

P.C. THOMAS

v.

P.M. ISMAIL & ORS.

(Civil Appeal No. 5033 of 2006 etc.)

SEPTEMBER 4, 2009

[D.K. JAIN AND R.M. LODHA, JJ.]

Representation of the People Act, 1951:

ss. 123(3) and (5); 100(1)(b) – Election petition – Alleging Corrupt practice by printing and publishing, distributing and circulating by himself, his election agents and workers, notice and calender – High Court setting aside the election holding the allegation proved – On appeal, held: The conduct of the returned candidate amounted to corrupt practice – Case proved by witnesses.

s. 101(b) – Claim of election petitioner and another candidate of the election, to be declared elected, on setting aside of election of returned candidate – Held: Election in the constituency in question having already been conducted, case becomes infructuous.

Election Laws – Charge of corrupt practice – Nature, standard of proof and onus to prove – Held: Such charge under Representation of People Act to be equated with criminal charge – Standard of proof thereof is proof beyond reasonable doubt – The onus lies on the election petitioner – Representation of the People Act, 1950 – Evidence – Standard of proof – Onus to prove.

Appeal – First appellate court – Power of – To interfere with order of trial court – Held: Supreme Court as a first appellate court should not interfere with the finding of fact unless there are compelling reasons to do so.

A Election of the appellant to Lok Sabha was challenged by the respondent No.1-election petitioner (the candidate who had got second highest number of votes). It was inter alia alleged that appellant had committed corrupt practices as enumerated u/ss. 123(3) and 123(5) of Representation of the People Act, 1951, and therefore his election was liable to be declared void u/s 100(1)(b) of the Act. He also prayed that he should be declared elected in terms of s.101(b) of the Act.

C High Court sustained the maintainability of the Election Petition on the grounds of corrupt practice falling u/ss. 123(3) and 123(5) of the Act. Election of the appellant was set aside. Hence the Civil Appeal No. 5033 of 2006.

D Civil Appeal No. 5777 of 2006 was preferred by second respondent therein. He claimed that he having got higher number of votes in the said election, on the election of returned candidate having been set aside, should have been declared as elected, instead of the election petitioner in Civil Appeal No. 5033 of 2006 .

Dismissing the appeals, the Court

HELD :

F Civil Appeal No. 5033 of 2006:

G 1. A charge of corrupt practice envisaged by Representation of the People Act, 1951, is to be equated with a criminal charge and the standard of proof thereof would not be preponderance of probabilities as in a civil action but proof beyond reasonable doubt as in a criminal trial. If this test is not applied, a very serious prejudice is likely to be caused to the successful candidate whose election would not only be set aside, he may also incur disqualification to contest an election for a certain period

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entailing even extinction of his political career. The onus lies heavily on the election petitioner to make out a strong case for setting aside an election. [Para 10] [138-A-C]

Ch. Razik Ram vs. Ch. Jaswant Singh Chouhan and Ors. 1975 (4) SCC 769; Jeet Mohinder Singh vs. Harminder Singh Jassi 1999 (9) SCC 386; Surinder Singh vs. Hardial Singh and Ors. 1985 (1) SCC 91, relied on.

2.1. The High Court was satisfied that notice (Ext.P1) and calendar (Ext.P2) were distributed by workers of the appellant. Applying the test of common man's understanding and the effect of the said documents on the mind and feelings of an ordinary average voter, the court agrees with the High Court that the said notice/ statement (Ext.P1) did constitute an appeal to the members of the Christian community, particularly, the Catholics to seek their votes for the appellant, being a Catholic, on the ground of religion, caste and community. Calendar (Ext.P2), does not per se fall within the mischief of Section 123(3) of the Act but taken along with Exhibit P1 does serve as a statement to strengthen the appeal in notice (Ext.P1). The circulation of the said exhibits amounted to violation of Section 123(3) of the Act. [Para 18] [147-B-D]

2.2. The notice (Ext. P1) does contain a message or an appeal on religious grounds to the Christians/ Catholics to vote for him for the benefit of the larger interests of the Christians, particularly the Roman Catholics. Indeed, the community members all over understood it as such. This is borne out from the testimony of Pws.-2, PW-6, PW-7, PW-8, PW-9, etc., etc. who all deposed about the party workers of IFDP, to which party the appellant belonged to, giving notice (Ext.P1) and calendar (Ext.P2) to each one of them as a statement by a known leader of Catholics. The consent

A of the appellant for distribution of the exhibits P1 and P2 among the Catholic voters, though not directly proved, was rightly inferred from the fact that his agent who got these printed, paid charges and circulated these. [Para 17 and 18] [146-D-G]

B 2.3. To bring the appeal within the ambit of Section 123(3) of the Act, it required proof that as per specific pleas in the Election Petition, documents Ext.P1 and Ext.P2 were got printed and published by the appellant through his election agent, and distributed by the agents or workers/campaigners as alleged. The election petitioner claimed to have no personal knowledge about it and stated that the information about it was supplied to him by the jeep driver, PW-4 and PW-19 who deposed having supplied the said information to the election petitioner before filing of the election petition. [Para 19] [147-D-G]

E 2.4. Three witnesses were produced by the election petitioner in support of his pleas regarding printing and distribution of Exts. P1 and P2. Viz., PW-4 driver of the jeep; PW-5, claiming to have been temporarily employed for a month at the Press to meet the election rush of work; and PW-6. To counter the evidence of PW-4, PW-5 and PW-6, the appellant produced RW-9, the owner of jeep, F RW-6, owner of the Press and RW-11. The High Court in its judgment under appeal for reasons stated discredited the testimony of RW-9, RW-6 and believed the testimony of PW-4, PW-5 and PW-6. While dealing with the statement of RW-9, the High Court has recorded that his answers to the questions were generally evasive and his evidence untrustworthy. Nothing was pointed out against these observations. His testimony carries little conviction as against that of PW-4. [Paras 20, 21, 22 and 23] [147-G-H; 148-A-E; 149-C-D]

H 2.5. RW-11, the chief election agent of the appellant,

in his proof affidavit, denied the allegation made by PWs- 4, 5 and 6 and the part allegedly attributed to him by PW- 5 about the placing of a printing order of Exts.P1 and P2 with the Press and taking delivery of the printed material. According to him, there was no meeting at the alleged time, as on that date and time, he was in the District Collector's office where scrutiny of nomination papers of the appellant was held. In cross-examination, he stated that his attendance in proceedings for scrutiny of papers is a matter reflected in court records. No evidence about it was produced in support. [Para 24] [150-B-E]

2.6. There is no ground to differ with the findings recorded by the High Court that the appellant has committed corrupt practice as contemplated u/s. 123(3) of the Representation of the People Act, 1951 by printing and publishing Annexure I notice and Annexure II photo calendar and distributing and circulating Annexure I along with Annexure II by himself, his election agent and other agents, his election workers and campaigners with his consent and connivance. [Paras 5 and 24] [133-B-C; 150-G]

Hem Raj vs. Ramji Lal and Anr. 1975 (4) SCC 671, distinguished.

Ch. Razik Ram vs. Ch. Jaswant Singh 1975 (4) SCC 769, held inapplicable.

S. Harcharan Singh vs. S. Sajjan Singh and Ors. 1985 (1) SCC 370, referred to.

3. There is no question of drawing an adverse inference against the election petitioner for not examining the author of Exbt P-1 as a witness, particularly when the printing and circulation of offending material (Exts.P1 and P2) has been proved by the election petitioner beyond

A reasonable doubt. [Para 26] [152-C-D]

4. Although being the Court of first appeal, this Court has no inhibition in reversing such a finding. Of fact or law, which has been recorded on a misreading or wrong appreciation of the evidence of the law but ordinarily the appellate court attaches great value to the opinion formed by the Trial judge, more so when the Trial Judge happens to be a High Court Judge; had recorded the evidence and had the benefit of watching the demeanour of witnesses in forming first hand opinion of them in the process of evaluation of evidence. This Court should not interfere with the findings of fact recorded by the trial court unless there are compelling reasons to do so. The High Court has not committed any grave error in the appreciation and assessment of the evidence on the point. On consideration of the evidence in its totality, adduced by the election petitioner and the appellant, the court agrees with the High Court that the election petitioner has adduced cogent, satisfactory and reliable evidence to establish the charge against the appellant u/s. 123(3) of the Act. [Paras 28 and 29] [153-D-H; 154-A]

Gajanan Krishnaji Bapat vs. Dattaji Raghobaji Meghe 1995 (5) SCC 347, relied on.

F Civil Appeal No. 5777 of 2006:

5. Fresh election to the said parliamentary constituency having already taken place in this year, this appeal is rendered infructuous and has to be dismissed on that ground. [Para 33] [154-F-G]

G Case Law Reference:

1975 (4) SCC 769

Relied on.

Para 11

held inapplicable. Para 27

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1999 (9) SCC 386	Relied on.	Para 12	A
1985 (1) SCC 91	Relied on.	Para 13	
1975 (4) SCC 671	Distinguished.	Para 26	
1985 (1) SCC 370	Referred to.	Para 27	B
1995 (5) SCC 347	Relied on.	Para 28	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5033 of 2006.

From the Judgment & Order dated 31.10.2006 of the High Court of Kerala at Ernakulam in Election Petition No. 1 of 2004.

WITH

Civil Appeal No. 5777 of 2006.

T.L.V. Iyer and P.S. Narasimha, Ashok Mathur, Raju Joseph, Anshul Naryana, M.T. George, R. Basanth, P.S. Sudheer, Sindhu T.P., John Mathew, Pradyot Kumar Chakravarty for the appearing parties.

The Judgment of the Court was delivered by

D.K. JAIN, J. 1. This appeal under Section 116A of the Representation of People Act, 1951 (for short 'the Act') is directed against the judgment and order dated 31st October, 2006 rendered by the High Court of Kerala at Ernakulam in Election Petition No.1 of 2004, setting aside the election of the appellant to the House of People (Lok Sabha) from 12 H.P. Muvattupuzha Parliamentary Constituency.

2. Election to the said Parliamentary Constituency was held on 10th May, 2004 and the result was declared on 13th May, 2004. The appellant, who was the first respondent in the Election Petition, was the candidate from the Indian Federal Democratic Party ('IFDP' for short), a constituent of the National

- A Democratic Alliance. He was declared elected by a margin of 529 votes over the first respondent (hereinafter referred to as the 'election petitioner'), who got the second highest number of votes. The election petitioner was the candidate from the Communist Party of India (Marxist), a constituent of the Left
- B Democratic Front (for short 'LDF'). While the appellant secured 2,56,411 votes, the election petitioner got 2,55,882 votes. The second respondent in the election petition, who had contested the election as a candidate of the Kerala Congress (M), a constituent of the United Democratic Front ('UDF' for short),
- C secured 2,09,880 votes. The other 13 contestants got an insignificant number of votes.

3. The election of the appellant was challenged by the election petitioner on the ground that the appellant had committed corrupt practices as enumerated under Sections

D 123(3) and 123(5) of the Act and, therefore, his election was liable to be declared void under Section 100(1)(b) of the Act. The consequent relief prayed for in the Election Petition was for declaring the election petitioner as elected in terms of Section 101(b) of the Act.

E 4. The allegations in the Election Petition were denied by the appellant. In the first instance, as a preliminary objection, the appellant questioned the maintainability of the Election

F Petition. Rejecting the objection, the High Court, vide its order dated 28th February, 2005 sustained the maintainability of the Election Petition only on two grounds of corrupt practice, viz. one falling under Section 123(3) of the Act and the other under

G Section 123(5) of the Act. While the election petitioner himself gave up the grounds pertaining to allegation of excess election expenditure incurred by the appellant over the maximum limit provided under Section 77 of the Act and the allegation of undue influence under Section 123(2) of the Act arising out of a speech made by the then President of the Bharatiya Janta Party, the High Court rejected the ground pertaining to the

allegation of bribery in the form of gratification offered by the appellant to one of the contestants in order to get his candidature withdrawn from this election. A

5. Upon consideration of the pleadings and taking note of abandonment of the afore-noted allegations by the election petitioner, the learned Judge framed the following issues: B

1. Whether the 1st respondent has committed corrupt practice as contemplated under Section 123(3) of the Representation of the People Act, 1951 by printing and publishing Annexure I notice and Annexure II photo calendar and distributing and circulating Annexure I along with Annexure II by himself, his election agent and other agents, his election workers and campaigners with the consent and connivance of the 1st respondent in various places of No.12 H.P. Muvattupuzha Parliamentary Constituency for the election held on 10.5.2004. C D

2. Whether the 1st respondent, his election agent and other agents with the consent of the 1st respondent, had committed corrupt practice contemplated under Section 123(5) of the Representation of the People Act, 1951 by hiring and procuring vehicles, viz., autorickshaw Nos. KL-5/4400, KL-5/C 3431 and Jeep Nos. KRO 6606 and KL-5/1845 for free conveyance of the electors to and from the polling station Nos. 57 to 71 in Poonjar Thekkekara Panchayat in Poonjar Assembly Constituency of No. 2 Muvattupuzha Parliamentary Constituency for the election held on 10.5.2004. E F

3. Whether the election of the 1st respondent from No. 12 H.P. Muvattupuzha Parliamentary Constituency can be declared as void by the conduct of corrupt practices enumerated in issue Nos.1 and 2 and is it liable to be set aside. G

4. Whether the petitioner has to be declared as duly H

A elected from No.12 H.P. Muvattupuzha Parliamentary Constituency after setting aside the election of the 1st respondent.

B 5. Whether the election petitioner is entitled to get the cost of his election petition.

C 6. On behalf of the election petitioner, twenty five witnesses, including himself were examined. Alleged public notice dated 21st April, 2004 and photo-calendar, filed as Annexures I and II respectively with the election petition, were exhibited through election petitioner as Ext.P1 and P2 respectively. On the side of the appellant, eleven witnesses, including himself were examined and Ext. R1(a) to R1(g) were marked.

D 7. Analysing the evidence adduced by the parties on the issues, except for issue No.5, the High Court answered all the issues in favour of the election petitioner. Thus, costs of the election petition, were not awarded. It has been observed by the High Court that in the instant case, even though consent of the appellant herein for printing Ext.P1 and P2 is not proved by direct evidence but from proven facts, namely, the election agent of the appellant, Advocate James Anakallungal, (hereinafter referred to as 'James'), arranging for printing of Ext. P1 & P2; the appellant paying the printing charges and the party workers distributing these documents in the houses of electors, who are Catholics, the only inference possible is that the circulation of printed copies of Exts.P1 & P2 was with the knowledge of the appellant. *Inter alia*, observing that while Ext.P1 independently constitutes an appeal to the Catholic voters to vote for the appellant on the ground of his religion attracting the mischief of Section 123(3) of the Act, Ext.P2 supports and strengthens Ext.P1, the learned Judge held that the appellant has committed corrupt practice under Section 123(3) of the Act by appealing to the electors to vote on the ground of his community and religion through the printing and

H circulation of Exts.P1 and P2 among the electors.

Consequently, his election was liable to be declared void under Section 100(1)(b) of the Act. On the second issue also, the High Court has observed that though no direct evidence is produced to prove the consent given by the appellant or his election agent to his party workers to arrange the vehicles and even the witnesses have not specifically stated that the vehicles were provided to them free of charge, yet in view of the evidence of the witnesses that party workers of the appellant had offered vehicles to them, the only possible inference could be that the witnesses were provided vehicles free of charge resulting in violation of Section 123(5) of the Act. Having found issues No.1 to 3 against the appellant, the High Court came to the conclusion that but for the corrupt practices, proved to have been practiced by the appellant, the election petitioner would have got at least 265 more of the votes polled in favour of the appellant, in which case, he would have won the election. Accordingly, exercising power conferred on it under Section 100(1)(b) of the Act, the High Court declared the election of the appellant, the returned candidate, to the said Parliamentary Constituency, to be void and the election petitioner was declared elected under Section 101(b) of the Act in his place from the said Constituency. The High Court further ordered that the findings of commission of corrupt practices by the appellant under Sections 123(3) and 123(5) of the Act will hold good for the purpose of Section 99 of the Act as well. Aggrieved by the said decision, the appellant has come up in appeal before us.

8. Assailing the findings of the High Court, Mr. F.S. Nariman, learned senior counsel appearing on behalf of the appellant, strenuously urged that the conclusion of the High Court to the effect that the appellant had committed corrupt practices as envisaged under sub-sections (3) and (5) of Section 123 of the Act are palpably erroneous, inasmuch as: (i) it was neither the case of the election petitioner, nor any specific plea was raised in the election petition, that the appellant had appealed to the electors to vote for him on the ground of his community or religion by distribution of printed

- A offending materials viz. a notice/statement dated 21st April, 2004 (Ext.P1) and a photo calendar for the year 2004 (Ext.P2);
- B (ii) both the offending documents (Ext.P1 and Ext.P2) were not proved as per the prescribed procedure and, therefore, the very basis in forming the opinion that the appellant had committed corrupt practice was missing; (iii) having held that independently Ext.P2 did not constitute an appeal to vote on the ground of religion of the appellant and that the said exhibit had to be read collectively with Ext.P1, alleged to be a notice purportedly authored and printed by one John Kachiramattom (hereinafter referred to as 'John K.'), which had been circulated along with Ext.P2, and the circulation of both amongst the electors together constituted an appeal to vote for the appellant on the ground of his religion, the learned Judge has failed to appreciate that none of the witnesses examined by the election petitioner had stated that John K. had acknowledged or stated to them that he had, in fact, prepared and signed the said notice/statement for circulation; (iv) though John K. was cited as one of the witnesses by the election petitioner in the list submitted by him, he was not called by the election petitioner for recording of his evidence; (v) the inferences drawn by the learned Judge were based on unproven documents, even source whereof had not been proved; and (vi) the finding of the High Court to the effect that appellant had committed corrupt practice under Section 123(5) of the Act was based only on inferences drawn from the statements made by interested witnesses when none of the witnesses had stated that the vehicles were provided free of charge. To buttress his argument that an adverse inference should have been drawn against the election petitioner for not examining John K., learned counsel placed reliance on the decisions of this Court in *Hem Raj vs. Ramji Lal & Anr¹*, *Thakur Sen Negi vs. Dev Raj Negi & Anr²*, *Virendra Kumar Saklecha vs. Jagjiwan & Ors³*, *Jeet Mohinder*

1. (1975) 4 SCC 671.

2. (1993) Supp. 3 SCC 645.

H 3. (1972) 1 SCC 826.

*Singh vs. Harminder Singh Jassi*⁴ and *Kanhaiyalal vs. Mannalal & Ors.*⁵ Reliance was also placed on the decisions of this Court in *Ram Chand Bhatia vs. Shri Hardyal*⁶, *Ch. Razik Ram vs. Ch. Jaswant Singh Chouhan & Ors.*⁷, *Surinder Singh vs. Hardial Singh & Ors.*⁸, *Mercykutty Amma vs. Kadavoor Sivadasan & Anr.*⁹, and a number of other decisions in which the dictum in *Ch. Razik Ram* (supra) was followed in support of the proposition that the standard of proof in an election petition is the same as in a criminal trial, which the election petitioner failed to discharge.

9. Mr. P.S. Narasimha, learned senior counsel appearing for the election petitioner, on the other hand, supporting the decision of the High Court, submitted that upon production of originals of pamphlet and the calendar by PW1, they were marked as Exts.P1 and P2 respectively and duly endorsed by the Court trying the election petition, therefore, the documents stood proved. In support of the plea that once a document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document was irregular, cannot be allowed to be raised at any stage subsequent to the marking of the document as exhibit, reliance was placed on the decisions of this Court in *R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple & Anr.*¹⁰, *Dayamathi Bai (Smt) vs. K.M. Shaffi*¹¹ and *P.C. Purushothama Reddiar vs. S. Perumal*¹². Other pleas raised were also countered by

4. (1999) 9 SCC 826.

5. (1976) 3 SCC 386.

6. (1986) 2 SCC 121.

7. (1975) 4 SCC 769.

8. (1985) 1 SCC 91.

9. (2004) 2 SCC 217.

10. (2003) 8 SCC 752.

11. (2004) 7 SCC 107.

12. (1972) 1 SCC 9.

A the learned counsel.

10. Before we proceed to examine the facts of the case to consider the question as to whether charges of corrupt practices were established against the appellant, we deem it necessary to reiterate that a charge of corrupt practice envisaged by the Act is to be equated with a criminal charge and the standard of proof thereof would not be preponderance of probabilities as in a civil action but proof beyond reasonable doubt as in a criminal trial. If this test is not applied, a very serious prejudice is likely to be caused to the successful candidate whose election would not only be set aside, he may also incur disqualification to contest an election for a certain period entailing even extinction of his political career. Undoubtedly, the onus lies heavily on the election petitioner to make out a strong case for setting aside an election.

D 11. In *Ch. Razik Ram* (supra), speaking for the Bench, Sarkaria, J. observed thus:

E “..It is well settled that a charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. Thus, the trial of an election petition being in the nature of an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial. Just as in a criminal case, so in an election petition, the respondent against whom the charge of corrupt practice is levelled, is presumed to be innocent unless proved guilty. A grave and heavy onus therefore, rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt. It is true that there is no difference between the general rules of evidence in civil and criminal

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cases, and the definition of "proved" in Section 3 of the Evidence Act does not draw a distinction between civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainty amounting to demonstration is rarely to be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the definition, is that of a person of prudence and practical good sense. 'Proof' means the effect of the evidence adduced in the case. Judged by the standard of prudent man, in the light of the nature of onus cast by law, the probative effect of evidence in civil and criminal proceedings is markedly different. The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is requisite for a conviction. The same is largely true about proof of a charge of corrupt practice, which cannot be established by a mere balance of probabilities and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the mind of the Court is left rocking with reasonable doubt - not being the doubt of a timid, fickle or vacillating mind - as to the veracity of the charge, it must hold the same as not proved".

12. A three-Judge Bench of this Court in *Jeet Mohinder Singh* (supra), referring to a large number of earlier decisions, culled out the following legal principles, relevant for our purpose, in the field of election jurisprudence:

- "(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

A 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 an enormous load on the public funds and administration. [See: *Jagan Nath vs. Jaswant Singh*¹³, *Gajanan Krishnaji Bapat vs. Dattaji Raghobaji Meghe*¹⁴].

C (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 the hilt, the standard of proof being the same as in a criminal trial. [See: *Quamarul Islam vs. S.K. Kanta*¹⁵, *F.A. Sapa vs. Singora*¹⁶, *Manohar*

13. AIR 1954 SC 210.

14. (1995) 5 SCC 347.

15. 1994 Supp (3) SCC 5.

H 16. (1991) 3 SCC 375.

*Joshi etc. vs. Damodar Tatyaba alias Dada Saheb Rupwati etc*¹⁷. and *Ram Singh vs. Col. Ram Singh*¹⁸].

- (iii) The Appellate Court attaches great value to the opinion formed by the trial Judge more so 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. [See: *Gajanan Krishnaji Bapat* (supra); *Kripa Shankar Chatterji vs. Gurudas Chatterjee*¹⁹].

13. Similar opinion has been expressed in subsequent decisions, including *Surinder Singh* (supra) and *Mercykutty Amma* (supra) on which reliance had been placed by learned counsel for the appellant.

14. With this background, it has to be examined if the findings recorded in the judgment in appeal, holding corrupt practices under Section 123(3) and (5) of the Act having been committed by the appellant, are justified or hit by the contentions to the contrary raised by the appellant. It would be appropriate to reproduce the aforesaid provisions of the Act,

17. (1991) 2 SCC 342.

18. 1985 Supp SCC 611.

19. (1995) 5 SCC 1.

A which are extracted below:

"Section 123 - Corrupt practices. —The following shall be deemed to be corrupt practices for the purposes of this Act:—

B (1) xxx xxx xxx

(2) xxx xxx xxx

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

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

(3A) xxx xxx xxx

(3B) xxx xxx xxx

F (4) xxx xxx xxx

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

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29 for the poll:

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

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

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

15. Issue No.1 is based on the alleged violation of sub-section (3) of Section 123, the vital ingredients of which, relevant for our purpose, are:- (i) appeal by a candidate or his agent or by any person with the consent of the candidate or his election agent, (ii) to vote or refrain from voting for any person, (iii) on the ground of religion, race, caste, community or language.

16. Therefore, in order to decide whether in the present case, corrupt practice is committed, it has to be examined: (a) whether notice (Ext.P1) and photo-calendar (Ext.P2) independently or jointly constitute appeal to the voters to vote on the ground of religion or caste or community of the appellant as alleged in the election petition and (b) if so, whether the appellant herein or his agent or any other person with the

- A consent of the appellant or his agent has printed and distributed or at least distributed the same among the voters to bring them within the mischief of the sub-section. Calendar (Ext.P2) is described as printed at "Akshara" with the telephone number of the Press. It contains the photograph of the appellant with the Holy Pope, taken on the occasion of the beatification ceremony of Mother Teresa. Notice (Ext.P1) purportedly authored and published in the name of John K., does not contain the name of the printing press or a direct appeal to the voters to vote for the appellant. To appreciate its contours and the purpose, it would be expedient to visualize its contents, which are extracted below:

"Dear People,

21.4.2004

- D I need not introduce Adv. P.C. Thomas, Former President of the Kothamangalam Diocese, former State Secretary of the Catholic Congress, the son of P.T. Chacko, who was Kerala's powerful Home Minister and the prominent leader our community has been. It is humbly brought to your notice that our land and society will be blessed if P.C. Thomas who has for the last 15 years been carrying out illustrious service as the people's representative of Muvattupuzha Lok Sabha Constituency and safeguarded the honour of the community and above all of Keralites at the national level, is once again made victorious.

- G The Holy Father has exhorted us that the Christian Community, which is about 2% of population of India, should not keep away from the national main stream. Many priests, nuns and spiritualists from Kerala are carrying out gospel work, educational activities and nursing of the sick all over North India. Most of these places are now under BJP Rule. Various just released opinion surveys clearly predict that the BJP Government will again come to power at the centre. It is indisputable that if elected from

Muvattupuzha, P.C. Thomas will receive central cabinet membership and also thereby a chance to do more good for our homeland and society.

When our missionaries were abused in Jambuva of Madhya Pradesh, it was P.C. Thomas who reached rushed first and took a strong stand. And was not this matter acknowledged and established through public declaration by revered father mar Mathew Vaniyakizhakkal. Many representatives of the Christian community serving in North India have, via phone and letters informed me that the help and service they received at the political level should not be caused to be lost, and requested that P.C. Thomas must be elected and sent with more strength for functioning for them at Delhi. I too desire for their hope to be fulfilled, for P.C. Thomas is the greatest friend and well-wisher of Malayalees in Delhi and other outside places. We are also witnesses to the fight he fought in parliament for the benefit of the Agricultural Sector, which represents a great majority of the members of our community. Financial security is indispensable for spiritual strength, to some extent, as we know.

P.C. Thomas, who participated as the official representative of the Central Government at the function beatifying and conferring sainthood to Mother Teresa who had flown away to God's court like the piece of white cloud of purity and declared before the whole world, by kissing the hand of the holy father, the love and affection of 100 crore Indians, stands as social worker whom our community can always be proud of it was the selfishness and personal interest of certain people, which sent him to the BJP front. But there too he stands as a witness of Christ like the old Joseph who was elevated as king by the aliens.

I request you to give P.C. Thomas, who is the representative of the Christians followings the footsteps of lord Jesus who stepped in to this world to preach the

A gospel to the poor, to console the sad at heart to free the shackled, to give sight to the blind and to liberate the oppressed and who follows the commandment of the Holy Church, your ever strong prayer support to enable that son to continue as Jesus witness in Delhi.

B With love and regard

John Kachiramattom

Sd/- John Kachiramattom"

C 17. Obviously, as the High Court has also deduced, notice
 (Ext.P1) clearly contains an appeal in that, the Holy Father, the
 Pope, head of the Roman Catholics does exhort them not to
 keep away from the mainstream. It applauds the services of the
 D appellant in standing for the community when it is under attack
 and had fought in Parliament for the benefit of the community,
 whose interest demanded the Catholics/Christians to vote for
 him. The notice does contain a message or an appeal on
 religious grounds to the Christians/Catholics to vote for him for
 the benefit of the larger interests of the Christians, particularly
 E the Roman Catholics.

18. Indeed, the community members all over understood
 it as such. This is borne out from the testimony of Benny George
 (PW-2), K.J. Reji (PW-6), Chako (PW-7), Benny Avoly (PW-8),
 F Jose (PW-9), etc. etc., who all deposed about the party workers
 of IFDP, to which party the appellant belonged to, giving notice
 (Ext.P1) and calendar (Ext.P2) to each one of them as a
 statement by John K., a known leader of Catholics. The consent
 of the appellant for distribution of the said exhibits among the
 G Catholic voters, though not directly proved was rightly inferred
 from the fact that his agent James, who got these printed, paid
 charges and circulated these. The circulation of the said
 exhibits amounted to violation of Section 123(3) of the Act. The
 aforesaid witnesses also stated having gone through the notice
 (Ext.P1), discussed about it with their family members or friends
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and to have come to the conclusion that the appellant being a leader of Catholics and a candidate in the Parliamentary Elections 2004, having always stood with the community, deserved to be supported and voted for. Nothing significant was brought out in their cross examination to discredit them. Considering it all, the High Court was satisfied that notice (Ext.P1) and calendar (Ext.P2) were distributed by workers of the appellant. Applying the test of common man's understanding and the effect of the said documents on the mind and feelings of an ordinary average voter, we agree with the High Court that the said notice/statement (Ext.P1) did constitute an appeal to the members of the Christian community, particularly, the Catholics to seek their votes for the appellant, being a Catholic, on the ground of religion, caste and community. Calendar (Ext.P2), as indicated above, does not *per se* fall within the mischief of Section 123(3) of the Act but taken along with Exhibit P1 does serve as a statement to strengthen the appeal in notice (Ext.P1).

19. To bring the aforesaid appeal within the ambit of Section 123(3) of the Act, it required proof that as per specific pleas in paras 11 and 14 of the Election Petition, documents Ext.P1 and Ext.P2 were got printed and published at Akshara Press by the appellant through his election agent, James and distributed by the agents or workers/campaigners as alleged. We have examined the evidence produced in the case. The election petitioner-Respondent No.1 claimed to have no personal knowledge about it and stated that the information about it was supplied to him by the jeep driver, Ajimon (PW-4) and K.K. Parmeswaran (PW-19) who deposed having supplied the said information to the election petitioner around the middle of May, 2004, whereafter the election petition was filed on 26th June, 2004.

20. Three witnesses were produced by the election petitioner in support of his pleas (regarding printing and distribution of Exts.P1 & P2) in paras 8, 9, 11 and 14 of the

- A petition. Ajimon (PW-4) driver of the jeep KEF 7953 made a detailed statement about his reporting with jeep to appellant's election agent James on 24th April, 2004; the latter taking the jeep to Akshara Press; the appellant's arriving there and making cash payment through his agent James to the Press owner; taking delivery of bundles of printed materials, each bundle with a copy of the printed material Exts.P1 or P2 on it; 50 bundles of Exts.P1 and P2 being loaded in the jeep and James taking the jeep driven by PW-4 to the election office at eight named places and the stated number of bundles being unloaded at appellant's election offices at each place. He also stated his reporting to James again on 25th April, 2004, loading from the Press the remaining 50 bundles of the printed material in the jeep and going to three named places with and under instruction of James and unloading the same at each place.
- D When cross-examined, he stated that the said jeep was sold away by its owner (RW-9) – Thomas, some two months after the election. Further cross-examined, he denied that he was an IFDP worker or that the day before, he was in the CPI(M) office, and was pressurized by them to make a statement as above.
- E 21. PW-5, K.K. Balachandran (claiming to have been temporarily employed for a month at the Akshara Press to meet the election rush of work) deposed about the appellant/his agent James visiting the Press on 8th April, 2004 and placing a printing order for notice (Ext.P1) and calendar (Ext.P2); these
- F being printed there and packed in bundles; his being associated in packing of the printed material at the Press and of James (RW-11) with the jeep driven by Ajimon (PW-4), taking delivery; appellant reaching there; making payment to the Press owner through his agent James; his (witnesses) assisting
- G in loading of 50 bundles in the jeep and James leaving the Press in the said jeep. Cross-examined, he gave details of the premises, the machinery installed therein, and the other occupiers of the building. He denied the suggestion that he had no connection with the Press or that he came to the court to make a false statement.
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22. PW-6 (K.J.Reji) deposed about his attending an election meeting at 5.30 p.m. on 24th April, 2004 at Vazhakulam; participation of the appellant and John K in the meeting; the latter making a speech; the jeep coming to the election office of the appellant, unloading of some bundles and on request of Anil Johny (his friend) to have taken bundles to the election office of the first respondent. He also stated of being given a calendar (Ext.P2) and notice (Ext.P1) from these bundles; his going back home with these; reading notice (Ext.P1) and seeing the calendar (Ext.P2). Cross-examined, he denied that he was an active worker of the IFDP. He was not questioned on his statement about the election meeting on 24th April, 2004 attended by the appellant and being addressed by John K.

23. To counter the evidence of PW-4, PW-5 and PW-6, the appellant produced Thomas (RW-9), the owner of jeep, Jose Kutty (RW-6), owner of Akshara Press and James (RW-11), who respectively sought to counter the versions of the respondent No.1's witnesses, PWs-4, 5, and 6 aforesaid. RW-9, Thomas, owner of the jeep stated that he never gave the jeep to PW-4 or instructed him to report to James on 24th April, 2009. He admitted that Ajimon was employed by him but to drive his bus. According to him, the jeep was purchased just for sale and was not run by him. According to him, the jeep was sold away by him within eight days of its purchase. If really so, there was no occasion for him to get it transferred in his name, which he did. RW-6 (Jose Kutty), owner of the Press denied having ever employed PW-5 or the printing of notice (Ext.P1) and calendar (Ext.P2) at his Press. In cross- examination, he admitted that the appellant and his election agents were known to him for a long time; that he did undertake election printing work for them and also that printing any material without inscribing the name of the Press thereon (as on notice, Ex.P1) is violative of the provisions of Section 137A of the Act, inviting prosecution/action against him. The High Court in its judgment under appeal for reasons stated discredited the testimony of

- A the owner of the jeep (RW-9) and owner of the printing Press (RW-6) and believed the testimony of PW-4, PW-5 and PW-6. While dealing with the statement of RW-9, the High Court has recorded that his answers to the questions were generally evasive and his evidence untrustworthy. Nothing was pointed out against these observations. His testimony carries little conviction as against that of PW-4 (Ajimon).

24. RW-11, James, the chief election agent of the appellant, in his proof affidavit, denied the allegation made by PW-4, PW-5 and PW-6 and the part allegedly attributed to him by PW-5 about the placing of a printing order of Exts.P1 and P2 with Akshara Press on 8th April, 2004 and taking delivery of the printed material on 24th April, 2004 (vouched by PW-4 and PW-5) at 5.00 p.m. or so, or about the election meeting on 24th April, 2004 at 5.30 p.m. at Vazhakullam; stated by PW-6 as having been attended by him and the appellant or being addressed by John K, purported author of Ext.P1. According to him, there was no such meeting at 5.30 p.m. or 6.00 p.m., as on that date and time; he was in the District Collector's office where scrutiny of nomination papers of the appellant was held.
- E In cross-examination, he stated that his attendance in proceedings for scrutiny of papers is a matter reflected in court records. No evidence about it was produced in support. Being an advocate of standing, associated with law office of the appellant for 26 years, he well understood its importance, for if really so, production of such record could have rendered the entire case of the election petitioner about RW-11 getting Exts.P1 and P2 printed; taking delivery of the same from Akshara Press; its distribution that day as highly doubtful, nay, a nullity and not doing so provided sanctity to the election petitioner's case and credibility to the testimony of PW-4 to PW-6. We accordingly see no ground to differ with the findings recorded by the High Court on issue No.1.

25. The aforesaid findings on issue No.1 were sought to be assailed by learned senior counsel appearing for the

appellant on points No.(i) to (v) digested in para 8 (supra). A
 These are not tenable. Pithily stated, these were: (i) it was
 neither the case of the election petitioner nor any specific plea
 that the appellant had appealed to the electors to vote for him
 on the ground of community or religion by distribution of Exts.P1
 and P2; (ii) the aforesaid documents were not proved by B
 prescribed procedure and the basis for forming opinion thereon
 was missing; (iii) notice (Ext.P1) purports to be authored by
 John K, who was not examined by the election petitioner
 despite having cited him as a witness and as such an inference
 drawn by the learned Judge was based on unproved C
 documents; (iv) no witness produced had stated that he had
 acknowledged to him that John K had prepared or signed the
 said exhibits and (v) the inference drawn is based on unproved
 documents.

26. As already noted above (Para 19 supra), the election D
 petitioner's case in paras 8, 9, 11 and 14 of the petition laid in
 specific terms, concisely put, does show that documents
 Exts.P1 and P2, purportedly authored by John K, were got
 printed by the appellant through his admitted election agent –
 James at Akshara Press; the appellant paid charges therefor E
 through his said agent to the owner of the Press and delivery
 of the printed material was taken from the Press and the same
 were circulated amongst Catholic/Christian voters by
 appellant's agents and campaigners to his knowledge. As
 noted in para 17 (supra), these did contain an appeal to F
 Catholics/ Christians to vote for the appellant on religious
 grounds. These documents, produced by the election petitioner,
 were also proved by him as PW-1 and exhibited P1 and P2
 with the consent of the parties. PW-5 also stated that the notice
 (Ext.P1) and calendar (Ext.P2) were given by James (RW-11), G
 agent of the appellant for printing at Akshara printers where he
 was then working. No objection on pleas of "inadmissibility" or
 "mode of proof" was raised at the time of their exhibition or any
 time later during trial, when most of the witnesses, produced
 by the parties were confronted with these, as duly exhibited, H

- A bearing stamp marking with particulars, prescribed under Order XIII Rule 4 of the Code of Civil Procedure, 1908 and duly signed as such. In our opinion, it is too late in the day now to object to their exhibition on the ground of "prescribed procedure" i.e. mode of proof. Moreover, we also find that it was nobody's
- B case that the said documents were got printed by John K or distributed amongst voters by him. Absence of proof of acknowledgment by him because of non production of John K as a witness, in the circumstances, in our view, is inconsequential. Admittedly, John K was a well known leader
- C of high stature, recognized as such by Christian/Catholic voters including those mentioned in Para 17 (supra) and, therefore, there is no question of drawing an adverse inference against the election petitioner for not examining him, as strenuously urged on behalf of the appellant, particularly when the printing and circulation of offending material (Exts.P1 and P2) has been
- D proved by the election petitioner beyond reasonable doubt. In that view of the matter, the dictum of this Court in *Hem Raj* (supra) and other cases referred to in para 8 (supra) is not applicable. In these cases, the election petitions were dismissed because of inadequacy of the evidence produced
- E by the election petitioners in order to discharge the onus to prove the corrupt practice alleged and not because of non-examination of a named witness. Moreover, the printing and circulation of Exts.P1 and P2 having been proved, the question as to who authored Ext.P1 is immaterial. The contentions raised
- F by the learned counsel on the point are thus, unsustainable.

27. 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
- G 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
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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. (See: *S. Harcharan Singh vs. S. Sajjan Singh & Ors.*²⁰). As noted above, in the present case, the High Court has recorded a clear finding that the election petitioner has produced adequate evidence which goes to prove the charges against the appellant under Section 123(3) of the Act beyond reasonable doubt. Thus, the ratio of the decision relied upon by the appellant is of no avail to him.

28. This Court in *Gajanan Krishnaji Bapat* (supra) has observed that although being the Court of First appeal, this Court has no inhibition in reversing such a finding, of fact or law, which has been recorded on a misreading or wrong appreciation of the evidence or the law but ordinarily the appellate court attaches great value to the opinion formed by the Trial Judge, more so when the Trial Judge happens to be a High Court Judge; had recorded the evidence and had the benefit of watching the demeanour of witnesses in forming first hand opinion of them in the process of evaluation of evidence. This Court should not interfere with the findings of fact recorded by the Trial Court unless there are compelling reasons to do so.

29. Having examined the material on record in the light of the afore-noted settled principles, we are convinced that the High Court has not committed any grave error in the appreciation and assessment of the evidence on the point. On consideration of the evidence in its totality, adduced by the election petitioner and the appellant, we agree with the High Court that the election petitioner has adduced cogent,

20. (1985) 1 SCC 370.

- A satisfactory and reliable evidence to establish the charge against the appellant under Section 123(3) of the Act.

B 30. For the view we have taken above, we deem it unnecessary to examine the second issue, viz. the corrupt practice in hiring or procuring vehicles free of charges to the electors to go to and from the polling booths falling under Section 123(5) of the Act, on which ground also the election of the appellant has been invalidated by the High Court.

- C 31. For all the foregoing reasons, we see no merit in this appeal. The same is dismissed accordingly but in the circumstances of the case, we make no order as to costs in this appeal.

CIVIL APPEAL NO.5777 OF 2006

- D 32. This appeal under Section 116A of the Act has been preferred by the 2nd respondent in C.A. No.5033 of 2006, who had unsuccessfully contested the election as a candidate of the Kerala Congress (M). As noted above, the appellant in the said appeal, who was declared elected had got 2,56,411 votes; the
E election petitioner got 2,55,882 votes and the appellant in this appeal had secured 2,09,880 votes. The short grievance of the appellant is that election of P.C. Thomas having been set aside, instead of declaring the election petitioner as elected; the High Court should have declared the appellant as elected from 12
F H.P. Muvattupuzha Parliamentary Constituency.

- G 33. In our opinion, fresh election to the said parliamentary constituency having already taken place in this year, this appeal is rendered infructuous and has to be dismissed on that ground. It is ordered accordingly.

K.K.T.

Appeals dismissed.