs are based upon legal advice.

27. Rule 94A of the Conduct of Election Rules, 1961 provides that an affidavit referred to in the proviso to Sub-section (1) of Section 83 of the Act shall be sworn before a Magistrate of First Class or a Notary or Commissioner of Oaths, and shall be in Form 25. In this election petition, the affidavit filed by the Petitioner along with the Election Petition, was sworn before an Advocate. The proforma affidavit as in Form 25, reads thus:

I,...., the Petitioner in the accompanying election petition, calling in question the election of Shri/Shrimati....(Respondent No.in the said petition) make solemn affirmation/oath and say,

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

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

(c)

(d)

Etc.

Signature of deponent.

Solemnly affirmed/sworn by Shri/Shrimati.... at....this....day of200 .

Before me, Magistrate of First Class/Notary/ Commissioner of Oaths

Proforma affidavit prescribed under Rule 94A shows that the affidavit as referred to, in Section 83 should be sworn before a Magistrate of First Class or a Notary or a Commissioner of Oaths.

28. It is contended by the learned senior counsel appearing for the 1st Respondent that the affidavit filed in lieu of chief-examination is not in conformity with Order XIX Rule 3 Code of CPC which reads thus:

The affidavit shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statement of his belief may be admitted.

In view of the fact that the affidavit is not in accordance with Order XIX Rule 3 Code of Civil Procedure, the contention of the learned senior counsel appearing for the first Respondent is that the entire chief-examination has to be eschewed from consideration. Affidavit is a written or printed declaration or statement of facts made voluntarily and confirmed under the affirmation before a person authorized to administer affirmation. In other words, it is solemn assertion or declaration which can be substitute for an oath or instead of swearing. The affidavit has been defined in Sub-clause (3) of Section 3 of the General Clauses Act, 1897 to include "the affirmation and declaration in the case of person by law allowed to affirm or declare instead of swearing." Therefore, the essential ingredients of an affidavit are that the statements or declarations are made by the deponent relevant to the subject matter and in order to add sanctity to it, he declares or affirms the truth of the contents made in the presence of a person who in law is authorized either to administer oath or to accept the affirmation. Verification of affidavit is necessary to enable the Court to test the genuineness and authenticity of averments so that the Court can act safely on such affidavit. Sub-rule 1 of Rule 3 declares as to what an affidavit should contain. It requires the deponent to state in the affidavit such facts within his own knowledge which he is able to prove. Rule 4 of Order XVIII as amended by Amended Act 2002 indicates that the evidence (examination in chief of a witness) shall be an affidavit subject to cross-examination before the Court or before the commissioner appointed by the Court.

29. Coming to the affidavit filed in lieu of chief examination, it reads thus:

I, Putta Madhukar, s/o. Raja Lingu, Aged 37 years, Occ: Agriculture, R/o.: H. No. 2-42/1, Near Post Office, Manthani village and Mandal, Karimnagar District, do hereby solemnly affirm and sincerely state on oath as under:"

At the end of the affidavit, it reads thus:

Sworn and signed before the at Hyderabad on this the 25th day of June, 2010.

Advocate, Hyderabad.

30. Rule 38 of the Andhra Pradesh Civil Rules of Practice and Circular orders, 1980 deals with before whom the affidavits have to be sworn which reads thus:

Affidavits intended to use in judicial proceedings may be sworn before any Court or Magistrate or a member of Nyaya Panchayat constituted under the A.P. Gram Panchayats Act, 1964, or a Sub-Registrar, Nazir, or Deputy Nazir or a member of the State Legislature or a Member of Parliament, or a Municipal Councilor or a member of Zilla Parishad or any Gazetted Officer in the service of the State Government or the Union Government or a Notary as defined in Notaries Act, 1952, or a retired Gazetted Officer receiving pension from Government or a commissioned Military Officer or an advocate who has been engaged in such proceedings or any Superintendent in the office of the Commissioner for the Andhra Pradesh Hindu Religious Institutions and Charitable Endowments.

The above provision makes it clear that the affidavit can be sworn before an advocate other than the advocate who has engaged in such proceedings. It is not the case of the 1st Respondent that the advocate who sworn the affidavit is the same advocate who is conducting the case. Rule 39 of the said Rules prescribes that officer before whom an affidavit is sworn or affirmed shall state the date on which, and the place where, the same is sworn or affirmed and sign his name and description at the end as in Form No. 14, otherwise the same shall not be filed or read in any matter without the leave of the Court. Form No. 14 reads thus:

Rule 39-A Affidavit on solemn affirmation, (cause title) I, Madura Ramaswamy Pillai, s/o A.B and a Hindu.... Of....years of age, solemnly and sincerely affirm (or make oath and say) as follows:

- 1.
- 2.

Solemnly affirmed (or sworn) at the office of the Court of the District Munsif ofthis day of

31. The model of the affidavit form would go to show that it should be solemnly and necessarily affirm before the officer authorized to take the contents on oath and at the end of the affidavit, it shall be stated that deponent has solemnly affirm or sworn at the office on so and so date. In this case, the affidavit in lieu of chief-examination would go to show that it was solemnly affirmed and sincerely stated on oath and sworn and signed before the advocate at Hyderabad on 09th day of July, 2009. Therefore, the affidavit in lieu of chief examination filed by the election Petitioner is in accordance with law.

32. The learned senior counsel appearing for the first Respondent also relied on a decision reported in Rajendra Pratap Bhanj Deo Vs. Regu Mahesh @ Regu Maheswar Rao and Another, wherein it was held thus (Para 32):

Verification of pleadings or affirmation of affidavits has a definite purpose to serve. It binds the party to the averments made in it. Apart from putting the opposite party to a definite notice, it circumscribes the parties to the pleadings so that they cannot expand or embellish the same at a later stage. Unverified pleadings or unaffirmed affidavits are not at all acceptable in law. Certain defects as to verification or affirmation are curable, and others, not. It was held by the Supreme Court in *Shipra v. Shanti Lal Khoiwal*, AIR 1996 SC 1691, that "defective portions can be struck off and other independent issues can be tried.

In view of the above decision, it is clear that the pleadings or affidavits have to be verified with regard to the allegations based on the information of the Petitioner and his knowledge about the contents, but in this case as pointed out earlier, affidavit with regard to verification of the pleadings are in accordance with the provisions of Code of Civil Procedure.

From the foregoing discussion, it is clear that the affidavit filed in lieu of chief-examination is completely in accordance with the requirements of the Code of Civil Procedure, 1908 and the rules framed thereunder. Therefore, the contention of the learned senior counsel appearing for the first Respondent that the entire chief-examination of the election Petitioner has to be eschewed from consideration, cannot be accepted as it is wholly devoid of merit and is unsustainable.

33. The learned senior counsel appearing for the Petitioner relied upon a decision in *Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others*, with regard to the standard of proof required in an Election Petition as that of the strict proof of charge beyond reasonable doubt, wherein it is held thus:

(13) THOUGH the election of a successful candidate is not to be interfered with lightly and the verdict of the electorate upset, this Court has emphasised in more than one case that one of the essentials of the election law is to safeguard the purity of the election process and to see that people do not get elected by flagrant breaches of the law or by committing corrupt practices. It must be remembered that an election petition is not a matter in which the only persons interested are the candidates who fought the election against each other. The public is also substantially interested in it and it is so because election is an essential part of a democratic process. It is equally well settled by this Court and necessary to bear in mind 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 even to impose upon him a disqualification for 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 Petitioner has to succeed, he must establish definitely and to the satisfaction of the Court the charge of corrupt practice which he levels 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. In the case of an election petition, based on allegations

of commission of corrupt practice, the standard of proof is generally speaking that of criminal trials, which requires strict proof of the charge beyond a reasonable doubt and the burden of proof is on the Petitioner and that burden does not shift.

(14) BY this proposition, however, we should not be understood to mean or imply that the returned candidate is absolved from his liability to bring forth evidence on the record to rebut the case of the Petitioner and to particularly prove such facts which are within his special knowledge (Section 106 Evidence Act). Though, the nature of allegations in cases alleging corrupt practices are quasi criminal and the burden is heavy on him who assails an election but unlike in a criminal trial, where as 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 and wherever necessary by adducing evidence besides giving his sworn testimony denying the allegations. However, this stage reaches if and when the election Petitioner leads cogent and reliable evidence to prove the charges levelled against the returned candidate as, only then, can it be said that the former has discharged his burden. That necessarily means, that if the election Petitioner fails to adduce such evidence which may persuade the Court to draw a presumption in his favour the returned candidate will not be required to discharge his burden by adducing evidence in rebuttal. While on this point it will be also pertinent to mention that the election Petitioner has established the charge by proof beyond reasonable doubt and not merely by preponderance of probabilities as in civil action....

From the above decision, it is clear that onus lies on the election Petitioner to establish the charge of corrupt practice and the evidence must be cogent and definite. Further, it is also clear that during the trial of the Election Petition, the returned candidate has to place before the Court his version and specify the Court that he has not committed the corrupt practices. That stage comes only after the election Petitioner leads cogent, acceptable and reliable evidence to prove the charge.

34. The learned senior counsel appearing for the Petitioner relied on a decision in *Manohar Joshi V. Nitin Bhaurao Patil and Anr.* (1996) 1 Supreme Court Cases 169, wherein it is held thus: (para 39)

The distinction between Clause (b) of Sub-section (1) and Sub-clause (ii) of Clause (d) therein is significant. The ground in Clause (b) provides that the commission of any corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent by itself is sufficient to declare the election to be void. On the other hand the commission of any corrupt practice in the interests of the returned candidate by an agent other than his election agent (without the further requirement of the ingredient of consent of a returned candidate or his election agent) is a ground for declaring the election to be void only when it is further pleaded and proved

that the result of the election in so far as it concerns a returned candidate has been materially affected. This ground is further subject to Sub-section (2) of Section 100 of which the onus is on the returned candidate.

35. ISSUE No 1: Whether R1 incurred expenditure exceeding Rs. 35,00,000/- contrary to the exceeding limit of election expenses fixed by the Rules?

Coming to corrupt practices, the learned senior counsel appearing for the Petitioner also relied on a decision in *Kanwar Lal Gupta v. Amarnath Chawla And Ors.* AIR 1975 SUPREME COURT 308 (1), wherein it is held:

In deed, the Petitioner could not possibly lead any such evidence because what expenses were actually incurred would be a matter within the special knowledge of the first Respondent. But, that does not mean that on the material on record, the court cannot arrive at a reasonable estimate of the expenses incurred by the first Respondent.

It is further held:

The court can and must as far as possible assess the amount of expenditure on the basis of the material on record when it finds that there is no suppression of some item of expenditure or some item is deliberately shown as less than what must have actually been incurred.

36. The learned senior counsel appearing for the Petitioner also relied on a decision in *Common Cause A Registered Society Vs. Union of India and others*, wherein it is held thus: (para 19).

Adverting to Section 77 of the income tax Act, Mr. Kapil Sibal, learned Counsel for the Election Commission has contended that the expenditure incurred by a political party in terms of Explanation I to Section 77 of the R.P. Act shall be presume to be authorised by the candidate himself but the said presumption would be rebuttable. The onus lies on the candidate to prove that the expenditure was in fact incurred / authorised by the party and it was not incurred by the candidate himself. We see considerable force in the contention of the learned Counsel. There can be no dispute that the expenditure incurred by a candidate himself would squarely fall u/s 77(1) of the R.P. Act. There can also be no dispute with the proposition that the expenditure actually incurred and spend by a political party in connection with the election of a candidate cannot be treated to be the expenditure u/s 77(1) of the Act. The question, however, for determination is what rule of evidence is to be followed to attract the provisions of Explanation I to Section 77 of the R.P. Act? The said Explanation is in the nature of an exception to Sub-section I of Section 77. A candidate in the election who wants to take the benefit of Explanation I to Section 77 of the R.P. Act - in any proceeding before the Court - must prove that the said expenditure was in fact incurred by the political party and not by him. Any expenditure in connection with the election of a candidate which according to him has been incurred by his political party shall be presumed to have been authorised by the candidate or his

election agent. But the presumption is rebuttable. The candidate shall have to show that the said expenditure was in fact incurred by a political party and not by him. The candidate shall have to rebut the presumption by the evidentiary - standard as applicable to rebuttable presumptions under the law of evidence. An entry in the books of account of a political party maintained in accordance with Section 13A of the income tax Act showing that the party has incurred expenditure in connection with the election of a candidate may by itself be sufficient to rebut the presumption. On the other hand, the ipse dixit of the candidate or writing at the bottom of the pamphlet, poster, cutout, hoarding, wall painting, advertisement and newspaper etc. that the same were issued by the political party may not by itself be sufficient to rebut the presumption. We, therefore, hold that the expenditure including that for which the candidate is seeking protection under Explanation I to Section 77 of R.P. Act) in connection with the election of a candidate - to the knowledge of the candidate or his election agent- shall be presumed to have been authorised by the candidate or his election agent. It shall, however, be open to the candidate to rebut the presumption in accordance with law and to show that part of the expenditure or whole of it was in fact incurred by the political party to which he belongs or any other association or body of persons or by an individual (other than the candidate or his election agent). A constitution bench of this Court in *Dr. P. Nalla Thampy Terah Vs. Union of India (UOI) and Others*, speaking through Chandrachud, C.J. interpreted Explanation I to Section 77 as under:

while we are on this question, we would like to point out that if an expenditure which purports to have been incurred, for example, by a political party, has in fact been incurred by the candidate or his election agent, Explanation 1 will not be attracted. It is only if the expenditure is in fact incurred or authorised by a political party or any other association or body persons, or by an individual (other than the candidate or his election agent) that the Explanation will come into play. The candidate cannot place his own funds in the power or possession of a political party, or a trade union or some other person and plead for the protection of Explanation I. The reason is that, in such a case, the incurring of the expenditure by those others, is a mere facade. In truth and substance, the expenditure is incurred by the candidate himself because, the money is his. What matters for the purpose of Explanation 1 is not whose hand it is that spends the money. The essence of the matter is, whose money it is. It is only if the money expended by a political party, for example, is not laid at its disposal by the candidate or his election agent that Explanation 1 would apply. In other words, it must be shown, in order that Explanation 1 may apply, that the source of the expenditure incurred was not the candidate or his election agent. What is important is to realise that Explanation 1 does not create a fiction. It deals with the realities of political situations. It does not provide that the expenditure in fact incurred or authorised by a candidate or his election agent, shall not be deemed to be incurred or authorised by them, if the amount is defrayed by a political party. This would be tantamount to creating a fiction. The object of the

Explanation is to ensure that the expenditure incurred, for example, by a political party on its own, that is, without using the funds provided by the candidate or his election agent shall not be deemed to be expenditure incurred or authorised by the candidate or his election agent. If the expenditure is incurred from out of the funds provided by the candidate or his election agent Section 77(1) and not Explanation 1 would apply.

(Emphasis supplied)

37. The learned senior counsel appearing for the Petitioner also placed strong reliance on a decision in Jeet Mohinder Singh Vs. Harminder Singh Jassi, wherein it is held thus: (para 51)

The averments made by the Appellant have been denied in the written statement. It is denied that the Respondent at any time incurred or authorised the expenditure beyond the amount of Rs. 44,832. 00 as stated in the return of expenses. It was denied that the observer had taken in possession certain posters from the office complex of the Respondent in his presence. As to the poster with the caption "pichhle panj salan which...."the Respondent stated that the poster was got printed and distributed by the block congress committees of Talwandi Sabo and Mor Mandi in routine in the third week of December, i.e., much before the filing of nomination paper by the Respondent. The said poster was neither got printed nor distributed nor pasted by the Respondent or on his behalf in the constituency. The Respondent had got printed 3500 posters of different sizes and types from Satguru Printing Press for Rs. 2,800. 00. He had also got printed 2000, 1500 and 1000 posters respectively for Rs. 1800, 1875 and 900 and handbills ten thousands in numbers for Rs. 1000. 00 only. The total expenditure incurred by the Respondent on the printing of posters was Rs. 10275. 00 which has been correctly shown in the return of the expenses.

38. The learned senior counsel appearing for the Petitioner also relied on a decision in Dr. Vijay Laxmi Sadho v. Jagdish AIR 2001 SUPREME COURT 600 which deals with a situation where the Election Petition does not comply with the provisions of Sections 81 and 82 of the RP Act, 1951, wherein it is held thus: (para 9)

An election petition is liable to be dismissed in limine u/s 86(1) of the Act only if the election petition does not comply with either the provisions of "Section 81 or Section 82 or Section 107 of the Act. " The requirement of filing an affidavit along with an election petition, in the prescribed form, in support of allegations of corrupt practice is contained in Section 83(1) of the Act. Thus an election petition is not liable to be dismissed in limine u/s 86 of the Act, for alleged non-compliance with provisions of Section 83(1) of the Act or of its proviso. What other consequences, if any, may follow from an allegedly "defective" affidavit, is to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case.

39. The learned senior counsel appearing for the Petitioner also placed reliance

on a decision in Kamalnath Vs. Sudesh Verma, wherein it is held thus:

It was held in the aforesaid case that it is necessary to plead requisite facts showing authorization, or undertaking of reimbursement by the candidate or his election agent and a mere vague and general statement that the candidate and his workers with his consent spent money in election in excess of the permissible ceiling would not be sufficient to constitute corrupt practice.

40. The learned senior counsel appearing for the Petitioner also relied on a decision in P.C. Thomas Vs. P.M. Ismail and Others, wherein it is held thus:

As regards the decision of this Court in Ch. Razik Ram (supra) and other decisions on the issue, relied upon on behalf of the Appellant, there is no quarrel with the legal position that the charge of corrupt practice is to be equated with criminal charge and the proof required in support thereof would be as in a criminal charge and not preponderance of probabilities, as in a civil action but proof "beyond reasonable doubt". It is well settled that if after balancing the evidence adduced there still remains little doubt in proving the charge, its benefit must go to the returned candidate. However, it is equally well settled that while insisting upon the standard of proof beyond a 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. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process.

41. The learned senior counsel appearing for the Petitioner also relied on a decision in Bhikaji Keshao Joshi and Another Vs. Brijlal Nandlal Biyani and Others, wherein it is held thus:

In view of the specific objection taken in the written statement and the opportunities which the Petitioners had for amending the petition which the above orders disclose, there is considerable force in the contention of the Attorney-General that the Petitioners, for some reasons best known to themselves, have come forward with a some what irresponsible petition and that while the Court has undoubtedly the power to permit amendment of the schedule of corrupt practices by permitting the furnishing of better particulars as regards the items therein specified, there was no duty cast upon the Tribunal to direct "suo motu" the furnishing of better particulars.

42. The learned senior counsel appearing for the Petitioner also placed reliance on a decision in Balwan Singh Vs. Lakshmi Narain and Others, which deals with non-furnishing full particulars of election petition, wherein it is held thus:

An election petition is not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged in the petition, are not set out. Where an objection is raised by the Respondent that a petition is defective because full particulars of an alleged corrupt practice are not set out, the Tribunal is bound to decide whether the objection is well-founded. If the Tribunal upholds the

objection, it should give an opportunity to the Petitioner to apply for leave to amend or amplify the particulars of the corrupt practice alleged; and in the event of non-compliance with that order the Tribunal may strike out the charges which remain vague. Insistence upon full particulars of corrupt practices is undoubtedly of paramount importance in the trial of an election petition, but if the parties go to trial despite the absence of full particulars of the corrupt practice alleged, and evidence of the contesting parties is led on the plea raised by the petition, the petition cannot thereafter be dismissed for want of particulars, because the defect is one of procedure and not one of jurisdiction of the Tribunal to adjudicate upon the plea in the absence of particulars. The appellate court may be justified in setting aside the judgment of the Tribunal if it is satisfied that by reason of the absence of full particulars, material prejudice has resulted; and in considering whether material prejudice has resulted failure to raise and press the objection about the absence of particulars before going to trial must be given due weight....

43. The learned senior counsel appearing for the Petitioner also placed reliance on a decision in *Shri Udhav Singh Vs. Madhav Rao Scindia*, wherein it is held thus:

We are afraid, this ingenious method of construction after compartmentalisation, dissection segregation and inversion of the language of the paragraph, suggested by Counsel, runs counter to the cardinal canon of interpretation, according to which, a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context, in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, primarily, from the tenor and terms of his pleading taken as a whole.

44. The learned senior counsel appearing for the Petitioner also relied on a decision in *F.A. Sapa Etc., Etc., Vs. Singora and others*, wherein it is held thus:

A charge of corrupt practice has a two-dimensional effect; its impact on the returned candidate has to be viewed from the point of view of the candidate's future political and public life and from the point of view of the electorate to ensure the purity of the election process. There can, therefore, be no doubt that such an allegation involving corrupt practice must be viewed very seriously and the High Court should ensure compliance with the requirements of Section 83 before the parties go to trial. This is quite clear from the observations of this Court in the case of *K.M. Mani Vs. P.J. Antony and Others*, While defective verification or a defective affidavit may not be fatal, the High Court should ensure its compliance before the parties go to trial so that the party required to meet the charge is not taken by surprise at the actual trial. It must also be realised that delay in complying with the requirements of Section 83 read with the provisions of the Code or the omission to disclose the grounds or sources of

information, though not fatal would weaken the probative value of the evidence ultimately lead at the actual trial. Therefore, an election Petitioner can afford to overlook the requirements of Section 83 on pain of weakening the evidence that he may ultimately tender at the actual trial of the election petition. That is because as held in Mani's case the charge of corrupt practice has to be proved beyond reasonable doubt and not merely by preponderance of probabilities. Allegation of corrupt practice being quasi-criminal in nature, the failure to supply full particulars at the earliest point of time and to disclose the source of information promptly may have an adverse bearing on the probative value to be attached to the evidence tendered in proof thereof at the trial. Therefore, even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lead the court in a given case to doubt the veracity of the evidence ultimately tendered. If, however, the affidavit or the schedule or annexure form an integral part of the election petition itself, strict compliance would be insisted upon.

45. The learned senior counsel appearing for the Petitioner also placed reliance on a decision in Mohan Rawale Vs. Damodar Tatyaba alias Dadasaheb and Others, wherein it is held that a distinction has to be drawn with regard to material facts and material particulars, and it is held thus:

(11) REFERRING to the importance of pleadings a learned author says: "pleadings do not only define the issues between the parties for the final decision of the court at the trial, they manifest and exert their importance throughout the whole process of the litigation. ... They show on their face whether a reasonable cause of action or defence is disclosed. They provide a guide for the proper mode of trial and particularly for the trial of preliminary issues of law or fact. They demonstrate upon which party the burden of proof lies, and who has the right to open the case. They act as a measure for comparing the evidence of a party with the case which he has pleaded. They determine the range of the admissible evidence which the parties should be prepared to adduce at the trial. They delimit the relief which the court can award....

(12) FURTHER, the distinction between "material facts" and "full particulars" is one of degree. The lines of distinction are not sharp, "material facts" are those which a party relies upon and which, if he does not prove, he fails at the time.

(13) IN *bruce v. Odhams Press Ltd.* Scott L.J. said: "the word "material" means necessary for the purpose of formulating a complete cause of action; and if any one "material" statement is omitted, the statement of claim is bad. " The purpose of "material particulars" is in the context of the need to give the opponent sufficient details of the charge set up against him and to give him a reasonable opportunity.

46. The learned senior counsel appearing for the Petitioner also relied on a decision in H.D. Revanna Vs. G. Puttaswamy and Others, wherein it is held thus:

This Court has repeatedly pointed out the distinction between "material facts" and "particulars". In so far as "material facts" are concerned, this Court has held that they should be fully set out in the Election Petition and if any fact is not set out, the Petitioner cannot be permitted to adduce the evidence relating thereto later; nor will he be permitted to amend the petition after expiry of the period of limitation prescribed for an Election Petition. As regards particulars, the consistent view expressed by this Court, is that the petition cannot be dismissed in limine for want of particulars and if the Court finds that particulars are necessary, an opportunity should be given to the Petitioner to amend the petition and include the particulars. The Constitution Bench in *Balwan Singh Vs. Lakshmi Narain and Others*, held that an election petition was not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged were not set out. It was observed that if an objection was taken and the Tribunal was of the view that particulars had not been set out, the Petitioner had to be given an opportunity to amend or amplify the particulars and that it was only in the event of non-compliance with the order to supply the particulars, the charge could be struck out.

47. On the other hand, the learned senior counsel appearing for the first Respondent relied on a decision in *Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi*, wherein it is held thus:

Allegations contained in paras 50, 51 and 53(1)(f) of the election petition purport to state that Rajiv Gandhi and his workers with his consent spent money on the election in excess of the ceiling limit and major portion of which was not shown by him in his election expenses return. It was alleged that in all Rs. 3,15,500. 00 had been spent by Rajiv Gandhi in his election but he did not include the same in his return. Details of the expenditure is mentioned in the sub-paras (A) to (G) of para DO. In these paras the Appellant alleged that Rajiv Gandhi used at least 100 jeeps for thirty days and his workers with his consent used 40 jeeps and spent money on propaganda badges, leaflets, making arrangements for holding meetings for Smt. Indira Gandhi throughout the Amethi constituency and money was spent in providing food to 100 workers of Rajiv Gandhi, in all the returned candidate and his workers with his consent spent a sum of Rs. 3,15,500. 00 but the same as not accounted for in the election return. The allegations contained in these paras relate to the corrupt practice u/s 123(6) of the Act read with Section 77. Section 123(6) provides that incurring or authorising of expenditure in contravention of Section 77 is a corrupt practice. Section 77 lays down that every candidate at the election shall keep a correct and separate account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of nomination and the date of declaration of result. The account shall contain such particulars as prescribed by Rules. Sub-section (3) lays down that expenditure shall not exceed such amount as may be prescribed. Rule 90, Conduct of Election Rules, 1961, prescribed that the expenses shall not exceed a sum of Rs. 1 lakh for Lok Sabha election in the State of Uttar Pradesh. Section 77 and the Rules therefore prescribed a ceiling limit for

election expenses and if any candidate incurs or authorises expenses in excess of the ceiling limit, he would be guilty of corrupt practice u/s 123(6) of the Act. The allegations contained in various sub-paras of para 50 merely allege that a number of vehicles were plying with Congress (1) flags and food was served in connection with the election meetings, distribution of badges and leaflets. There is, however, no allegation that Rajiv Gandhi incurred or authorised incurring of expenditure for the aforesaid purposes. Any voluntary expense incurred by a political party, well-wishers, sympathisers or association of persons does not fall within the mischief of Section 123(6) of the Act, instead only that expenditure which is incurred by the candidate himself or authorised by him is material for the purpose of Section 77. In *Rananjaya Singh Vs. Baijnath Singh and Others*, this Court pointed out that expenses must be incurred or authorised by the candidate or his election agent. In that case the Manager, the Assistant Manager, 20 Ziladars and their peons were alleged to have worked for the election of the returned candidate. This Court held that the employment of extra persons and the incurring or authorising of extra expenditure was not by the candidate or his election agent". It was further pointed out that persons who volunteer to work cannot be said to be employed or paid by the candidate or his election agent. In *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, Ray, C.J. observed "authorisation means acceptance of the responsibility. Authorisation must precede the expenditure. Authorisation means reimbursement by the candidate or election agent of the person who has been authorised by the candidate or by the election agent of the candidate to spend or incur. In order to constitute authorisation the effect must be that the authority must carry with it the right of reimbursement.

48. The learned senior counsel appearing for the first Respondent also placed reliance on a decision in *Jeet Mohinder Singh Vs. Harminder Singh Jassi*, wherein it is held thus: (para 40)

Before we may proceed to deal, in exercise of our appellate jurisdiction, with the pleas raised on behalf of the Petitioner-Appellant canvassing commission of corrupt practices by the Respondent which in the opinion of the High Court the election Petitioner has failed in proving, we would like to state a few well-settled legal principles in the field of election jurisprudence and relevant to our purpose. They are:

(i) The success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the Court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves enormous load on the public funds and administration.

(ii) Charge of corrupt practice is quasi-criminal in character. If substantiated it

leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career. A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Two consequences follow. Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to hilt, the standard of proof being the same as in a criminal trial.

(iii) The Appellate Court attaches great value to the opinion formed by the Trial Judge *moreso* when the Trial Judge recording findings of fact is the same who had recorded the evidence. The Appellate Court shall remember that the jurisdiction to try an election petition has been vested in a Judge of the High Court. Secondly, the trial Judge may have had the benefit of watching the demeanour of witnesses and forming first-hand opinion of them in the process of evaluation of evidence. The Supreme Court may re-assess the evidence and come to its own conclusions on feeling satisfied that in recording findings of fact the High Court has disregarded settled principles governing the approach to evidence or committed grave or palpable errors.

Section 83 of the Act requires every election petition to contain a concise statement of the material facts on which the Appellant relies. If the election petition alleges commission of corrupt practice at the election, the election petition shall set forth full particulars of any corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Every election petition must be signed and verified by the Appellant in the manner laid down for the verification of pleadings in the Code of Civil Procedure. An election petition alleging corrupt practice is required to be accompanied by an affidavit in Form 25 read with Rule 94a of the Conduct of Election Rules, 1961. Form 25 contemplates the various particulars as to the corrupt practices mentioned in the election petition being verified by the Appellant separately under two headings: (1) which of such statements including particulars are true to Appellant's own knowledge, and (ii) which of the statements including the particulars are true to information of the Appellant. It has been held in *Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others*, that the election Petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice so as to bind him to the charge levelled by him and to prevent any fishing or robing enquiry, also (to) prevent the returned candidate from being taken by surprise.

49. The learned senior counsel appearing for the first Respondent also relied on a

decision in *Ravinder Singh Vs. Janmeja Singh and Others*, wherein it is held thus:

Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83(1) of the Act, the election petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election Petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election Petitioner to make such a charge with full responsibility and to prevent any fishing and roving enquiry and save the returned candidate from being taken by surprise. In the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial the defect being of a fatal nature.

50. The learned senior counsel appearing for the first Respondent also placed reliance on a decision in *Kamal Nath Vs. Sudesh Verma*, wherein it is held thus:

On a combined reading of Section 77 and Section 123(6) of the Act, it is explicitly clear that the excess expenditure must be incurred by the candidate or by any person authorised by the candidate or his election agent. In other words, an expenditure incurred by a third person, who is not authorised by a candidate or who is not an election agent of the candidate, will not be a corrupt practice within the ambit of Section 123(6) of the Act. It would, therefore, be necessary to establish a corrupt practice, as contemplated u/s 123(6) of the Act to plead requisite facts showing authorization or undertaking of reimbursement by the candidate or his election agent....

51. The learned senior counsel appearing for the first Respondent also relied on a decision in *Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others*, wherein it is held thus: (para 21)

Section 77 of the Act provides that every candidate at an election shall either by himself or by his election agent keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both days inclusive. Explanation (1) which was introduced by the Amendment Act of 1974 declares that any expenditure incurred or authorised in connection with the election of a candidate 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 and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purposes of Sub-section (1) of Section 77. Sub-section (2) of Section 77 provides that the account of election expenses shall contain such particulars as may be prescribed and Sub-section (3) lays down that the total of

the said expenditure shall not exceed such amount as may be prescribed. Vide Section 78 of the Act the account of election expenses is required to be lodged with District Election Officer by every candidate at an election within thirty days from the date of election of the returned candidate. The maximum amount of election expenditure which may be incurred by the candidates for the Parliamentary and Assembly Constituencies has been prescribed in Rule 90 of the Conduct of Election Rules 1961. In so far as the Parliamentary Elections are concerned, the said limit is Rs. 1,50,000. 00. u/s 123(6) of the Act, the incurring or authorising of expenditure in contravention of Section 77 of the Act amounts to commission of a corrupt practice. However, every contravention of Section 77 of the Act does not fall within the mischief of Section 123(6) of the Act. Neither the violation of Sub-section (1) of Section 77 nor the violation of Sub-section (2) of Section 77 amounts to the commission of the corrupt practice u/s 123(6) of the Act. However, Section 77(3) mandates that the total of the expenditure in connection with the election shall not exceed the prescribed limit and therefore the provisions of Section 123(6) of the Act are related only to Section 77 of the Act. If a candidate incurs or authorises expenditure in excess of the prescribed limits, he commits the corrupt practice u/s 123(6) of the Act and his election is liable to be set aside and he also incurs the disqualification of being debarred from contesting the next election. From a plain reading of Sections 123(6) and 77 including Explanation 1 to Section 77 of the Act, it is therefore clear that in order to be a corrupt practice, the excessive expenditure must be incurred or authorised by the candidate or his election agent. An expenditure incurred by a third person, which is not authorised by the candidate or his election agent is not a corrupt practice. In *Magraj Patodia Vs. R.K. Birla and Others*, after referring to a catena of authorities even before the inclusion of Explanation 1 to Section 77 of the Act by the Amendment Act 58 of 1974, it was emphasised that to prove the corrupt practice of incurring or authorising expenditure beyond the prescribed limit, it is not sufficient for the Petitioner to merely prove that the expenditure beyond the prescribed limit had been incurred in connection with the election of the returned candidate, but he must go further and prove that the excess expenditure was authorised or incurred with the consent of the returned candidate or his election agent. In *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, this Court reaffirmed the above view and taking note of the Amendment Act 58 of 1974, opined that voluntary expenditure incurred by friends, relations, or sympathizers of the candidate or the candidates' political party are not required to be included in the candidate's return of expenses, unless the expenses were incurred in the circumstances from which it could be positively inferred that the successful candidate had undertaken that he would reimburse the party or the person who incurred the expense. It is not enough to prove that some advantage accrued to the returned candidate or even that the expenditure was incurred for the benefit of the returned candidate or that it was within the knowledge of the returned candidate and he did not prevent it, to clothe the returned candidate with the liability of committing the alleged corrupt practice. Noticing that during an election, the sponsoring or supporting political

parties as well as friends, sympathizers and well wisher do sometimes incur expenditure not only without the consent of the concerned candidate but even without his knowledge this Court opined that the successful candidate cannot be clothed with all such expenses to suffer the disqualification.

52. The learned senior counsel appearing for the first Respondent also placed reliance on a decision in Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, wherein it is held thus: (para 121)

Allegations that election expenses are incurred or authorised by a candidate or his agent will have to be proved. Authorisation means acceptance of the responsibility. Authorisation must precede the expenditure. Authorisation means reimbursement by the candidate or election agent of the person who has been authorised by the candidate or by the election agent of the candidate to spend or incur. In order to constitute authorisation the effect must be that the authority must carry with it the right of re-imburement.

53. Basing on the legal position as enunciated in the aforesaid decisions, it has to be seen whether the case of the election Petitioner falls within the scope and ambit of Section 123(6) of the RP Act, 1951 ?

54. It is not in dispute that the election Petitioner is one of the contesting candidates for 24 Manthani Assembly Constituency in the general elections held on 16.4.2009, having fielded from Praja Rajyam Party. It is also not in dispute that in the said election, the first Respondent contested as a candidate from Indian National Congress party. It is also not in dispute that the first Respondent secured 63,770 votes and the Petitioner stood second in the said election having secured 50,561 votes. Result of the said election was declared on 16.5.2009 whereunder the first Respondent was declared as elected. It is also not in dispute that Manthani police seized certain election materials from Eicher van bearing registration No. AP23T 9440 which was carrying canvassing material relating to Congress-I party, on 5.4.2009, and registered a case in crime No. 53 of 2009 of Manthani police station against one Challoi Ravi, s/o. Mallesham. As per panchanama dated 5.4.2009, which is marked as Ex.P11, the following election canvassing materials have been seized.

(1) 10,162 Nos. banners containing photographs of the first Respondent and his father; (2) 11,374 Nos. cotton Flags which carry slogan relating to the first Respondent and "Hand" symbol; (3) 620 Flexis; (4) Bundles weighing 359 kgs, which contained Multi-coloured wall posters; (5) 30, 350 Nos. caps; (6) 384 Nos. T-shirts

The said material was produced before the Mandal Executive Magistrate, Manthani. Thereafter, one G. Satyanarayana Raju, President of Mandal Congress Committee, Manthani filed a claim petition on 8.4.2009 for release of the said material. According to the case of the Petitioner, he filed an objection petition before the Tahsildar on 9.4.2009, but, without considering his objections, the canvass materials seized in crime No. 53 of 2009, except T-shirts, were released

in favour of said G. Satyanarayana Raju.

55. Even the first Respondent did not deny or dispute about the seizure of the certain election materials by the police from the Eicher van while being driven by its driver Challoji Ravi, on 5.4.2009. There is no pleading or evidence to show that the said Challoji Ravi is an election agent of the first Respondent or he is the person, who, with the consent of the returned candidate or his election agent, was carrying the election materials for the purpose of using the same in the election campaigning in Manthani Assembly Constituency. In the affidavit filed in lieu of chief-examination of Petitioner, it is stated that the first Respondent got his election materials published and arranged them to be brought to Manthani Assembly Constituency for the purpose of distribution to voters while the materials were brought in a motor vehicle, Manthani police seized the materials from the van. He also stated that the seizure of materials relate to crime No. 53 of 2009 of Manthani police station. In so far as the materials seized in crime No. 69 of 2009 of Regonda police station and crime No. 54 of 2009 of Manthani police station, the learned senior counsel appearing for the Petitioner fairly conceded that those material have not been obtained custody from the concerned Magistrates so as to use the same during the election campaigning. Further, the material seized in crime No. 69 of 2009 of Regonda police station and crime No. 54 of 2009 of Manthani police station are not shown to be used in the election campaigning or that this materials were being carried by an election agent of the first Respondent or that the persons who were arrested in connection with those two cases were carrying the material, with the consent of the first Respondent or his agent. According to P.W.1, entire materials seized in crime No. 53 of 2009 belong to the first Respondent. He also stated that, as per the instructions issued in the general elections 2009, suggested rates of election materials were issued by the District Election Officer/Collector, Karimnagar, wherein rates of each of the items which may be used in election canvass were fixed. Ex.P2 is the list of suggested rates of various items of election materials. According to the case of the election Petitioner, as per the suggested rates, minimum cost of -10,162 banners comes to Rs. 12,19,440/-; 11,374 flags comes to Rs. 2,27,480/-; 620 flexies comes to Rs. 3,16,200/-, multi-coloured wall posters comes to Rs. 70,000/-; 30,350 caps comes to Rs. 2,12,450/-; T-shirts comes to Rs. 38,400/-, and of pamphlets, face masks, door stickers and badges comes to Rs. 5,00,000/-. According to P.W.1, he included only the expenditure said to have been incurred by the first Respondent towards election canvas materials which were seized by police. He further stated that after release of the materials in pursuance of the orders in Ex.P32 by the Mandal Executive Magistrate, Manthani on 10.4.2009, the first Respondent used the election materials for the purpose of canvassing during the elections. When a specific suggestion was given to him that the materials seized in crime No. 53 of 2009 were not used in the election campaign, the same was denied.

56. Ex.P28-claim petition would go to show that G. Satyanarayana Raju, President of Mandal Congress Committee, Manthani filed a claim petition for

return of the election materials which were sent by the Andhra Pradesh Congress Committee, Hyderabad. The recitals in this document would go to show that the material sent by the Andhra Pradesh Congress Committee (APCC) to the District Congress Committee (DCC), Karimnagar and to the Mandal Congress Committee, Manthani for the purpose of Peddapalli parliamentary constituency, including 7 assembly segments, that on 5.4.2009 election canvass materials were seized by police on false complaint and that the materials which were sent for the use in the elections was approved by the Chief Election Office vide his memo dated 1.4.2009 and therefore, he prayed to release the said material. The election Petitioner filed an objection petition to the claim petition under Ex.P28, stating inter alia that Congress party was trying to claim the property by producing false and fabricated documents for the purpose of their false claim and that he filed the petition under the Right to Information Act, 2005 seeking information and details of seized property, and his petitions were pending before the concerned authorities, and therefore, he requested not to dispose of the claim petition relating to the seized property in crime No. 53 of 2009 of Manthani police station. Basing on the claim petition, the Tahsildar-cum-Mandal Executive Magistrate, Manthani passed order on 10.4.2009, which is marked as Ex.P32, wherein it is stated that, the Petitioner Sri G. Satyanarayana Raju, President, Mandal Congress Committee, Manthani submitted a petition along with following documentary evidence on 7.4.2009 and requested to release the election materials stating that Congress party publicity materials were sent by the APCC to DCC, Karimnagar, and from DCC to Manthani for the purpose of Elections to Peddapalli parliamentary constituency including the seven assembly segments. The learned Mandal Executive Magistrate verified the details of the material shown in the letter of APCC and DCC with reference to the material seized and found tallied, and therefore, having satisfied with the evidence produced by the claim Petitioner G. Satyanarayana Raju, ordered release of the seized material. From the above discussion, it is clear that the seized material viz. 10,000 Nos. banners; 25,000 Nos. caps; 10,000 Nos. flags; 17,385 Nos. masks; 6,442 Nos. masks; 13 bags buntings; 5 bags small door poster stickers; 10 bags wall posters; 6 bags Nos. pamphlets; 1 bag Nos. literature; 620 Nos. flexes; and 3 bags badges, were ordered to be released to said G. Satyanarayana Raju.

57. The contention of the learned senior counsel appearing for the Petitioner is that because banners contained photographs of the first Respondent and his father, they must have been used during the elections by the first Respondent alone. Except an omnibus statement made by P.W.1 that after release of the election materials by the Mandal Executive Magistrate, the materials were used for the purpose of the election campaigning by the first Respondent, there is no other evidence produced to show that the election material which were ordered to be released by the Mandal Executive Magistrate in favour of said G. Satyanarayana Raju were, in fact, used for campaigning during the election by the first Respondent. Even P.W.2, who is resident of Kamanpur village, which lies within the Manthani Assembly Constituency, simply stated that the first

Respondent used to make canvass by way of conducting rallies, distributing pamphlets, caps, badges, khanduvas, door posters, and he had seen affixing copies of Ex.P5, which contain photographs of first Respondent and his father, and the party symbol, on walls during the election campaigning in Kamanpur; Ex.P6 contain the photograph of the first Respondent whereas Ex.P7 contains photograph of his father. He also stated that Bindi stickers were given to the voters during the election campaign. He further stated that Ex.P9-wall posters contain photograph of the first Respondent and he had seen them while they were being affixed on the walls of houses in the village.

58. Another witness P.W.3 stated that during elections, the election propaganda was carried on, in jeeps, affixing wall posters, distributing pamphlets and affixing door slips, etc.; Ex.P2 contained photograph of Sridhar Babu (R1), his father Sripada Rao, election symbol of Congress-I party and photographs of late Dr. Y.S. Rajasekhara Reddy and Sri D. Srinivas; Ex.P6 contained photographs of Sridhar Babu (R1) and his father and Bindi stickers, and that Bindi Stickers were distributed in his house also; that, Ex.P7 contained the slogan that leadership of Sridhar Babu (R1) has to flourish and it also contained photographs of first Respondent, his father and also the party symbol; Ex.P8 contained the slogan "Sripada Rao long live" and also the photograph and name of first Respondent; that, Ex.P9 is the wall poster containing photograph of the first Respondent with a caption "Kamanpur Progressive Park". If the evidence of P. Ws.2 and 3 is to be accepted as true and correct, the allegations are very vague, obscure and incomprehensible. They did not specifically testify that the materials handed over to the said G. Satyanarayana Raju in pursuance of Ex.P32-order of the Mandal Executive Magistrate were the self-same election material used by the first Respondent during the election campaign.

59. The evidence of P.W.4, who is Sub Inspector of Police, Manthani police station, would go to show that he seized certain election canvas materials and registered a case in crime No. 53 of 2009 and conducted panchanama under Ex.P11 and seized the same in the presence of mediators. His evidence remained unchallenged. It is not the case of P. Ws.2 and 3 that they were present at the time of seizure of election canvass materials by P.W.4 in the presence of mediators. Hence, they are not competent to speak that the materials seized by police were the same materials used during the elections.

60. It is the case of the first Respondent that he came to know that police seized some election publicity material pertaining the Peddapalli parliamentary constituency and-registered a case in crime No. 53 of 2009. He specifically asserted that the election publicity materials seized by police, and released in favour of G. Satyanarayana Raju, were not used for his election publicity purpose and he has no connection or consent or knowledge in any manner including his election agent, with regard to registration of the three cases and the material seized therein. He further stated that the election expenses incurred during his election i.e. from the date of his nomination till the date of declaration of result

in election, were submitted to the election authorities with true and correct accounts and the same was accepted by the election authorities. It is also stated by him that the publicity materials which do not contain name of the printer and publisher do not belong to him and Ex.R7 is the election expenditure return filed by him. He admitted that the election expenditure statement was prepared by his agent and the same was duly verified basing on the bills and vouchers, and that he paid the amounts towards election expenditure to his agent basing on the vouchers and bills, and that as far as his memory goes, the election material like posters, banners, pamphlets, khanduvas, wall writings, use of cable network, etc. were used in the election propaganda. He denied about printing of pamphlets like Ex.P5 or bindis like Ex.P6. He admitted about containing photographs of his father and congress party election symbol in Ex.P7, but stated that he had not got printed the posters like Ex.P7. Similarly, he stated that he had not got printed pamphlets and posters like Exs.P8 and P9. In view of the above discussion, it is clear from the above evidence that the Petitioner has not adduced any direct evidence or circumstantial evidence to infer that the materials got released by G. Satyanarayana Raju from the Mandal Executive Magistrate were, in fact, used during the campaigning of the election by the first Respondent.

61. Circumstantial evidence is modification of indirect evidence. It means evidence not by direct testimony of a witness, of a fact to be proved, but by the bearing upon that fact or other and subsidiary facts which are relied upon as inconsistent with any result other than truth of the principal fact. The evidence which proves or tends to prove the factum probandum indirectly by means of certain inferences of deduction to be drawn from its existence or its connection with other facts probantia, it is called circumstantial evidence. When a case rests upon circumstantial evidence, such evidence must satisfy the following tests, (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the act or commission was committed by the Respondent and none else. In a case depending largely on circumstantial evidence, there is always a danger that conjectures or suspicions may take the place of legal proof. Suspicion, however strong, cannot take the place of legal proof.

62. Simply because the President of Mandal Congress Committee, Manthani by name G. Satyanarayana Raju, had taken delivery of the seized election canvass materials in crime No. 53 of 2009 of Manthani police station and that the seized materials contained photographs of the first Respondent or his father or some other leaders of Congress party, there cannot be any irresistible conclusion that those materials have been used during the election campaign of 24-Manthani Assembly Constituency. Ex.P28-claim petition and Ex.P32-proceedings of the Mandal Executive Magistrate, Manthani, would clearly go to show that the APCC

sent the election materials which were seized in crime No. 53 of 2009 of Manthani police station registered u/s 102 of the Code of Criminal Procedure, 1973, for the purpose of election campaigning in Peddapally parliamentary constituency including its seven assembly segments, but not exclusive use or utilization in the Manthani Assembly Constituency in which the first Respondent was one of the contesting candidates. Even Ex.P29-letter addressed by one Ama Anand, General Secretary, DCC office in-charge, Karimnagar, would go to show that the following election materials were being sent in Eicher van bearing Registration No. AP23T 9440 to Peddapalli parliamentary constituency. As seen from Ex.P29, the particulars of the election material are as follows:

- 1) Banners - 10,000 Nos.
- 2) Caps 25,000 Nos.
- 3) Flags 10,000 Nos.
- 4) Masks 25,000 Nos.
- 5) Masks 12,000 Nos.
- 6) Buntings - 13 bags
- 7) Small door Poster stickers- 15,000 Nos.
- 8) Wall posters- 5,000 Nos.
- 9) Pamphlets - 25,000 Nos.
- 10) Literature- 2,000 Nos.
- 11) Flexies - 650 Nos.
- 12) Badges - 25,000 Nos.

From the above evidence adduced by the Petitioner himself, it is clear that the election materials seized in crime No. 53 of 2009 of Manthani police station is not meant exclusively for the use in the election campaigning of 24-Manthani Assembly Constituency. The said materials have to be used during the election campaign in respect of seven assembly segments which come under Peddapalli parliamentary constituency. Even P. Ws. 1 to 3 did not say that they were present when G. Satyanarayana Raju after taking custody from the Mandal Executive Magistrate, handed over all or some election campaign materials to first Respondent or to his election agent or to some other person nominated by the first Respondent or his election agent. In the absence of any evidence, it does not lead to drawn an irresistible conclusion that the materials seized in crime No. 53 of 2009 of Manthani police station were exclusively used in the election campaign by the first Respondent in 24-Manthani Assembly Constituency from the date of his nomination till the date of declaration of result.

63. The contention of the learned senior counsel appearing for the Petitioner is

that non-examination of Ama Anand, who addressed letter under Ex.P29, and said G. Satyanarayana Raju, who filed claim petition under Ex.P28, is fatal to the case of the first Respondent. The first Respondent did not even deny or dispute about either the said G. Satyanarayana Raju filing Ex.P28-claim petition or receiving the election materials by him from the Mandal Executive Magistrate in pursuance of Ex.P32-proceedings. Similarly, the first Respondent is not disputing about the letter addressed by the said Ama Anand under Ex.P29 to the District Congress Committee, Karimnagar. A presumption in terms of Section 114(g) of the Indian Evidence Act, 1872, that the evidence which could be and is not produced, would, if produced, be unfavourable to the person who withheld it, cannot be drawn. This illustration refers to the presumption raised from willful withholding of evidence. Only when there is a suppression of useful evidence, it may ordinarily leads to the inference that the evidence, if produced, would go against the party who withholds it. When the election materials seized by police were, admittedly, sent by APCC to be used in 7 assembly segments of Peddapalli parliamentary constituency, there must be clear, unambiguous and cogent evidence as to what extent the quantity of election materials got released in pursuance of Ex.P29, were used in the campaigning of Manthani Assembly Constituency, is lacking. It is the specific case of the first Respondent that no part of the election materials obtained custody by G. Satyanarayana Raju, President of Mandal Congress Committee, Manthani, from the Mandal Executive Magistrate were used during the election by him. Having come to the Court to set aside the election of the first Respondent on the ground of corrupt practices, the burden to establish the charge beyond all reasonable doubt as required to prove a charge in a criminal case, lies undoubtedly on the Petitioner. Beyond all reasonable doubt is the estimate which a prudent man makes of the probabilities having regard to what must be his duty as a result of the estimate. Therefore, it is the estimate of probabilities arrived at, by a prudent man from his practical stand point. In case of corrupt practices, the Court has to be very watchful and ensure that conjectures or suspicions do not take the place of legal proof.

64. In an election petition, where the plea relates to corrupt practice of incurring of election expenditure in contravention of Section 77 of the R.P. Act, 1951 is raised, the Petitioner has to definitely plead the material fact that the first Respondent spent money much more than the prescribed limit. Section 77 of the Act consists of three clauses. Clause (1) thereof reads that every candidate at an election shall either by himself or by his election agent, keep a separate and correct account of expenditure in connection with election incurred or authorized by him or by his election agent, between the date on which he has been nominated and the date of declaration of result thereof, both the dates inclusive. The above provision does not by itself indicate about disqualification of returned candidate in case of contravention, but the requirement is that every candidate by himself or his agent, must keep a separate and correct account of all the expenditure. There is no pleading that the returned candidate has not kept a separate and correct account of expenditure incurred by him or his election agent

from the date on which he was nominated till the date of declaration. P.W.1 has only stated that the election expenditure submitted by the first Respondent does not show the real expenditure and that incorrect statement of election expenditure is only a device to screen the actual expenditure incurred by the first Respondent himself and by the party on his behalf. His evidence does not indicate or describe as to how and in what manner, the statement of account submitted by the first Respondent as in Ex.R7 is not the correct or improper expenditure in connection with his election. P.W.1 stated that the election expenditure filed by the first Respondent is not only incorrect, but also not in accordance with the rules and he suppressed the expenditure made by him and his party. Unless there is a specific challenge as to correctness or otherwise of Ex.R7 in the first instance, any amount of evidence with regard to incorrect or false account of expenditure statement is valueless. No doubt, the Petitioner has given an explanation in the election petition stating that though he applied for District Election Officer for furnishing certified copy of the account vouchers relating to the expenditure in connection with the election, they have not furnished the same to him. In such circumstances, it is the imperative duty of the Petitioner to file an application for amendment of election petition seeking to challenge the correctness or otherwise of Ex.R7. Therefore, the case of the Petitioner does not fall under Clause (1) of Section 77 of the RP Act, 1951.

65. Coming to Clause (2) which prescribes that the account shall contain such particulars as may be prescribed, there is no pleading that the account particulars submitted by the first Respondent is not in accordance with any provision or rule as prescribed by the election rules. In the evidence, P.W.1 stated that the first Respondent did not reveal his source of funds and that the election expenditure did not show any vouchers filed by the Respondent No. 1, and that the Respondent No. I had shown the expenditure up to part III, under Ex.P37, leaving the other three parts, which shows that he suppressed some expenditure made in the election. As seen from part III marked as Ex.P37, he incurred Rs. 5,35,153.20 ps., which is abstract of expenditure statement. Therefore, there is no pleading and evidence to show that the expenditure account submitted by the returned candidate is contrary to the procedure prescribed under the rules. Hence, the Clause (2) to Section 77 of the RP Act, 1951 has no application to the facts of the present case.

66. Coming to the Clause (3) of Section 77 of the Act, which says that total expenditure shall not exceed such amount as may be prescribed. It is not in dispute that Clause 23.2 of Ex.P8, which is a book for candidates issued by the Election Commission of India in 2009 Elections, fixes the total expenditure limit as on 24.10.2003 vide Ministry of Law and Justice (Legislative Department) Notification No. H-11-19(6)/2003, dated 24.10.2003, and according to it, the maximum limit of election expenditure in any assembly constituency relating to the State of Andhra Pradesh is Rs. 10,00,000/-. Therefore, the contention of the senior counsel appearing for the Petitioner is that the expenditure of entire materials published by the first Respondent and his party is not included in the

election expenditure statement and in view of the fact that expenditure incurred during the elections exceeds over and above Rs. 10,00,000/-, it is a corrupt practice within the meaning of Section 123(6) read with Clause (3) of Section 77 of the RP Act, 1951. It is not denied or disputed even by the first Respondent that the election expenditure should not exceed Rs. 10,00,000/- in an assembly constituency in so far as the State of Andhra Pradesh is concerned. Now, it has to be seen whether the first Respondent exceeded the limit prescribed under law during the elections.

67. On this aspect, the entire case of the Petitioner rests upon Exs.P10 and P11. In pursuance of the registration of the case under Ex.P10, Manthani police seized certain canvass materials of Congress-I party. The materials seized in pursuance of the said crime number have been incorporated in Ex.P11-panchanama. It is not in dispute about the registration of the case in crime No. 53 of 2009 of Manthani police station when certain canvassing materials from Eicher van bearing No. AP 23T 9440 on 5.4.2009 were seized. P.W.4 is the Sub Inspector of Police, Manthani police station, who registered the case and he is the person who recorded Ex.P11-panchanama in the presence of mediators. It is not in dispute that those materials were taken custody by one G. Satyanarayana Raju, President of Mandal Congress Committee, Manthani by virtue of Ex.P32-order of the Mandal Executive Magistrate, Manthani. Ex.P11 does not indicate that the materials seized were got printed by the returned candidate or his election agent and that they were being taken to the Manthani Assembly Constituency for the purpose of using the same in the election campaign. The driver of the Eicher van from which the materials were seized, is not shown to be the election agent of the returned candidate or there is no evidence to show that with the consent of the returned candidate or his election agent, the materials were being transported to the Manthani Assembly Constituency.

68. Ex.P32-Order of the Tahsildar& Executive Magistrate, Manthani, dated 10.4.2009, reads thus:

The Station House Officer, Manthani reported that on receipt of reliable information about the transportation of Election campaign materials, he rushed to Nadi Veedi locality of Manthani proper and found one Eicher van bearing No. AP23T 9440 having with Congress-I Party canvassing material under suspicious circumstances and caused inspection of the van and seized (13) packed Urea bags of Election campaign materials which belongs to Congress-I Party contesting candidate Sri Sridhar Babu and registered a case in Cr. No. 53/2009 u/s 102 and submitted for further necessary action.

List of seized materials.

Item-1

1. Bag containing 66 Kgs weight 5808 T Shirts.
2. Bag containing 48 Kgs weight 384 T Shirts.

Item-II

1. "Sripada Ashaya Sadanalo Sridar" banners 36 Kgs Weight 422 Nos.
2. "Sripada Ashaya Sadanalo Sridar" banners 36 Kgs Weight 422 Nos.
3. "Sripada Ashaya Sadanalo Sridar" banners 42 Kgs Weight 504 Nos.
4. "Sripada Ashaya Sadanalo Sridar" banners 38 Kgs Weight 456 Nos.
5. "Sripada Ashaya Sadanalo Sridar" banners 36 Kgs Weight 422 Nos.
6. "Sripada Ashaya Sadanalo Sridar" banners 39 Kgs Weight 468 Nos.
7. "Sripada Ashaya Sadanalo Sridar" banners 42 Kgs Weight 504 Nos.
8. "Sripada Ashaya Sadanalo Sridar" banners 43 Kgs Weight 516 Nos.
9. "Sripada Ashaya Sadanalo Sridar" banners 40 Kgs Weight 480 Nos.
10. "Sripada Ashaya Sadanalo Sridar" banners 42 Kgs Weight 504 Nos.
11. "Sripada Ashaya Sadanalo Sridar" banners 49 Kgs Weight 588 Nos.
12. "Sripada Ashaya Sadanalo Sridar" banners 33 Kgs Weight 396 Nos.
13. "Sripada Ashaya Sadanalo Sridar" banners 33 Kgs Weight 396 Nos.
14. "Sripada Ashaya Sadanalo Sridar" banners 42 Kgs Weight 504 Nos.
15. "Sripada Ashaya Sadanalo Sridar" banners 42 Kgs Weight 504 Nos.
16. "Sripada Ashaya Sadanalo Sridar" banners 42 Kgs Weight 504 Nos.
17. "Sripada Ashaya Sadanalo Sridar" banners 27 Kgs Weight 324 Nos.
18. "Sripada Ashaya Sadanalo Sridar" banners 42 Kgs Weight 504 Nos.
19. "Sripada Ashaya Sadanalo Sridar" banners 41 Kgs Weight 492 Nos.
20. "Sripada Ashaya Sadanalo Sridar" banners 38 Kgs Weight 456 Nos.
21. "Sripada Ashaya Sadanalo Sridar" banners 34 Kgs Weight 408 Nos.
22. "Sripada Ashaya Sadanalo Sridar" banners 43 Kgs Weight 516 Nos.
23. "Sripada Ashaya Sadanalo Sridar" banners 27 Kgs Weight 324 Nos.

Item-III Caps, Hand Symbol

1. 21 Kgs. Weight 1050 Nos.
2. 22 Kgs. Weight 1100 Nos.
3. 22 Kgs. Weight 1100 Nos.
4. 22 Kgs. Weight 1100 Nos.
5. 22 Kgs. Weight 1100 Nos.

6. 23 Kgs. Weight 1150 Nos.
7. 33 Kgs. Weight 1650 Nos.
8. 22 Kgs. Weight 1100 Nos.
9. 21 Kgs. Weight 1050 Nos.
10. 21 Kgs. Weight 1050 Nos.
11. 21 Kgs. Weight 1050 Nos.
12. 21 Kgs. Weight 1050 Nos.
13. 21 Kgs. Weight 1050 Nos.
14. 22 Kgs. Weight 1100 Nos.
15. 22 Kgs. Weight 1100 Nos.
16. 7 Kgs. Weight 350 Nos.
17. 21 Kgs. Weight 1050 Nos.
18. 22 Kgs. Weight 1100 Nos.
19. 22 Kgs. Weight 1100 Nos.
20. 36 Kgs. Weight 1800 Nos.
21. 34 Kgs. Weight 1700 Nos.
22. 22 Kgs. Weight 1100 Nos.

Item -IV Small Flags consisting with Sridar Babu and Late Sri Pada Rao Photos.

1. 67 Nos. weight 3149 Nos.
2. 29 Nos. weight 1363 Nos.
3. 9 Nos. weight 423 Nos.
4. 25 Nos. weight 1175 Nos.
5. 35 Nos. weight 1645 Nos.
6. 50 Nos. weight 2350 Nos.
7. 27 Nos. weight 1269 Nos.

Item-V Masks containing Sridar Babu photos

1. 12 Kgs weight 1044 Nos.
2. 35 Kgs weight 3045 Nos.
3. 21 Kgs weight 1827 Nos.
4. 22 Kgs weight 1914 Nos.

5. 19 Kgs weight 1653 Nos.
6. 9 Kgs weight 783 Nos.
7. 32 Kgs weight 2784 Nos.
8. 23 Kgs weight 2001 Nos.
9. 22 Kgs weight 1914 Nos.
10. 17 Kgs weight 870 Nos.

Item-VI Masks containing Y.S. Rajasekhar Reddy

1. Kgs weight 1566 Nos.
2. 14 Kgs weight 1218 Nos.
3. 14 Kgs weight 1218 Nos.
4. 14 Kgs weight 1218 Nos.
5. 14 Kgs weight 1218 Nos.

Item-VII containing Congress Party Flag, Smt. Sonia Gandhi & Rajasekhar Reddy photos

1. 12 Kgs weight 72 Bundles.
2. 13 Kgs weight 78 Bundles.
3. 13 Kgs weight 78 Bundles.
4. 14 Kgs weight 85 Bundles.
5. 11 Kgs weight 66 Bundles.
6. 15 Kgs weight 90 Bundles.
7. 13 Kgs weight 78 Bundles.
8. 14 Kgs weight 84 Bundles.
9. 15 Kgs weight 90 Bundles.
10. 22 Kgs weight 132 Bundles.
11. 14 Kgs weight 84 Bundles.
12. 11 Kgs weight 72 Bundles.
13. 22 Kgs weight 132 Bundles.
- 14.

Item -VIII Door Stickers

1. 50 Kgs Weight

2. 40 Kgs Weight
3. 33 Kgs Weight
4. 69 Kgs Weight
5. 27 Kgs Weight

Item-IX Congress Party Wall Posters

1. 25 Kgs weight.
2. 20 Kgs weight.
3. 25 Kgs weight.
4. 24 Kgs weight.
5. 49 Kgs weight.
6. 47 Kgs weight.
7. 37 Kgs weight.
8. 42 Kgs weight.
9. 48 Kgs weight.
10. 42 Kgs weight.

Item -X Hand Bills

1. 40 Kgs Weight
2. 30 Kgs Weight
3. 36 Kgs Weight
4. 30 Kgs Weight
5. 29 Kgs Weight
6. 39 Kgs Weight

Item-XI Pragathi Pathamulo Kataram Mandalam

1. 46 Kgs weight

Item-XII Flexes Indiramma Rajyam Soniya Gandhi Photos

1. 32 Kgs. Weight 128 Nos.
2. 22 Kgs. Weight 88 Nos.
3. 24 Kgs. Weight 96 Nos.
4. 47 Kgs. Weight 188 Nos.
5. 30 Kgs. Weight 120 Nos.

Item-XIII Congress Party Pocket Badges

1. 43 Kgs Weight
2. 35 Kgs Weight
3. 15 Kgs Weight

The Petitioner Sri G. Satyanarayana Raju, President, Mandal Congress Committee, Manthani has submitted a petition along with the following documentary evidences on 07.04.2009 praying to release the materials stating that Congress Party publicity material was sent by the APCC to DCC, Karimnagar and from DCC to Manthani for the purpose of Elections to Peddapally Parliamentary Constituency including the seven segments. The said materials were seized by the Police on the false complaint made by the rival political parties and further stated that the said material was approved by the CEO, Hyd. Vide 262/Elec.B/A 1/2009, Dt. 01.04.2009.

1. DCC, Karimnagar Lr. Pad Dated 05.04.2009 was claimed that the materials were purchased from the following centres and sending to Peddapally P.C. for Election purpose. 1. M/s. Caxton Printers Vide Bill No. 685, dtd. 30.03.2009.

2. M/s. Sri Ram Fabrics, 79-7-16/1, Shyamala Nagar Vide Bill No. 1, Dt. 25.03.2009.

3. M/s. AK Fabrics, Sircilla, Karimnagar Dist. Vide Bill No. 250, Dt. 24.03.2009.

Particulars of materials.

1.

Banners:

10000 Nos.

2.

Caps:

25000 Nos.

3.

Flags:

10000 Nos.

4.

Masks:

25000 Nos.

5.

Masks:

12000 Nos.

6.

Buntings:

13 Bags.

7.

Small Door poster Sticker: 15000 Nos.

8.

Wall Posters:

5000 Nos.

9.

Phamplets:

25000 Nos.

10.

Literature:

2000 Nos.

11.

Flexies:

650 Nos.

12.

Badges:

25000 Nos.

2. APCC, Hyderabad Lr. Pad Dated 04.04.2009 was claimed that the materials were purchased from the following centres and sending to Karimnagar Dist for Election purpose.

1. M/s. Caxton Printers Vide Bill No. 685, dtd. 30.03.2009.

2. M/s. Sri Ram Fabrics, 79-7-16/1, Shyamala Nagar Vide Bill No. 1.

3.M/s. AK Fabrics, Sircilla, Karimnagar Dist. Vide Bill No. Particulars of materials:

1.

Banners:

10000 Nos.

2.

Caps:

25000 Nos.

3.

Flags:

10000 Nos.

4.

Masks:

25000 Nos.

5.

Masks:

12000 Nos.

6.

Buntings:

13 Bags.

7.

Small Door poster Sticker: 15000 Nos.

8.

Wall Posters:

5000 Nos.

9.

Pamphlets:

25000 Nos.

10.

Literature:

2000 Nos.

11.

Flexies:

650 Nos.

12.

Badges:

25000 Nos.

Further the objection petition filed by Sri Putta Madhukar stating that the seized materials expected to be cost more than 20.00 lakh and the maximum expenditure per candidate for assembly is 10.00 lakhs and requested not to release the seized materials. He further requested that two cases registered in Cr. No. 53/2009 and 54/2009 may be combined enquire for eliciting truth and also raised that the police seized a bill along with the Dist. Congress Committee letter pad while conducting seizure procedure, the said letter should also be taken into consideration while examining the bills filed by the claim Petitioner in case of dispose claim petition.

In this context, the Station House Officer, Manthani has been asked to submit the bills, if any seized along with the material as stated in the objection petition filed by Sri Putta Madhukar vide this office letter 3rd cited. The Station House Office, Manthani vide ref. 4th cited, has informed that no bills were seized as stated by the Petitioner. The Chief Electoral Officer, A.P., Hyd. Vide memo No. 262/Elec.B/A1/2009-1, dt. 01.04.2009 has clarified that allow the transportation of publicity materials of parties to various destinations. In the event of doubt, they may insist on the letters like delivery vouchers or similar authorization issued by the party.

In this case, the claimant Sri G. Satyanarayana Raju has submitted a letter from the APCC, Hyd. and DCC, Karimnagar. The material was sent to Karimnagar then to Peddapalli Parliamentary Constituency. The details of the materials shown in the letter of the APCC and DCC are verified with reference to the material seized and found tallied.

Keeping in view the above, I satisfied with the evidence produced by the claimant Sri G. Satyanarayana Raju and release the seized materials as detailed below to the claimant.

The details of materials released.

1.

Banners:

10000 Nos.

2.

Caps:

25000 Nos.

3.

Flags:

10000 Nos.

4.

Masks:

17385 Nos.

5.

Masks:

6442 Nos.

6.

Buntings:

13 Bags.

7.

Small Door poster Sticker: 5 bags

8.

Wall Posters:

10 bags

9.

Phamplets:

6 bags

10.

Literature:

1 bag

11.

Flexies:

620 Nos.

12.

Badges:

3 bags

From the above order, it is clear that the aforesaid election materials were

returned to G. Satyanarayana Raju, President of Mandal Congress Committee, Manthani, who addressed a letter as in Ex.P28 to the Returning Officer to release the material, wherein it is clearly stated that the materials as mentioned in Ex.P28 were sent by APCC to DCC, Karimnagar, and from the DCC, Karimnagar to Manthani, for the purpose of use in election campaign to Peddapally parliamentary constituency including 7 assembly constituencies, on 5.4.2009. As seen from Ex.P32, the materials were sent to Manthani for the purpose of election in Peddapalli parliamentary constituency including seven segments of assembly constituencies. Therefore, there is no evidence adduced by the Petitioner to show that the election campaign materials, as seized by police under Ex.P11-panchanama in crime No. 53 of 2009 of Manthani police station, were being sent to Manthani exclusively for the use in Manthani Assembly Constituency. In view of the fact that the first Respondent denied that the material obtained custody from the Mandal Executive Magistrate were used by him in the election campaign, the burden of proof to establish the same lies on the election Petitioner. The pleading on this aspect in so far seized materials were used for the purpose of canvassing on behalf of the first Respondent in the election, has been specifically denied by the first Respondent stating that the election materials seized by the Manthani police in crime No. 53 of 2009 and released in favour of G. Satyanarayana Raju, were not used for the purpose of canvassing in the election by him or on his behalf. The documents filed by the Petitioner himself disclose that the election materials pertain to Peddapalli parliamentary constituency. Therefore, the initial burden is on the Petitioner to show that the material that were released in favour of said G. Satyanarayana Raju relating to crime No. 53 of 2009 of Manthani police station, were, in fact, used during the elections by the first Respondent or his agent.

69. The evidence of P.W.1 is that the first Respondent got his election material published and arranged them to be brought to Manthani Assembly Constituency for the purpose of distribution to the voters. Because the election material carries photographs of the first Respondent and his father along with "hand" symbol and slogan "I love Manthani", and no photographs of other candidates contesting in Peddapalli parliamentary constituency are printed on the material, the learned senior counsel appearing for the Petitioner stated that it has to be presumed that the materials seized in crime No. 53 of 2009 belong to the first Respondent. According to P.W.1, the materials were exclusively sent for the purpose of using in Manthani Assembly Constituency as per Ex.P28. But, that does not appear to be correct as seen from Ex.P28-claim petition. Ex.P28 shows that the election materials were sent for the purpose of election to Peddapalli parliamentary constituency of which Manthani is one of the Assembly segments.

70. An omnibus statement is made that after getting the seized materials released, the first Respondent used the material for the purpose of his election and the expenditure incurred in respect of the material seized in crime No. 53 of 2009 of Manthani police station had not been shown in Ex.R7, and so it amounts to a corrupt practice as it exceeded the ceiling limit prescribed by law.

Admittedly, P.W.1 was not present when police conducted panchanama as in Ex.P11 on 5.4.2009 and that he had not personally seen those canvassing materials at the time when Ex.P11 was drafted. Similarly, no witness is examined to speak about the nature of materials seized and that those materials have been used during the election. P.W.1 did not say that posters like Ex.P5, pamphlets like Ex.P6, door stickers like Ex.P7 and Pamphlets like Ex.P8, are the self same materials that were seized in crime No. 53 of 2009 of Manthani police station. He stated that Ex.P9 is the posters which were seized in crime No. 53 of 2009. But, there is no basis that those posters formed part of panchanama in Ex.P11. He has given a general and vague statement about using of stickers, door stickers, photographs of the returned candidate and his father, which are prominently printed and also use of photographs of his father on the stickers on the sheet used by woman.

71.P. Ws.2 and 3, who are the residents of the villages in Manthani Assembly Constituency, stated that the first Respondent and his party used to make canvass by way of conducting rallies, distributing pamphlets, caps, badges, khanduvas, door posters, and that P.W.2 had seen affixing copy of Ex.P5 on walls during the election campaign. They deposed about Exs.P5 to P9. Nothing has been elicited in cross-examination of these two witnesses to discredit their testimony. Even if the evidence of P. Ws. 2 and 3 is accepted as true and correct, it would not reveal that how many number of pamphlets, door stickers, bindi stickers and wall posters, were used. It is not in dispute that during the elections, the canvass materials used include posters, banners, pamphlets, khanduvas, wall writings and cable net work. But, there is no evidence to show that the election materials like Exs.P5 to P9 were the same material which were seized by police in crime No. 53 of 2009 of Manthani police station and subsequently released in favour of said G. Satyanarayana Raju.

72. The Petitioner valued each items of canvass material released by the Mandal Executive Magistrate, Manthani in terms of the list of rates suggested by the District Collector, Karimnagar during the General Elections, 2009, as per Ex.P2, which comes to Rs. 26,85,240/- The basis of his estimation is as follows:

Items released by the Executive Magistrate

Suggested rate for each item Rs.

Value of the item as per the suggested rate Rs.

1. 10,000 Banners

120/-

12,00,000/-

2. 10,000 flags

20/-

2,00,000/-

3. 620 flexies

510/-

3,26,000/-

4. 25,000 caps

30/-

7,50,000/-

5. 17,385 masks

7/-

1,21,695/-

6. 10 bags wall posters

8/-

40,000/-

7. 6,442 masks

7-

45,094/-

8. 6 bags pamphlets

1000/-Per bag

12,250/-

Total:

26,85,240/-

But, there is no evidence that all the aforementioned materials were used exclusively during the elections for the Manthani Assembly Constituency. The documents produced by the Petitioner himself would go to show that the aforementioned material relates to Peddapalli parliamentary constituency. Simply because the canvas material seized were handed over to said G. Satyanarayana Raju, President of Mandal Congress Committee, Manthani, in the absence of any other evidence, it does not lead to an irresistible conclusion that those materials were used in the elections by the first Respondent.

73. As per Ex.P35, the value of the material supplied by the APCC to each of the assembly constituency is Rs. 27,950/-. It is not in dispute that these items were supplied by the APCC for use in the elections in Manthani Assembly Constituency. Basing on the suggested rates, the Petitioner estimated the value of the material,

as per Ex.P35, which comes to Rs. 74,250/-. For example, for 200 Nos. of cloth banners, the amount shown by the first Respondent for each banner is Rs. 15/-. As per the suggested rates, it is Rs. 120/-. Similarly, with regard to big flags, the amount shown by the first Respondent is Rs. 5/-, but as per the suggested rates it is Rs. 20/-. On these two items, the expenditure shown by the first Respondent is Rs. 5,500/-, whereas as per the suggested rates, according to the Petitioner, it comes to Rs. 34,000/- Similarly, in respect of medium flags, the first Respondent showed its value at Rs. 1.50 ps. per flag, but the suggested rate is Rs. 10/-. In respect of small flags, the amount shown by the first Respondent is Rs. 0.75 ps. per flag, but the suggested rate is Rs. 7/-. Under these two heads, the expenditure shown by the first Respondent is Rs. 5,250/-, whereas the amount, as per the suggested rates, comes to Rs. 45,000/-. Therefore, basing on the comparative statement made by the Petitioner, the amount shown in the publicity material comes to Rs. 27,950/- whereas as per the suggested rates it comes to Rs. 74,250/-

74. As seen from Ex.P2, the suggested rate of two meters cloth banner is Rs. 120/-. If the banner is of 1/4th meter, naturally its cost would amount to Rs. 15/-. Depending upon the size, quality of material and printing expenditure of the banner, its cost varies. There is no evidence to show that the first Respondent used cloth banners in the length of two meters. Naturally, the suggested rates fixed by the District Collector appear to be maximum ceiling limit. The cost naturally depends upon the quality of the material, length of material, nature of writings and such other factors. Therefore, the burden is on the Petitioner to show that the description of the material used by the first Respondent is almost akin to the material described in Ex.P2. Simply because the cost of the material in Ex.R7 is shown less than the suggested rates, it does not necessarily mean that the actual cost has been suppressed by the first Respondent. So also, the expenditure statement as per Ex.P36, the value of the material used is less than the suggested rates fixed by the District Collector. The expenditure incurred under Ex.P36 as shown by the first Respondent is Rs. 48,881.25 ps., whereas the Petitioner estimated the expenditure, as per the suggested, at Rs. 29,25,530.25 ps. As already pointed out, the cost of the election materials depend upon various factors. As seen from Ex.R7, the grand total of expenditure incurred by the first Respondent during the elections is Rs. 4,34,153/-. The margin of APCC, as per Ex.P35, is Rs. 2,50,000/-. According to the Petitioner, total variation is Rs. 3,24,972.20 ps., and therefore, the total expenditure incurred by the Petitioner is Rs. 10,10,125/- and hence it exceeded the expenditure limit fixed for an assembly constituency. The Petitioner seems to have estimated the cost of the material in terms of Ex.P2. Under no stretch of imagination, that can be a basis for determining the correct value of the canvass materials used in the election. It is not shown that the cost of the materials was shown purposefully and intentionally far lesser than the suggested rates. Therefore, the estimation of the Petitioner with regard to the cost of the canvass materials as per the suggested rates, cannot be taken into account so as to

arrive at a conclusion that the expenditure incurred is beyond the ceiling limit.

75. The Petitioner has not examined any other competent and proper persons to speak that the cost of stickers, banners, pamphlets, flexies and other materials used in the campaign is not the correct estimation and the expenditure shown on each of the items by the first Respondent is incorrect. On this aspect, the evidence of R.W.1 would go to show that he paid the amount towards the election expenditure to his agent basing on the vouchers and bills and his agents looked after the rates with regard to the election expenditure with reference to the suggested rates. He categorically asserted that Exs.P5 to P8-election materials, were not got printed by him. A specific plea has been taken by the first Respondent on this aspect. Therefore, the initial burden is on the Petitioner to establish that the pamphlets and election material as per Exs.P5 to P9, were got printed or prepared on the instructions of the returned candidate or by his election agent. There cannot be any dispute that the charge relating to corrupt practice is required to be proved more than the charge to be proved in a criminal case. Such evidence is lacking. At best, Exs.P5 to P8 might have been used in the election because they contain photographs of the first Respondent and his father. Mere using of pamphlets, khanduvas, etc. by itself is not a ground to infer that the first Respondent exceeded expenditure beyond Rs. 10,00,000/-. There is absolutely no evidence to show that the posters containing photographs of the first Respondent and his father along with the then Chief Minister and the President of the Congress Party, door stickers and pamphlets were used in the election campaign.

76. The contention of the learned senior counsel appearing for the Petitioner is that, Ama Anand, who is the General Secretary of District Congress Committee, Karimnagar, who stated in Ex.P29 that the material mentioned therein purchased from M/s. Caxton Printers vide bill No. 685, dated 30.3.2009; M/s. Sai Ram Fabrics, vide bill No. 1, dated 25.3.2009; and M/s. A.K. Fabrics, vide bill No. 250, dated 24.3.2009, were being sent in vehicle bearing No. AP 23T 9440, dated 5.4.2009 to Peddapalli parliamentary constituency, is not examined. Similarly, it is also his contention that Gidugu Rudra Raju, who sent some material under Ex.P30, and the said G. Satyanarayana Raju, who is President of Mandal Congress Committee, Manthani, who took custody of the seized material in crime No. 53 of 2009 of Manthani police station, were not examined. According to the learned senior counsel, had these three witnesses been examined on behalf of the first Respondent, they would have been in a position to speak which of the material was allotted or handed to the concerned person in respect of the Manthani Assembly Constituency, and therefore, from the non-examination of these witnesses, an adverse inference can be drawn u/s 114(g) of the Indian Evidence Act, 1872. Section 114(g) of the Act reads that the evidence which could be or is not produced, would if produced, be unfavourable to the person who withholds it. The Rule is contained in the well known maxim *Omnia praesumuntur contra spolia torem*, which means that if a man wrongfully withholds the evidence, the other presumption to his disadvantage consistent

with the facts admitted or proved, will be adopted. If a party in possession of the best evidence, which would throw light in controversy, withholds it, the court can draw an adverse inference against him notwithstanding that the onus of proof does not lie upon him. Before drawing the said presumption, it must be established that they are necessary and proper witnesses to resolve the controversy in dispute. Their examination is necessary if it is shown that their evidence would unfold the facts in dispute. In an Election Case, when there is no onus on the successful candidate to prove particular facts, non-examination of a particular person to controvert the facts alleged in the Petitioner's evidence, would not lead to draw the adverse inference. Certainly the above three witnesses are relevant to speak about the facts in dispute provided the evidence adduced by the Petitioner goes to show that the material sent by them is exclusively for the use of canvassing in the election relating to Manthani Assembly Constituency. The first Respondent did not deny or dispute about Exs.P35 and P36-letters and seizure of certain election material as per Ex.P11-panchanama. But, the case of the first Respondent is that the material which was got released in crime No. 53 of 2009 was not meant for the election campaigning of Manthani Assembly Constituency alone, but it relates to Peddapalli parliamentary constituency. If it is established that the material sent by the APCC is exclusively for the use in the Manthani Assembly constituency and the material that has been taken custody from police has been used in the Manthani Assembly Constituency, then the examination of those persons is imperative. Therefore, non-examination of the three persons, as pointed out by the learned senior counsel appearing for the Petitioner, cannot be shown to be withholding the evidence deliberately or intentionally. Adverse inference, u/s 114 (g) of the Indian Evidence Act, 1872, against the first Respondent can only be drawn if the withheld evidence is with regard to the facts in issue. So, in these circumstances, the contention of the learned senior counsel appearing for the Petitioner that the presumption u/s 114(g) of the Indian Evidence Act, 1872, can be drawn is wholly devoid of merit and untenable.

77. The learned senior counsel appearing for the Petitioner further contended that when a fact is especially within the knowledge of a person the burden of proving that fact is upon him, in terms of Section 106 of the Indian Evidence Act, 1872 and that purchase of various election materials and its values are exclusively within the knowledge of the first Respondent and therefore the first Respondent has to explain any fact in issue under dispute. There cannot be any dispute that Section 106 of the Act cannot be used to shift the onus of proving a charge by the Petitioner in respect of corrupt practices. Section 106 does not contemplate that the first Respondent should prove his case. Even with regard to the facts which are exclusively within the knowledge of the first Respondent, Section 106 of the Indian Evidence Act, 1872 comes into operation only when the Petitioner establishes the charge beyond reasonable doubt and thereafter only the onus shifts on to the first Respondent to speak about the facts which are in his exclusive knowledge. In view of the fact that the Petitioner miserably failed to

establish the charge beyond reasonable doubt, the question of invoking Section 106 of the Indian Evidence Act, 1872 does not arise. Accordingly, this issue is answered against the Petitioner.

78. ISSUE No. 3: Whether joining of returned candidate as first Respondent as Duddilla Sridhar @ Duddilla Sridhar Babu is in conformity with the certificate issued by the Returning Officer under Rule 66 of the Conduct of Elections Rules, 1961, and whether it amounts to non-compliance of Section 82 of the Representation of People Act, 1951 ?

It is vehemently contended by the learned senior counsel appearing for the first Respondent that a specific plea has been taken by the first Respondent in his counter that name of the first Respondent is shown as "Duddilla Sridhar @ Duddilla Sridhar Babu, and that the first Respondent filed his nomination as "Duddilla Sridhar Babu", and that after declaration of result, the Returning Officer issued certificate under Rule 85 of the Conduct of Election Rules, 1961, in favour of "Duddilla Sridhar Babu", and that the Petitioner, being one of the contesting candidates, is well aware of name of the first Respondent appearing in the Certificate issued by the Returning Officer, and therefore impleading the first Respondent with wrong description is not a compliance u/s 82 of the RP Act, 1951. The first Respondent stated in the affidavit filed in lieu of chief-examination to the same effect. In Ex.R2-nomination paper, name of the first Respondent is shown as "Duddilla Sridhar Babu", and similarly, Exs.R3, R4, R5 and R6 would clearly go to show that name of the first Respondent is shown as "Duddilla Sridhar Babu". Though R.W.1 stated that he never described himself as "Duddilla Sridhar @ Sridhar Babu", he admitted that name shown in the affidavit Annexed to Ex.R3 is no other than himself, and in the supplementary affidavits, which form part of Ex.R3, his name is shown as "Duddilla Sridhar alias Sridhar Babu", and that he signed in it as "Sridhar". So, from his own admission, it is clear that the first Respondent is also called as "Duddilla Sridhar @ Sridhar Babu". Simply because his name is shown in Exs.R2 to R6 as "Duddilla Sridhar Babu", it cannot be said that it is not a proper compliance within the ambit and scope of Section 82 of the RP Act, 1951. The identity of the person is not in dispute. Therefore, the contention of the learned senior counsel appearing for the first Respondent that the election petition does not come within the scope and ambit of Section 82 of the RP Act, 1951, cannot be accepted.

79. It is also contended by the learned senior counsel appearing for the first Respondent that as per Ex.P1, "Duddilla Sridhar Babu" contested for the election of 24 Manthani Assembly Constituency and he got a majority of votes, but, however, in the election petition, the returned candidate i.e. first Respondent, is described as "Duddilla Sridhar @ Duddilla Sridhar Babu", and therefore, it violates Section 82 of the RP Act, 1951. Similarly, he also contended that one Tutta Madhu" contested the election as per Ex.P1, but no person by name Tutta Madhu" contested the election and as per the Petitioner's own evidence, Tutta Madhu" is not the person who contested the election. On the other hand, the

learned Counsel for the Petitioner contended that identity of the first Respondent is not in dispute and therefore it is not a case of mere not describing persons properly, and when the identity is not in dispute, it cannot be a ground to reject the election petition.

80. On this aspect, it is pertinent to refer to a decision in *Harikrishna Lal Vs. Babu Lal Marandi*, wherein it was held thus:

A reference may usefully be made to the maxim "*falsa demonstratio non nocet cum de corrore constat*" which means mere false description does not vitiate, if there be sufficient certainty as to the object. *Falsa demonstratio*" means an erroneous description of a person or a thing in a written instrument; and the above rule respecting it signifies that where the description is made up of more than one part, and one part is true, but the other false, there, if the part which is true describes the subject with sufficient legal certainty, the untrue part will be rejected and will not vitiate the devise: the characteristic of cases within the rule being that the description, so far as it is false, applies to no subject at all, and, so far as it is true, applies to one only. (See *Broom's legal Maxims*, 10th Edition, pp. 426-427). *Broom* quotes (at page 438) an example that an error in the proper name or in the surname of the legatee should not make the legacy void, provided it could be understood from the will what person was intended to be benefited thereby.

There is no manner of doubt that the Respondent is a duly enrolled elector in the voters list of No. 23 Ramgarh Assembly Constituency. In the voters list as well as in the nomination paper the Respondent was correctly described. The omission of his second name "lal" from the voters list is inadvertent or accidental and in any case merely technical. There is no doubt about the identity of the Respondent. Apparently that is why none of the candidates including the writ Petitioner and no one else raised any objection to the acceptance of the nomination paper by submitting that the Respondent was not a registered elector of the constituency. The returning officer entered into suo moto enquiry for his own satisfaction, and felt satisfied by looking into the electoral list of the constituency available with him, that the Respondent Babu Lal Marandi was the same person who was mentioned as Babu Marandi in the electoral list. Being an elector in the same constituency wherefrom he was contesting election it was not necessary for him to have filed a certified copy of the relevant entry from the voters list. Before the High Court, the writ Petitioner has chosen not to adduce any evidence to demonstrate that the returning officer was not right in arriving at the satisfaction which he did or that the Respondent was not enrolled in the electoral list of that constituency or was the one enrolled in some other constituency. The High Court has not erred in holding the election of the Respondent not liable to be set aside.

That is a case where the election of Jharkand Legislative Assembly from 23, Ramgarh Assembly Constituency was under challenge. In that context, it was held that the burden of proof lies on the election Petitioner to raise necessary pleadings and adduce evidence.

81. With regard to name of the Petitioner, it is not in issue at any point of time and it is not denied or disputed that the Petitioner contested the election against the first Respondent. Hence, this issue is answered in favour of the Petitioner and against the first Respondent.

82. Even according to the pleadings coupled with the evidence of P.W.1, the material used for the purpose of election canvassing on behalf of the first Respondent, would not come u/s 100(1)(d) of the RP Act, 1951, which prescribes that corrupt practice has been committed by the returned candidate or his election agent or by any other person with the content of the returned candidate or his election agent. There is no evidence at all that the material seized in pursuance of Ex.P11 was used in the election by the returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent. The only evidence stated by P.W.1 is that the material seized under Ex.P11 was used on behalf of the first Respondent. Even assuming for a moment that the material seized under Ex.P11 was used on behalf of the returned candidate, that would not attract Section 100(1)(b) of the RP Act, 1951 in view of the fact that the election laws have to be followed strictly. Therefore if the entire evidence adduced on behalf of the Petitioner is to be accepted as true and correct, it would not attract Section 100(1)(d) of the RP Act, 1951. Furthermore, the expenditure statement as furnished by R.W.1 as in Ex.R7 is not the subject matter of the dispute in the election petition. Therefore, the contents in Ex.R7 cannot be taken into consideration to show that the expenditure incurred by the first Respondent is over and above Rs. 10,00,000/-. The allegations in the pleadings and the evidence are vague as the full particulars of the corrupt practices the Petitioner alleged including the full statement as to names of parties alleged to have committed such corrupt practices and the date and place of commission of each such practice, have not been mentioned specifically in the pleadings nor proved by adducing necessary evidence. Nothing has been attributed against the first Respondent or his election agent, with regard to using of the material seized. Therefore, from the aforesaid discussion of the evidence, this Court has no hesitation in holding that the Petitioner failed to establish the charge levelled against the first Respondent so as to declare the election of the first Respondent as void in terms of Section 123(6) read with Section 77 of the RP Act, 1951.

83. The Election Petition is devoid of merit and is, accordingly, dismissed, with costs quantified at Rs. 5,000/- (Rupees five thousand).