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No. 247] CHENNAI, WEDNESDAY, DECEMBER 16, 2015
Karthigai 30, Manmadha, Thiruvalluvar Aandu-2046

Part V—Section 4

Notifications by the Election Commission of India

NOTIFICATIONS BY THE ELECTION COMMISSION OF INDIA

JUDGEMENT OF THE HIGH COURT OF MADRAS
ELECTION PETITION No. 3 OF 2011.

No. SRO G-30/2015.

The following Notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001, dated 3rd December, 2015, 12 Agrahayana 1937 (Saka) is published.

No. 82/TN-LA/3/2011:—In pursuance of section 106 (b) of the Representation of the people Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order of the High Court of Madras, dated: 5-8-2014 in Election Petition No. 3 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL, CIVIL JURISDICTION)

Tuesday, the 5th Day of August 2014

THE HON'BLE MS. JUSTICE R. MALA

Election Petition No. 3 of 2011

ELP No. 3 of 2011

Rama Eramanathan,
S/o Ramachandra Sastrigal,
No.18, Balu Street,
Kumbakonam - 612 001.

—Petitioner.

-Versus-

1. G. Anbalagan,
S/o Ganapathi,
No. 5/218, Natchaiyar Kovil Main Road,
Sakkottai - 612 401,
Kumbakonam Taluk.
2. Pala Annamalai,
S/o. Palaniyappan,
No. 1-A, Indira Gandhi Salai,
Kumbakonam - 612 001.
3. G. Rajkumar,
S/o. Gopalan,
East Street, Aththiyur,
Aththiyur Post, Via Cholapuram,
Kumbakonam Taluk.
4. MBS Dhashna Murthi,
S/o. Balasubramanian,
No. 83-A, Thiru Narayanapuram East Street,
Kumbakonam - 612 001.
5. P. Subramanian,
S/o. Panneer Selvam,
15, Tharangampadi Main Road,
Aduthurai, Thiruvudaimaruthur Taluk.
6. M. Panimayamary Rasu,
S/o. Maikel Swamy,
No. 7, Gandhi Nagar Extension,
Kumbakonam - 612 001.

7. R. Mohan,
S/o. Radha,
2/166, Srinivasa Nagar,
Pasupathi Kovil, Papanasam Taluk.
8. Kudanthai S. Vijayalakshmi
W/o.Late Shanmugam.
11. Harichandrapuram, Kurunji Nagar,
Cholan Maligai Post, Patteswaram Via.,
Kumbakonam Taluk.
9. The Returning Officer / Revenue Divisional Officer
171, Kumbakonam Assembly Constituency,
Kumbakonam - 612 001.
10. The District Election Officer
The District Collector,
Thanjavur.

.....Respondents

This Election Petition praying that this Hon'ble Court be pleased to pass an order to (a) declare that the Election of the 1st respondent from 171. Kumbakonam Assembly Constituency, dated 13.05.2011 is void (b) declare that the petitioner has been validly elected to the Tamil Nadu Legislative Assembly from No. 171. Kumbakonam Assembly constituency in the election held on 13.04.2011 (c) for costs in this petition.

The above Election petition having been heard on 04.07.2014 along with Election Petition coming on this day before this Court in the presence of Mr. D. Rajagopal, advocate for the Election Petitioner and of Mr. P.R. Raman, advocate for the 1st respondent and Mr. M.R. Raghavan, standing counsel for Election cases appearing in person for 9th & 10th respondent and other respondents not appearing in person or by advocates and upon reading the Election Petition of Rama Eramanathan and counter affidavit of the 1st respondent filed herein and upon perusing the evidence adduced herein and the exhibits marked thereon and this Court having stood over for consideration till this day and coming on this day before this court for orders in the presence of the above said advocates and this Court is of the view that "the election petitioner has not proved the corrupt practices alleged to be committed by the first respondent / returned candidate and that the election petitioner has failed to prove the corrupt practice alleged to be committed by the first respondent/returned candidate, in accordance with law."

It is ordered as follows:-

1. That the Election petition No. 3 of 2011 be and is hereby dismissed.
2. That there shall be no order as to costs.

Witness the Hon'ble Thiru SANJAY KISHAN KAUL, The Chief Justice, Highcourt at Madras Aforesaid, this the 5th day of August 2014.

Sd/-
Assistant Registrar,
Original Side- II

//Certified to be True Copy//

DATED THIS THE 23rd DAY OF SEPTEMBER 2015.

Court Officer (OS)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

MK - 02/09/2014

ELP No. 3 of 2011

Decree Dated: 05-08-2014

The Hon'ble MS. Justice
R. Mala

For Approval : 08/10/2014

Approved on : 08/10/2014

Copy to

Mr. M.R. Raghavan,
Standing Counsel for Election cases.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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The District Collector,
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.....*Respondents*

This Election Petition praying that this Hon'ble Court be pleased to pass an order to (a) declare that the Election of the 1st respondent from 171. Kumbakonam Assembly Constituency dated 13-05-2011 is void (b) declare that the petitioner has been validly elected to the Tamil Nadu Legislative Assembly from 171. Kumbakonam Assembly Constituency in the election held on 13-04-2011 (c) for costs in this petition.

The above Election Petition having been heard on 04-07-2014 along with Election Petition coming on this day before this Court in the presence of Mr. D. Rajagopal, advocate for the Election petitioner and of Mr. P.R. Raman Advocate 1st respondent and Mr. M.R. Raghavan, standing counsel for Election cases appearing in person for 9th and 10th respondent and other respondents not appearing in person or by advocates and upon reading the Election Petition of Rama Eramanathan and counter affidavit of the 1st respondent filed herein and upon perusing the evidence adduced herein and the exhibits marked thereon and this Court having stood over for consideration till this day and coming on this day before this Court for orders in the presence of the above said advocates;

The Court made the following order:—

The election petitioner has come up with the present election petition for a declaration to declare that the election of the first respondent from 171. Kumbakonam

Assembly Constituency dated 13-05-2011 is void and to declare that the petitioner has been validly elected to the Tamil Nadu Legislative Assembly From No. 171. Kumbakonam Assembly Constituency in the election held on 13-04-2011.

2. For the sake of convenience, the petitioner in the election petition is called as "Election Petitioner" the first respondent in the election petition is referred as the 'returned candidate' and the other respondents are referred as per their nomenclature in the election petition.

3. The election petitioner contested the election at No. 171. Kumbakonam Assembly Constituency.

4. In the election petition, the following facts have been set out by the election petitioner:—

(a) The notification for general election to Tamil Nadu Legislative Assembly was published by the Election Commission on 19-03-2011 and the model code of conduct came into effect on 01-03-2011. The nominations were called for on 19-03-2011 to the general elections to be held on 13-04-2011. The nominations were to be filed between 19-03-2011 to 26-03-2011 and the filed nominations were scrutinized on 28-03-2011 and last date for withdrawal of nomination was on 30-03-2011. The election was conducted on 13-04-2011 and the results were declared 13-05-2011.

(b) The petitioner filed his nomination on 24-03-2011 as a candidate belonging to All India Anna Dravida Munnetra Kazhagam (AIADMK) and contested in 2 leaves symbol. The first respondent submitted his nomination as a candidate belonging to the Dravida Munnetra Kazhagam (DMK) party under Rising Sun symbol. The second respondent filed his nomination as candidate belonging to the Bharathiya Janatha Party (BJP) under Lotus symbol. The third respondent filed his nomination as a candidate belonging to Bhagujan Samajwadi Party (BSP) under Elephant symbol. The fourth respondent filed his nomination as a candidate belonging to India Jananayaka Katchi (IJK) party under Ring symbol. The respondent 5 to 8 filed their nominations as independent candidates under the symbols of coconut, scissors, cup and saucer and balloon respectively.

(c) After the scrutiny of nomination papers, the nomination of the petitioner and the respondents 1 to 8 were found to be valid and were declared as the candidates contesting the election in 171. Kumbakonam Assembly Constituency and the polling was held in 13-04-2011. The Election Commission of India in exercise of its power under the Constitution of India and the Representation of People Act, 1951 have issued various circulars and guidelines from time to time which have got to be scrupulously followed by all the candidates and their agents and everyone working for them with the consent of the candidates.

(d) The 9th respondent *viz.*, the Returning Officer declared the first respondent as duly elected to the seat No. 171, Kumbakonam Assembly Constituency, Tamil Nadu Legislative Assembly having secured 78642 votes under Form No. 20C dated 13-05-2011. The petitioner was polled 77370 votes. The respondents 2 to 8 were polled 1606, 727, 1087, 294, 555, 478 and 649 votes respectively. The first respondent was declared to be the elected candidate by a margin of 1272 votes.

(e) The first respondent, his agent and others along with the consent of the first respondent have committed corrupt practices for the success of the first respondent who contested the election on behalf of the Dravida Munnetra Kazhagam and thereby violated the rules laid down by the Election Commission of India. The first respondent, his agents and men by way of bribery have induced the electors of the said Constituency with the consent of the first respondent to vote for the first respondent and to refrain from voting in favour of the petitioner by giving money to the voters. The petitioner gave several complaints regarding the distribution of money to the Returning Officer/Revenue Divisional Officer, Kumbakonam and to the Flying Vigilance Squad between 24-03-2011 to 13-05-2011. However, due to the lack of manpower, the 'flying squad' officials were unable to locate and catch the erring men of the first respondent and charge sheet all the persons involved in the complaints given by the petitioner. But the 'flying squad' found the complaints of the petitioner to be true in three distinct and separate places and actually caught and charge sheeted the men and agents of the first respondent with incriminating material in three places. The petitioner has filed the certified copies of the FIR along with this election petition to substantiate his claim.

(f) On 07-04-2011, in Utharai hamlet of Thirupurambiyam Village in the Kumbakonam Assembly Constituency, the First respondent's agent and party workers were found distributing money to the voters at 8.00 p.m. by one Iyyamperumal who informed the Union Secretary of the AIADMK party one Azhagu Chinnayan and stated that he has caught hold of one Ramaiyan along with the money to be distributed to the electors on behalf of the first respondent. The flying squad team headed by V. Balu interrogated the said Ramaiyan and recorded his statement. Ramaiyan confesses that one Murugesan and Rajendran of the DMK party had requested him to prepare a list of the electors for whom the money has to be given for voting in favour of the DMK. A sum of Rs. 4,700/- was recovered by the flying squad officer. The said incident was also videographed and concised in CD, a copy of which is produced along with the election petition. Because of Bribery, though the said area is a stronghold of the petitioner's party, the petitioner as polled only 233 more votes than the first respondent in the segment.

(g) The next incident of corrupt practice took place in Maruthanallur Village of the Kumbakonam Assembly Constituency. One Prakasam, AIADMK person of

Maruthanallur Village gave a complaint to the Returning Officer that money is distributed in Karuvulachery Sector of Maruthanallur Village. On receiving the complaint, the flying squad officer V. Balu rushed to the spot. On seeing the convoy of the officer, many electors present in the house of Sundaram filed the spot except the house owner Sundaram. Some of the persons who filed the spot were identified as Elangovan, Ganesan, Paramasivam and Pappa *alias* Loganathan. On interrogation, Sundaram confessed that he was coming out of his house and saw the aforesaid persons near the entrance of his house. They handed over a bundle of Rs. 100/- notes to him and ran away. The officer recovered 74 hundred rupees notes from the said Sundaram which is stated to be given to him by the aforesaid persons to distribute the same to the voters to vote for the first respondent. Because of the said corrupt practice made by the first respondent, the petitioner secured 300 votes less than the first respondent. But for the corrupt practices, the petitioner should have secured 1250 votes more than the first respondent.

(h) On 10-04-2011, the flying squad team was patrolling in the area of perumandi Village of Kumbakonam Assembly Constituency. At about 5.15 p.m the flying squad officer V. Balu received a call that the money is distributed by DMK with a request to vote for the first respondent in the Autonagar locality of perumandi Village which comprises of Autonagar, Maruthi Nagar, Ram Nagar, Perumandi and Karuppu housing unit. When the jeep was moving the Maruthi Nagar area the flying squad team found a large number of women elector present in the house of one Leema Rose. W/o. Amalraj on seeing the Jeep almost all the women ran away. When the officer interrogated Leema Rose, she confessed that the DMK functionary one Thangaraju, former President gave Rs.6,700/- to be distributed to the 73 persons for canvassing for the DMK candidate G. Anbalagan. However, the said transaction has not been entered in the expenditure account of the first respondent when the same was submitted to the Accounts Officer on 11-04-2011. One Singaram the accounts agent of the petitioner has perused the accounts of the first respondent produced by him on 11-04-2011 and found that there is no entry about the said transaction. Thus, because of the said corrupt practice the petitioner secured 381 votes less than the first respondent. But for the corrupt practice, according to the petitioner, he would have secured 978 votes more in the said area.

(i) In booth nos.212, 213 situated in the Kumbakonam Assembly Constituency, the booth slips issued by the Election Commission has to be distributed by the Government Machinery with the help of the Municipal Employees doing tax collections in that area. But, one R. Nandakumar the Municipal Councillor of the Kumbakonam Municipality belonging to the DMK was found distributing the both slips along with the amounts in the locality. When the said matter was brought to

the notice of the flying squad, they rushed to the spot. On seeing them, the aides of R. Nandakumar ran away with the amounts and the flying squad officials found that the booth slips were distributed by the DMK men. Thus, in booth nos.212 and 213, the petitioner secured 165 votes less than the first respondent. But for the corrupt practice, the petitioner would have secured 315 votes more than the first respondent. This act has also hampered the winning chances of the petitioner.

(j) The next incident pertains to the Kalaingar Kappittu Thittam. The first respondent herein is running a hospital by name Anbu Hospital which covers all the patients under the said scheme. The Government was frequently giving advertisement through local TV channel and the name of the Anbu Hospital found place in the said advertisement, even after the implementation of the model code of conduct. The said advertisement was telecast in the local channels from 19-03-2011 to 10-04-2011 and the expenditure of the said telecast did not find place in the election account of the first respondent. On the other hand, though the Petitioner after obtaining necessary permission from the election officials tried to telecast the canvassing visuals in the local TV channels, the same was prevented by the first respondent, since all the local TV channels were telecasted through the SCV Sakottai Centre and thus the valuable right of propaganda of the petitioner could not be exercised by him because of the act of the first respondent. Thus, the first respondent prevented the petitioner from telecasting his election propaganda in the local TV channels, however the first respondent was telecasting the advertisement pertaining to "Kalaingar Kappittu Thittam" a government scheme done by his Anbu hospital from 16-03-2011 to 11-04-2011 along with a request to vote for him in the elections to be held on 13-04-2011, which affected the winning chances of the petitioner.

(k) Thus, the corrupt practices stated above reduced the number of votes secured by the petitioner and enabled the rival candidate viz., the first respondent to secure more votes than normally he would have obtained. Hence, the petitioner prays to set aside the election of the first respondent under Section 100 of the Representation of the People Act, 1951 and the petitioner may be declared elected for the 171 Kumbakonam Assembly Constituency under Section 101 of the Representation of the People Act, 1951.

5. Counter Affidavit was filed on behalf of the first respondent / Returned Candidate putting forth the following contentions:

(a) The only allegation in the Election Petition concerns the alleged payment of money to some electors by some persons purportedly on behalf of the first respondent, allegedly towards securing their votes and the only evidence in support

thereof relied upon by the election petitioner are the CDs allegedly capturing the said transactions, apart from some complaints/FIRs lodged on behalf of the petitioner. A perusal of the CDs and the documents filed on record show that the allegations as made out in the election petition are not substantiated at all and hence, the election petitioner deserves to be dismissed for lack of particulars. The first respondent / Returned Candidate has not instructed any person to distribute any money or get money distributed or influence the voters in his constituency in any manner.

(b) The first respondent denies the allegations that he or his agents and men by way of bribery have induced the electors of the Kumbakonam Assembly Constituency to vote for him or to refrain from voting in favour of the petitioner. It is also denied that he or his agent or men gave amounts personally to the electors so as to vote for him or to refrain from voting in favour of the petitioner as alleged by the election petitioner. Further, the first respondent/returned candidate is not aware of and hence denies the complaints made by the petitioner to the Returning Officer, Revenue Divisional Officer, Kumbakonam and the "Flying Vigilance Squad" on alleged numerous occasions during the election canvassing period as alleged in the affidavit. Even assuming that those complaints had been lodged, the same are false and fabricated as the first respondent/returned candidate has not, by himself or through his agents or men paid any money to any persons/electors.

(c) The first respondent also denies the allegations that since there was lack of man power, the flying squad was unable to locate and catch the erring men and charge sheet all the persons involved in the complaints given on behalf of the petitioner either through cell phone or orally. There is nothing on record to show that there was lack of man power during the election and no material evidence in support of the said allegations. The first respondent also denies the contents of the FIR filed by the election petitioner and submits that in any case the allegations as recorded in the FIR does not show that the first respondent or his men were connected or involved with the incidents. Hence, the first respondent cannot be accused of corrupt practice or malpractices as alleged so as to set aside the election. Even assuming that the contents of the said FIR is correct, there is nothing in the FIR to link this respondent to the persons named in the FIR or allegations contained therein.

(d) The first respondent also denies that the the DMK party men with his consent were found distributing the money to the electors in Utharai hamlet in Thirupurambiyam Village. There is nothing on record to show that the person allegedly caught hold of was distributing money on behalf of the first respondent/returned candidate or that he was doing so for the purpose of casting votes in

favour of the first respondent or that he had acted on the instructions of the first respondent. There is a distinct absence of material particulars and material evidence in the election petition to link the first respondent/returned candidate to any of the alleged incidents set out in the affidavit. A perusal of the CD also does not disclose any link between the first respondent and the said Ramaiya, Murugesan and Rajendran. The first respondent is not even aware of the political parties to which the aforesaid persons are affiliated. The CD only shows some edited clips which has obviously been doctored by the election petitioner and the CD does not show a continuous recording of the alleged incident. Furthermore, no authority under law has done the said recording and it is admitted by the election petitioner himself that the CDs were created at his instance and by his persons. The conversation in the said CD is also not clear and no transcripts are provided along with the election petition. Even in the chargesheet enclosed along with document No.7, the first respondent is neither named nor referred to and no accusation or allegations have been leveled against him.

(e) The first respondent denies the contents of the CDs stating that the CDs do not show that money was given by the first respondent or his agent or men to the electors for casting votes in favour of the first respondent. It is further submitted that even assuming while denying that the allegations are correctly recorded in the CD, the same do not show any complicity by him and in any case the same do not amount to corrupt practice or unfair practice. It is also denied that because of bribery, the petitioner secured only 233 more votes than the first respondent in this segment. It is also pertinent to note that the very fact that the petitioner has secured more votes than this respondent in the said polling station itself goes to show that this respondent did not engage in any corrupt or unfair practice in the said constituency and he did not offer any money to the electors as alleged by the election petitioner.

(f) The first respondent also denies that he or his agents or his men were involved in corrupt practices in Maruthanallur Village, which forms part of 171, Kumbakonam Assembly Constituency. As the first respondent is not aware, he denied that one Prakasam, AIADMK person gave a complaint to the Returning Officer that money is distributed in Karuvulacherry sector of Maruthanallur Village and also informed the petitioner about the same. As the first respondent is not aware, he also denies the allegations that police on receipt of the complaint, with the permission of the Magistrate has charge sheeted a person allegedly belonging to the DMK party. As the first respondent is not aware, he also denies the allegations that the flying squad had recovered 74 hundred rupees notes from Sundaram which was stated to be given for alleged distribution with a request to

vote for him and also denies the confession of Sundaram. The first respondent also submits that there is no link or nexus between him and any of the persons allegedly involved in the said incident. Even the FIR pertaining to the said incident does not implicate him or in any way connect him to the alleged incident.

(g) The first respondent also denies that he has secured more votes due to the corrupt practice indulged by the first respondent like paying amount to the electors with a request to vote for him and also getting promises in the name of God to vote for him from those who received the amount. It is also denied that in some places his agents made a propaganda that a person who received the amount should not change their loyalty to him and persons who did so in the 2009 elections 'blood vomited' and suffered other ailments.

(h) With reference to the allegations alleged in paragraph 15 of the election petition, the first respondent denies the alleged incidence of corrupt practices of paying the electors to get their votes by the DMK people. The first respondent vehemently denies the alleged distribution of money by the DMK party men in the house of one Leema Rose in the Perumandi Village of 171, Kumbakonam Assembly Constituency. He also denies that one B. Nandakumar was found distributing booth slips along with amounts to be given to voters in the locality. He would further submit that he does not know any such person and hence even assuming that the alleged incident to be true, he has got no link or nexus with the said persons or incident alleged therein. It is also pertinent to note that no documentary evidence has been produced in support of the aforesaid allegation.

(i) The first respondent also submits that merely because he is running a hospital, he cannot by any stretch of imagination be deemed to be engaged in unfair or corrupt practices. He would submit that after publishing of the model code of conduct, the telecast of advertisement pertaining to his hospital providing Government Scheme was discontinued. He would vehemently deny that he has violated the provision of Section 101 (1) (d) (iv) of the Representation of the People Act., 1951. The first respondent also denies that he gave false affidavit that he has not utilized the Government welfare scheme in his favour or that he has made a false statement to get advantage over the petitioner.

(j) With reference to the allegations contained in paragraph 17 of the election petition, the first respondent denies that the petitioner, was deprived of his right to telecast visuals in the local TV channels and that the local TV channels have a tie up with the Sumangali Cable Vision or that the Kumbakonam telecast station or centre is housed at Sakkotai Village area, where his residence is situated. He would also deny the complaint filed by one Rajendran of AIADMK as he is not aware of the same.

(k) Thus, the first respondent denies all the allegations put forth by the election petitioner and hence, he prays for dismissal of the election petition.

6. The following issues are framed in the election petition.

1. *Whether the election petitioner has proved that the election petition was filed within the period of limitation prescribed under the provisions of the Representation of the People Act, 1951?*

2. *Whether the election petitioner has proved that the first respondent has engaged in corrupt practices as envisaged under Section 123 (1)(A)(b) of the Representation of the People Act, 1951?*

3. *Whether the election of the 1st respondent is liable to be set aside for the alleged corrupt practice committed under Section 100(1)(b), 100 (1)(d)(ii) & 100(1)(d)(iv) of the Representation of the People Act, 1951?*

4. *Whether the election petitioner is entitled to a declaration that the election of the 1st respondent/returned candidate is void?*

5. *Whether the election petitioner is entitled for further declaration that he has been validly elected for the Tamil Nadu Legislative Assembly from No. 171, Kumbakonam Assembly Constituency in the election held on 13-04-2011?*

7. The election petitioner who is the defeated candidate in No. 171, Kumbakonam Assembly Constituency, Tamil Nadu has filed the present election petition stating

1. *Election to the Tamil Nadu Assembly was published by the election commission on 19-03-2011.*

2. *The model code of conduct came into effect on 01-03-2011.*

3. *The nomination were called for on 19-03-2011.*

4. *The nominations were to be filed between 19-03-2011 to 26-03-2011.*

5. *The nomination were scrutinized on 28-03-2011.*

6. *The last date for withdrawal of nomination was on 30-03-2011.*

7. *The election was conducted on 13-04-2011 and the results were declared on 13-05-2011.*

8. The election petition was filed on 24-06-2011, challenging the election of the first respondent/returned candidate from No. 171, Kumbakonam Assembly Constituency to declare the election of the first respondent from

No. 171, Kumbakonam Assembly Constituency dated 13-05-2011 is void as he was involved in corrupt practice and to declare that the petitioner has been validly elected to the Tamil Nadu Legislative Assembly from No. 171, Kumbakonam Assembly Constituency in the election held on 13-04-2011 and costs.

Issue No. 1

9. Whether the election petitioner has proved that the election petition was filed within the period of limitation prescribed under the provisions of the Representation of the People Act, 1951?

In the said Act, it was specifically mentioned in Section 81 that the election petition has to be filed within 45 days from the date of election of the returned candidate. The said provision is usefully extracted here under:

"81. Presentation of petitions.-(1) An election petition calling in question any election may be presented on one or more of the grounds specified in 3[sub-section (1)] of Section 100 and Section 101 to the 4 [High Court] by any candidate at such election or any elector 5 [within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate, the election and the dates of their election are different, the later of those two dates]."

10. As stated already, the results of the election were declared on 13-05-2011 and the present election petition was filed on 24-06-2011, well within 45 days. So, I am of the view that the election petition was filed within the period of limitation as prescribed under Section 81 of the Act.

Hence, *Issue No. 1* is answered in favour of the election petitioner.

Issue No. 2 & 3

11. The election petitioner has challenged the election of the returned candidate only on the basis that the returned candidate has committed corrupt practice during the course of his canvas for votes. The election petitioner has specifically mentioned about the three incidents.

1. *Distribution of money by one Murugesan and Rajendran of the DMK Party in Utharai hamlet of Thirupurambiyam Village on 07-04-2011.*

2. *Distribution of money in the house of one Sundaram in Karuvulachery Sector of Maruthanallur Village.*

3. *Distribution of money to the party supports in Perumandi Village by one Leema Rose, w/o. Amalraj.*

12. The other allegations/contentions put forth by the election petitioner is as follows:

1. The C.D./Ex.P5 is admissible in evidence, since it was recorded during the course of discharge of official duty.

2. The broadcasting of advertisement pertaining to Kalaingnar Kaapeetu Thittam after the implementation of the model code of conduct.

3. The prevention of the election petitioner from advertising/canvassing in the local TV channels by the returned candidate.

4. The issuance of the booth slips by the Municipal Councilor belonging to DMK Party.

13. Before advertng into the allegations raised against the returned candidate, the important factor that has to be taken note is that the election to No. 171, Kumbakonam Assembly Constituency was conducted on 13-04-2011 and the results were declared on 13-05-2011. The Returned Candidate/first respondent secured 78,642 votes and the election petitioner secured 77,370 votes. The difference in votes is only 1272 votes, out of which 462 is in postal ballots and 810 votes is in machine votes.

14. Now this court has to decide whether the election petitioner has proved that the returned candidate has played corrupt practice by bribing the voters of influencing the voters?

The learned counsel for the first respondednt/returned candidate would submit that the election cannot be set aside as mere asking. To substantiate his argument, he relied upon the decisions of the Hon'ble Apex Court and it would be appropriate to consider the same, before advertng to the facts of the present case.

15.1 The learned counsel for the first respondent would submit that the burden of proof is on the election petitioner to prove the guilt of corrupt practice. No election can be set aside, if there is any doubt or if any other view is possible. To substantiate the said argument, he relied upon the decision reported in (2009) 1 Supreme Court Cases 633, Baldev Singh Mann v. Surjit Singh Dhiman, in paragraph 23, it was held that in Ram Phal Kundu v. Kamal Sharma the Court reiterated the principle of election jurisprudence and observed that the election of the returned candidate should not be lightly interfered with though at the same time the purity of the election process has to be maintained.

In the very same decision, the learned counsel for the election petitioner relied upon paragraph 29, wherein it was held that it is the bounden duty and obligation of the court to ensure that the purity of the election process is fully safeguarded and maintained. It would be appropriate to incorporate paragraphs 23 and 29 of the said decision:

“23. In *Ram Phal Kundu v. Kamal Sharma* (2004) 2 SCC 759, the court reiterated the principle of election jurisprudence and observed that the election of the returned candidate should not be lightly interfered with though at the same time the purity of the election process has to be maintained.

.....

.....

29. Before parting with the case, we would like to reiterate that in a democratic country the will of the people is paramount and the election of elected candidate should not be lightly interfered with. At the same time, it is also the bounden duty and obligation of the court to ensure that purity of election process is fully safeguarded and maintained.”

15.2 The learned counsel for the first respondent also relied upon the decision reported in (1995) 5 Supreme Court Cases 347, *Gajanan Krishnaji Bapat and Another v. Dattaji Raghobaji Meghe and others*, wherein it was held though the election of a successful candidate is not be interfered with lightly and the verdict of the electorate upset, the Court has emphasised in more than one case that on 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 was further held that once the election is challenged based on the corrupt practice, then 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 the case of doubt the benefit goes to the returned candidate. It is appropriate to incorporate paragraphs 12, 13, 16 and 17 of the said decision;

“12. The right to elect and the right to be elected are statutory rights. These rights do not inhere in a citizen as such and in order to exercise the right certain formalities as provided by the Act and the Rules made thereunder are required to be strictly complied with. The statutory requirements of election law are to be strictly observed because the election contest is not an action at law or a suit in equity but it is a purely statutory proceeding unknown to the common law. The Act is a complete code in itself for challenging an election and an election must be

challenged only in the manner provided for by the Act. In *Jyoti Basu vs. Debi Ghosal* (1982 (3) SCR 318), this Court observed:

“A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are and therefore, subject to statutory limitation. An Election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the Common Law nor the principles of Equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts Familiar to common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down, In the trial of election disputes, Court is put in a straight jacket.”

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, base 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.

16. The election law insists that to unseat a returned candidate, the corrupt practice must be specifically alleged and strictly proved to have been committed by the returned candidate himself or by his election agent or by any other person with the consent of the returned candidate or by his election agent. Suspicion, howsoever, strong cannot take the place of proof, whether the allegations are sought to be established by direct evidence or by circumstantial evidence. Since, pleadings play an important role in an election petition, the legislature has provided that the allegations of corrupt practice must be properly alleged and both the material facts and particulars provided in the petition itself so as to disclose a complete cause of action.

17. Section 83 of the Act provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must set forth full particulars of the corrupt practice that he alleges including as full a statement as possible of the name of the parties alleged to have committed such corrupt practices and the date and place of the commission of each of such corrupt practice. This Section has been held to be mandatory and requires first a concise statement of material facts and then the full particulars of the alleged corrupt practice. So as to present a full picture of the cause of action.

15.3. The learned counsel for the first respondent also relied upon the decision reported in (1999) 1 supreme Court cases 666, L.R. Shivaramagowda and others V.T.M. Chandrashekar (Dead) by Lrn, wherein it was held that failure to maintain true and correct accounts by itself does not amount to corrupt practice of incurring or authorising excess expenditure justifying setting aside the election. It is appropriate to incorporate the relevant portion in paragraph 18 of the said decision:

“18.....what is referred to in sub-section (6) of Section 123 as corrupt practice is only the incurring or authorising of expenditure in contravention of Section 77. Sub-section (6.) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section 3 of Section 77 i.e. The incurring or authorising of expenditure in excess of the amount prescribed. It cannot by any stretch of imagination be said that non-compliance with Section 77 (1) & (2) would also fall within the scope of Section 123 (6). Consequently, it cannot fall under section 100 (1) (b). The attempt here by the first respondent is

to bring it within section 100(1)(d) (iv). The essential requirement under that sub-section is that the result of the election insofar as it concerns that returned candidate has been materially affected. It is needless to point out that failure on the part of the returned candidate to maintain accounts as required by Section 77 (1) & (2) will in no case affect, and much less materially, the result of the election”.

15.4 The next decision relied on by the learned counsel for the first respondent is reported in 1969 (2) Supreme Court Cases 218, Ram Dayal V. Brijraj Singh and others, wherein it was held that the excess expenditure incurred for election and non-submission of proper account does not amount to corrupt practice. It is appropriate to incorporate paragraph 17 of the said decision:

“17. In the absence of any connection between the canvassing activities carried on by the Maharaja and the Rajmata with the candidature of Brijraj Singh, it is impossible to hold that any expenditure was incurred for Brijraj Singh which was liable to be included in the election expenses of the first respondent. Under s.(123 (6) of the Representation of the people Act, 1951, the incurring or authorising of expenditure in contravention of S. 77 is a corrupt practice and s. 77 provides, insofar as it is material:

“(1) 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 dates inclusive.

(2)

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.”

Unless it is established that the expenditure was incurred in connection with the election by the candidate or by his, election agent or was authorised by him it is not liable to be included under S.77 of the Representation of the people Act. We agree with the High Court that under S. 77(1) only the expenditure incurred or authorised by the candidate himself or by his election agent is required to be included in the account or return of election expenses and thus expenses incurred by any other agent or person without any-thing more need not be included in the account or return, as such incurring of expenditure would be purely voluntary. Assuming that expenditure was incurred by the Maharaja and the Rajmata for the purpose of canvassing votes against Raja Pancham Singh, in the absence of any evidence to show that the Maharaja and the Rajmata of Gwalior acted as election

agents of Brijraj Singh or the expenditure was authorised by Brijraj Singh it was not liable to be included in the account of the election expenses.

15.5. The learned counsel appearing for the first respondent relying on the decision reported in 1969 (3) Supreme Court Cases 238, Samant N. Balkrishna and Another V. George Fernandex and others, submits that the corruption charge has to be proved strictly in par with criminal case. The learned counsel placed much emphasis on paragraphs 24, 25 and 55 of the said decision and the same is usefully extracted here under:

“24. The heads of substantive rights in S. 100 (1) are laid down in two separate parts: the first dealing with situations in which the election must be declared void on proof of certain facts, and the second in which the election can only be declared void if the result of the election in so far as it concerns the returned candidate, can be held to be materially affected on proof of some other facts. Without attempting critically to sort out the two classes we may now see what the conditions are. In the first part they are that the candidate lacked the necessary qualification or had incurred disqualification, that a corrupt practice was committed by the returned candidate, his election agent or any other person with the consent of a returned candidate or his election agent or that any nomination paper was improperly rejected. These are grounds on proof of which by evidence, the election can be set aside without any further evidence. The second part is conditioned that the result of the election, in so far as it concerns a returned candidate, was materially affected by the improper acceptance of a nomination or by a corrupt practice committed in his interest by an agent other than an election agent or by the improper reception, refusal or rejection of votes or by any noncompliance with the provisions of the Constitution or of the Representation of the people Act or rules or orders made under it. This condition has to be established by some evidence direct or circumstantial. It is, therefore, clear that the substantive rights to make an election petition are defined in these sections and the exercise of the right to petition is limited to the grounds specifically mentioned.

25. Pausing here, we may view a little more closely the provisions bearing upon corrupt practices in s. 100. There are many kinds of corrupt practices. They are defined later in s. 123, of the Act and we shall come to them later. But the corrupt practices are viewed separately according as to who commits them. The first class consists of corrupt practices committed by the candidate or his election agent or any other person with the consent of the candidate or his election agent. These, if established, avoid the election without any further condition being fulfilled. Then there is corrupt practice committed by an agent other than an election agent. Here an additional fact has to be proved that the result of the election was

materially affected. We may attempt to put the same matter in easily understandable language. The petitioner may prove a corrupt practice by the candidate himself or his election agent or someone with the consent of the candidate or his election agent, in which case he need not establish what the result of the election would have been without the corrupt practice. The expression "Any other person" in this part will include an agent other than an election agent. This is clear from a special provision later in the section about an agent other than an election agent. The law then is this : If the petitioner does not prove a corrupt practice by the candidate or his election agent or another person with the consent of the returned candidate or his election agent but relies on a corrupt practice committed by an agent other than an election agent, he must additionally prove how the corrupt practice affected the result of the poll. Unless he proves the consent to the commission of the corrupt practice on the part of the candidate or his election agent he must face the additional burden. The definition of agent in this context is to be taken from s. 123 (Explanation) where it is provided that an agent "includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate." In this explanation the mention of "an election agent" would appear to be unnecessary because an election agent is the alter ego of the candidate in the scheme of the Act and his acts are the acts of the candidate, consent or no consent on the part of the candidate.

....

....

55. It is, not, therefore, necessary to examine, each of the 16 articles separately. If the conditions required by s. 100, (1) (d) read with s. 123 (4) are satisfied, a corrupt practice avoiding the election will be established. The first condition is that the candidate's belief in the falsity of the statements must be established. That was laid down by this Court in *Kumara Nand V. Brijmohan Lal Sharma* (1). The second condition is that the result of the election in so far as Mr. Fernandez is concerned must be shown to be materially affected. Thus we have not only to see (a) that the statement was made by an agent, (b) that it was false etc., (c) that it related to the personal character and conduct of Mr. Patil, (d) that it was reasonably calculated to harm his chances but also (e) that it in fact materially affected the result of the election in so far as Mr. Fernandez was concerned. Of these (a) and (c) are admitted and (b) is admitted by Mr. Fernandez because he said that he did not believe that there was any truth in these statements. The question next is whether they were calculated to affect the prospects of Mr. Patil. Here there can be no two opinions. These articles cast violent aspersions and were false as admitted by Mr. Fernandez himself. The course of conduct shows a deliberate attempt to lower his

character and so they must be held to be calculated to harm him in his election. So far the appellants are on firm ground. Even if all these findings are in favour of the appellants, we cannot declare the election to be void under S. 100 (1) (d) (ii) unless we reach the further conclusion that the result of the election in so (1) (1967) 2 S.C.R. 127. far as Mr. Fernandez was concerned had been materially affected. The section speaks of the returned candidate when it should have really spoken of the candidate who was defamed or generally about the result. However it be worded, the intention is clear. The condition is a prerequisite."

15.6. The next decision relied on by the learned counsel appearing for the first respondent is reported in 1970 (2) Supreme Court Cases 886, Magraj Patodia V. E.K. Birla and others, wherein it was held that the burden of proof is on the Petitioner and in doing so, he cannot depend on preponderance of probabilities. The evidence must be cogent and conclusive. The Court left the question open viz., whether a petitioner in an election case should establish the case beyond any reasonable doubt. It is appropriate to incorporate paragraphs 14, 29 and 30 of the said decision.

"14. while making these observations the learned judges relied on the decision of this Court in the case of Jagdev singh V. Pratap, Singh (2) in the present appeal we do not propose to go into the question whether the evidence adduced by a petitioner in an election case should establish the case beyond any reasonable doubt but suffice it to say that that evidence must be cogent and conclusive. It is true that as observed in Dr. M. Chenna Reddy Practice cannot be equated to a criminal charge in all respects. While the accused in a criminal case can refuse to plead and decline to adduce evidence on his behalf and yet ask the prosecution to prove its case beyond reasonable doubt such is not the position in an election petition. But the fact remains that burden of proving the commission of the corrupt practice pleaded is on the petitioner and he has to discharge that burden satisfactorily. In doing so he cannot depend on preponderance of probabilities. Courts do not set at naught the verdict of the electorate except on good grounds.

29. It is true that many times corrupt practices at election may, not be able to be established by direct evidence and the commission of those corrupt practices may have to be inferred from the proved facts and circumstances but the circumstances proved must reasonably establish that the alleged corrupt practice was committed by the returned candidate or his election agent. As, mentioned earlier preponderance of probabilities is not sufficient.

30. For the reasons mentioned above this appeal must fail and it is hereby dismissed. But we cannot leave this appeal without expressing our uneasiness about the law relating to election expenses. Section 123 (6) is by and large ineffective in controlling election expenses. There are ways to by-pass that provision. From what we have seen in the various election cases that came before us we are of the opinion that law controlling election expenses has been reduced to a mockery. We can only repeat the observations of this Court in Rananjaya Singh's case (1) that "the appeal in this connection must be to the parliament."

15.7. The learned counsel for the first respondent also relied upon the decision reported in (1979) 2 Supreme Court Cases 221, K.M.Mani V. F.J. Antony and Others, wherein it was held that the corrupt practice is quasi criminal in nature and the allegations should be established beyond all reasonable doubt and not be mere preponderance of probabilities. It is appropriate to incorporate paragraphs 38 and 40 of the said decision:

"38. The election petitioner has examined a number of other witnesses about what transpired at the meeting, but none of them has stated that the appellant was present there. Even Cherian J. Kappan (P.W. 3) has not stated that the appellant was present at the meeting, and we have no doubt that the High Court erred in taking a contrary view merely on the basis of the evidence of M.K. Raju (P.W. 5) and the appellant's programme of addressing some meetings in the vicinity of palai.

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40. The trial court has also taken Joseph Thomas's activities into consideration, along with the facts that he was a police officer working at Trivandrum, he went to the Bishop's house on March 12, 1977 and addressed a meeting there, and "openly" canvassed for the appellant who was a minister of the State Government at that time. The High Court has noticed the further fact that Joseph Thomas was the seniormost superintendent of police and he would not have been unaware that his conduct amounted to an offence under section 129 (2). On these premises the High Court has built up its finding that as Joseph Thomas took a very great risk, and declared that he was prepared to lose his job, the normal conclusion would be that "In all probability P.W. 6 faced the risk out of fear or favour, and either of which could have emanated only from the 1st respondent because it was the 1st respondent alone who was benefited by the impugned activities of P.W.6." To these circumstances Mr. Govindan Nair has added the further argument that as the Bishop wanted to remove the incorrect impression that he was against the appellant, it must follow that as the meeting was convened to remove that impression it was held for furtherance of the prospects of the election and any speech delivered by Joseph Thomas must be presumed to have that object."

15.8. The next decision relied on by the learned counsel appearing for the first respondent is reported in 1994 Supp (3) Supreme Court Cases 5, Ouamarul Islam V. S.K. Kanta and Others, wherein it was held that the newspaper reports are only hear say evidence and the maker of the report must also depose before the Court about the contents of the publication. It would be appropriate to incorporate paragraphs 48 and 49 of the said decision.

“48. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and publisher, PW4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act. The learned trial Judge could not treat the newspaper reports as duly ‘proved’ only by the production of the copies of the newspaper. The election petitioner also examined Abrar Razi, PW5, who was the polling agent of the election petitioner and resident of the locality in support of the correctness of the reports including advertisements and messages as published in the said newspaper. We have carefully perused his testimony and find that his evidence also falls short of proving the contents of the reports of the alleged speeches or the messages and the advertisements, which appeared in different issues of the newspaper. Since, the maker of the report which formed basis of the publications, did not appear in the court to depose about the facts as perceived by him, the facts contained in the published reports were clearly inadmissible. No evidence was led by the election petitioner to prove the contents of the messages and the advertisements as the original manuscript of the advertisements or the messages was not produced at the trial. No witness came forward to prove the receipt of the manuscript of any of the advertisements or the messages or the publication of the came in accordance with the manuscript. There is no satisfactory and reliable evidence on the record to even establish that the same were actually issued by IUML or MYL, ignoring for the time being, whether or not the appellant had any connection with IUML or MYL or that the same were published by him or with his consent by any other person or published by his election agent or by any other person with the consent of his election agent. The evidence of the election petitioner himself or of PW4 and PW5 to prove the contents of the messages and advertisements in the newspaper in our opinion was wrongly admitted and relied upon as evidence of the contents of the statement contained therein.

49. This Court in *Laxmi Raj Shetty v. State of Tamil Nadu*, considered the question of admissibility of the news items appearing in a press report in the Newspaper and opined:

"We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein.

It is now well settled that a statement of fact contained in a newspaper is merely hearsay and, therefore, inadmissible in evidence in the absence of the maker of the statement appearing in court and deposing to have perceived the fact reported."

In the present case, we find that no legally admissible evidence has been led by the respondent-election petitioner, in proof of the facts contained in the newspaper reports (news items), messages and advertisements. The appellant, returned candidates denied the making of the offending statements. The various newspaper reports, advertisements and messages, as published in Bahmani Newspaper cannot be treated as proof of the facts stated therein and cannot be used against the appellant in the absence of any evidence aliunde."

In the said decision, it was further held that in case of vague pleadings in respect of corrupt practice, the Court should rely upon much better type of evidence, absolutely reliable in nature to substantiate the allegation. Further, the election petitioner has to prove this connection of the returned candidate with the commission of the alleged corrupt practice either by himself or through his agent or by any other agent or person with his consent or with the consent of his election agent through any admissible and reliable evidence. It would also be appropriate to incorporate paragraphs 60 and 61 of the said decision.

"60. According to the election petitioner, the returned candidate also delivered an offensive speech at Jalanabad, the substratum whereof has already been extracted by us from the petition. In the election petition, apart from specifically mentioning that a speech was made by the appellant at Roza Market, there is no specific mention of any speech having been delivered by the appellant at Jalanabad. The use of the expression at "several places" besides Roza Market, in the petition where the meetings were allegedly held appears to have been designedly made by the election petitioner to lead evidence in respect of such other places for which evidence could be subsequently procured. In the pleadings specific reference to the

speech by the appellant was made only of Roza Market and not either of Jalanabad or Muslim Chowk. The learned trial judge should not have permitted any evidence to be led in respect of the meetings allegedly held at Jalanabad or Muslim Chowk. A novel procedure appears to have been adopted by the learned trial judge in overruling the objection raised on behalf of the returned candidate during the cross examination in this respect by holding that since the evidence was in accordance with the issues", the objections had no merit. In the face of vague pleadings and the absence of specific mention of Jalanabad as a place where the appellant spoke at the meeting, the doubtful nature of cassette, Ex.P7, containing the tape recorded speech allegedly delivered at Jalanabad and the absence of any other evidence to support the plea, we hold that the election petitioner has miserably failed to discharge the burden which lay on him to prove that the returned candidate had committed the corrupt practice as alleged in the petition of delivering the offending speech at Jalanabad or at Roza Market. The averments of the election petitioner were so vague that it left a wide scope to the election petitioner to adduce evidence in respect of a meeting at any place, on any date, that the found convenient or for which he could procure evidence later on. In view of the vague pleadings and defective affidavits, the court would require much better type of evidence, absolutely reliable in character, in proof of the alleged meeting where offending speeches were delivered by the appellant, than the evidence as has been produced by the election petitioner in this case. There is, no reliable, trustworthy or satisfactory evidence on the record to hold that the appellant delivered the speeches as alleged by the election petitioner either at Roza Market or at Jalanabad.

61. As already noticed, even if, it be assumed for the sake of argument that some of the advertisements and messages published in the newspapers, the contents whereof have not been proved for the reasons already given, do bring home the charge of committing the corrupt practices as envisaged by Sections 123(2), (3), (3A) of the Act, the election petitioner has failed on facts, to connect the returned candidate with the commission of the alleged corrupt practices either by himself or through his election agent or by any other agent or person with his consent or with the consent of his election agent through any admissible and reliable evidence. The learned trial judge was, therefore, not justified to set aside the election of the appellant on the basis of inadmissible and unreliable evidence. We are unable to accept the reasoning or the conclusions reached by the High Court."

15.9. The next decision relied on by the learned counsel appearing for the first respondent is reported in AIR 2013 CHH 141, Brijmohan singh v. Saroj Pandey, wherein it was held that the charge of corrupt practice has to be proved by the election petitioner with sufficient, cogent, clinching and trustworthy evidence.

16. Now, it would be appropriate to consider the decisions relied on by the learned counsel appearing for the election petitioner.

16.1. In the decision reported in **AIR 1985 Supreme Court 24, Ram Sharan Yadav V. Thakur Muneshwar Nath singh and others**, it was held that in cases where the allegations of fraud or undue influence are made, while insisting on standard of strict proof, the Court should not extend or stretch this doctrine to such an extreme extent as to make it well-nigh impossible to prove an allegation of corrupt practice. It would be appropriate to incorporate paragraphs 8 and 9 of the said decision:

"8. We would, however, like to add a word of caution regarding the nature of approach to be made in cases where allegations of fraud or undue influence are made. while insisting on standard of strict proof, the court should not extend or stretch this doctrine to such an extreme extent as to make it well-nigh impossible to prove an allegation on 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.

9. By and large, the Court in such cases while appreciating or analysing the evidence must be guided by the following considerations:

- (1) the nature, character, respectability and credibility of the evidence.
- (2) the surrounding circumstances and the improbabilities appearing in the case;
- (3) the slowness of the appellate court to disturb a finding of fact arrived at by the trial court who had the initial advantage of observing the behaviour, character and demeanor of the witnesses appearing before it, and
- (4) the totality of the effect of the entire evidence which leaves a lasting impression regarding the corrupt practices alleged."

16.2. In the decision reported in **AIR 1985 supreme court 236(1), S. Harcharan singh V. S. Sajjan Singh and Others**, at paragraph 64, it was held as follows:

"64. Taking into account the totality of the evidence in the back ground of the fact that some communications from Akal Takht call it Hukamnama or any other name were issued and the issues of editorials of Akali Times, which were mentioned by Shri Parkash Singh Badal as stated by the witness on behalf of the appellant and which is not denied by Shri Parkash Singh Badal, we are of the opinion that in this case appeal in the name of religion was made on behalf or respondent No. 3. Though some facts stated in the oral evidence about the meetings had not been stated in the petition but where evidence were tendered and were not shaken

in cross-examination and the versions have a ring of truth in the back ground of other facts, we are of the opinion that the case of appeal to religion by the respondent No. 3 has been proved in this case. A this conclusion becomes irresistible in view of absence of any express denial by Shri Parkash Singh Badal and in the absence of any explanation for not calling him as a witness on this point. Several decision of this Court have laid down various tests to determine the standard of Proof required to establish corrupt practice. While insisting on standard of strict proof, the Court should not extend or stretch this doctrine to such an extreme extent as to make it well. nigh impossible to prove an allegation of corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process."

The ratio laid down in the above decision is also followed in the decision reported in **AIR 1985 Supreme Court 24, Ram Sharan Yadav v. Thakur Muneashwar Nath Singh and Others.**

16.3. The next decision relied on by the learned counsel appearing for the election petitioner is reported in **AIR 1976 Supreme Court 271, Harrisingsh Pratapaingh Chawda v. Popatlal Mulshanker Joshi and others**, wherein it was held that the payment made not for inducing the vote but for defecting to Ruling Congress is not a corrupt practice. In the said decision, it was further held that the inducement is a bribery and even bribery to one voter is enough to make a election void. A specific allegation ot that effect has to be made in the election petition. It would be appropriate to incorporate paragraph 7 of the said decision.

"7. In this case it is obvious that the primary object of the payment made to the appellant was to induce him to defect from the organisation Congress to the Ruling Congress.

That is not a corrupt practice under the Representation of the people Act. Even if the payment was received with the promise that he would induce the voters to vote for the bribe giver it will not be bribery on the part of the bribe giver but only bribery on the part the bribe taker. The defection of the appellant to the Ruling Congress, if it took place, might mean that he was expected to work for the Ruling Congress. Equally it may not. A person who changes his party allegiance at the time of the election probably might not command much respect among electors if the 1 electors knew that he had done so after receiving some money. Otherwise the fact that two important persons the appellant and Madhusudansinhji, a younger brother of the ex-ruler of Danta Stata had joined the Ruling Congress might be expected to influence the voters to vote for the candidate set up by the Ruling Congress. But that would be not because of the payment made to the appellant

and Madhusudansinhji. Nor would such payment be bribery. To reiterate, it is the payment to the appellant that must induce the voters to vote for the candidate set up by the Ruling Congress in order that it might amount to bribery. It is not enough that his defection from organisation Congress to the Ruling Congress induces voters to vote for the Ruling Congress candidate. As we said earlier, if the payment to the appellant came to be known as the cause for his changing allegiance it may have a boomerang effect. It is therefore clear that the payment made to the appellant would not have induced the voters to vote for the Ruling Congress candidate. While after his defection therefore the appellant might have been expected to work for the Ruling Congress candidate or equally might not have been, it is perhaps implicit that he would also vote for the Ruling Congress candidate. Is this enough to make the payment made to the appellant bribery ? The payment was made not for the purpose of inducing him to vote but to make him defect to the Ruling Congress. That was the purpose for which the payment was made. That incidentally he might vote for the Ruling Congress candidate does mean that the payment was made to him in order to make him vote for the Ruling Congress candidate. The bargain was not for his vote, the bargain was for his defection. Therefore on this point we agree with the learned Judge of the High Court. But if there was a specific request by the 1st respondent to the appellant that he should vote for him then the position would be different. In that case it would be bribery and even bribery to one 903 person is enough to make an election void. A specific allegation to that effect has been made in the election petition and that has not been considered by the learned Judge of the High Court. We shall now proceed to do so."

16.4. The next decision relied on by the learned counsel for the election petitioner is reported in **AIR 2000 Supreme Court 256(1), Jeet Mohinder Singh V. Haminder Singh Jasai**, wherein it was held that the election petition shall contain material facts and particulars in respect of the corrupt practice. It would be appropriate to incorporate paragraph 46 of the said decision:

"46. The appellant filed replication to the written statement filed by the respondent. It is in the replication that the appellant has come out with an averment (vide para 8) that some amongst the electors who were threatened by Shri Sangram Singh, SHO were Jagseer Singh (not examined), Dharminder Singh, PW 13, Jawsant Singh (not examined), Jagraj Singh (not examined), and Mander Singh (not examined). Here itself, we may observe that material facts and particulars as to commission of corrupt practice are required to be given in the election petition and not in the replication filed much after the expiry of period of limitation for filing election petition. The material facts and particulars alleged for the first time in the replication and not forming part of averments made in the election petition cannot

be tried and cannot be made subject matter of issues framed by the Court. The learned Designated Election Judge has taken care to frame the issues only by reference to the averments made in the election petition and not by referring to the averments made for the first time in the replication. Firstly, the respondent does not have an opportunity of denying the averments-whether facts or particulars, introduced for the first time in replication. Secondly, as already stated, material facts and particulars as to corrupt practice are required to be supported by an affidavit in the prescribed proforma. The replication is not supported by any affidavit in the prescribed proforma.

16.5. The next decision relied on by the learned counsel for the election petitioner is reported in AIR 1975 Supreme Court 1718, Chaitanya Kumar Adatiya V. Smt. Suahila Dixit and Others, wherein it was held that the law requires that a corrupt practice involving bribery must be fully established. It would be appropriate to incorporate the relevant portion in paragraph 9 of the said decision:

"9. The law requires that a corrupt practice involving bribery must be fully established. The evidence must show clearly that the promise or gift directly or indirectly was made to an elector to vote or refrain from voting at an election.

The High Court found that the evidence on the point was neither reliable nor sufficient to prove that the grant was made with the motive of inducing the villagers to vote for the first respondent. We do not find that on the evidence this finding can be said to be unjustified."

16.6. The next decision relied on by the learned counsel appearing for the election petitioner is reported in AIR 1975 Supreme Court 1788 (1), Ziyanddin Burhanuddin Bukhari V. Brijmohan Ramdass Mehra and others, wherein it was held that the court has to determine the effect of statements made by the candidate upon the minds and feelings of the ordinary average voters of this country, in every case of alleged corrupt practice. It would be appropriate to incorporate paragraphs 13 and 15 of the said decision:

"13. Section 123 (2) gives the "undue influence" which could be exercised by a candidate or his agent during an election a much wider connotation than this expression has under the Indian Contract Act. "Undue influence", as an election offence under the English law is explained as follows in Halsbury's Laws of England, Third Edition, Vol. 14, P. 223-224 (para 387).

"A person is also guilty of undue influence, if he, directly or indirectly by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts, or threatens to inflict, by himself or by

any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that that person to vote or refrain from voting or on account of that person having voted or refrained from voting".

"A person is also guilty of undue influence, if, by abduction, duress or any fraudulent device or contrivance, be impedes or prevents the free exercise of the franchise of an elector or proxy for an elector, or thereby compels, induces or prevails upon an elector or proxy for an elector either to vote or to refrain from voting".

15. We have to determine the effect of statements proved to have been made by a candidate, or, on his behalf and with his consent, during his election, upon the minds and feelings of the ordinary average voters of this country in every case of alleged corrupt practice of undue influence by making statements. We will therefore, proceed to consider the particular facts of the case before us."

16.7. The next decision relied on by the learned counsel appearing for the petitioner is reported in AIR 1967 Supreme Court 1445, Rajendra Prasad Jain V. Sheel Bhadra Yajee and others, wherein it was stated that the specific amount offered as bribe need not be stated and mere fact that a candidate goes and offers some money is sufficient to show that he has already made his offer to corrupt the voter and secure his vote. It is appropriate to incorporate paragraph 13 of the said decision:

"13. In case No. XV of Borough of Coventry (4), it was said "with respect to bribery, as well as with respect to treating, I shall ever hold it to be a wise and beneficial rule of constitutional law, quite apart from the 17 & 18 Viet. c.102, that for the purpose of securing purity and freedom of election, candidates should be answerable for the acts of their agents, as well as for their own acts", and proceeding further, with regard to mere offers of bribe, it was said: "Although these cases have been classed below those of bribery by both the learned counsel, it cannot be supposed that an offer to bribe is not as bad as the actual payment of money. It is a legal offence, although these cases have been spoken of as being an inferior class by reason of the difficulty of proof from the possibility of people being mistaken in their accounts of conversations in which offers were made; whereas there can be no mistake as to the actual payment of money". In England, thus, the law relating to corrupt practice of giving bribery was extended to include offers of bribery, though it was held that stricter proof of offer of bribery should be insisted upon on the ground that there was a possibility of misunderstanding. In the case before us, the offer was in such clear terms that there could be no misunderstanding. In both cases, and particularly in the case of Shah Mustag

Ahmad, the offer was of money to be paid in order to secure the votes. We are unable to accept the proposition suggested by learned counsel that an offer of bribery cannot be held to be such unless a specific amount is mentioned in the offer. No such requirement is laid down by law, and if we were to accept this proposition, it would lay the field open for corruption in such a manner as to make the provision totally ineffective. A candidate wanting to secure a vote by bribery can always go and first ask the voter whether he is prepared to accept money as a bribe and need offer a specific sum only after the voter has signified his assent. Once the voter actually accepts the offer, it is not likely that evidence of that instance of bribery will be available. The mere fact that a candidate goes and offers some money is enough to show that he has already made his offer to corrupt the voter and secure his vote, though there may still be a possibility that, if subsequently the negotiations as to the precise amount to be paid as bribe fail, he may not actually succeed in his objective. The offer of bribery in the manner proved in this case, in our opinion, clearly satisfies the requirements of section 123 of the Representation of the People Act. The decision of the High Court upholding that off the Election Tribunal setting aside the election of the appellant to the Rajya Sabha was, therefore, right and must be upheld. The appeal fails and is dismissed with costs."

16.8. The next decision relied on by the learned counsel appearing for the petitioner is reported in 2010 (B) Supreme 136, *Joseph M. Puthasery V. T.S. John and others*, wherein it was held that to prove that the corrupt practice of a third person is attributed to a candidate under Section 123 of the Act, it must be shown that the candidate consented to the commission of such act. It is appropriate to incorporate paragraph 21 of the said decision:

"21. It is Well-settled that to prove that the corrupt practice of a third person is attributable to a candidate under section 123 of the Act, it must be shown that the candidate consented to the commission of such act. The finding that the appellant knew about such distribution because benefit of such distribution could only enure to him, but he kept silent despite knowledge of such distribution, is nothing else but an unwarranted inference and surmise on the part of the court. Similarly, the finding that seven UDF workers, who were allegedly arrested on May 8, 2001 by the Police for distribution of the pamphlets, were released at the behest of the appellant who went to the police Station and therefore, there was consent of the appellant is quite contrary to the testimonies of the witnesses. It may be mentioned that this finding is arrived at on the basis of (i) the averments in the election petition which have no basis to justify the finding, (ii) the testimonies of PW-12 to PW-21, but scrutiny of their evidence reveals that none of the said witnesses had witnessed the appellant going to the Police Station and securing

release of the seven workers and (iii) entries in the General Diary Ext. X5 which contains no details and only records what the Sub-Inspector heard from other people over the telephone about distribution of some printed notices. Nothing is mentioned in the said entry about involvement of any of UDF workers or the appellant and, therefore, the finding that UDF workers had distributed the pamphlets with the consent of the appellant being against evidence on record is liable to be set aside and is hereby set aside."

16.9. The next decision relied on by the learned counsel appearing for the petitioner is reported in AIR 1961 Supreme Court 334, Sarat Chandra Rabha and others V. Khagendranath Nath and others, wherein it was held that the inference from the facts and circumstances proved that there was not or there was consent of the successful candidate to the corrupt practice, as required by Section 100 (1) (b) of the Representation of the People Act, 1951, cannot be a question of law. It would be appropriate to incorporate paragraph 7 of the said decision:

"7. The next contention on behalf of the appellants is that both the High Court and the tribunal were wrong in holding that a corrupt practice within the meaning of s.100 (1) (b) read with s.123 (5) had not been proved in this case. The case of the appellant was that voters were carried by mechanically propelled vehicles to the polling booths by Birendra Kumar Nath who was in-charge of the electioneering campaign on behalf of the Congress Party and Bholaram Sarkar who was president of the Primary Congress Committee of Dhupdhara. The successful candidates were both contesting the election as nominees of the Congress Party and therefore these two persons who carried electors in mechanically propelled vehicles to the polling booths did so as agents of the successful candidates and with their consent. The High Court as well as the election tribunal hold that though Birendra Kumar Nath and Bholaram Sarkar might be deemed to be the agents of the successful candidates for purposes of the election and though the hiring of mechanically propelled vehicles by the agents for conveyance of electors to polling booths had been proved, there was no proof that this was done with the consent, express or implied, of the successful candidates. The High Court pointed out that consent, express or implied, of the candidates was necessary for purposes of s. 100 (1) (b) and was of the view that on the facts proved in this case such consent could not be inferred and the circumstances did not convincingly lead to an inference that the corrupt practice in question was committed with the knowledge and consent of the successful candidates. In view of this concurrent finding of the High Court and the tribunal on this question, namely, whether there was consent, express or implied, of the successful candidates to the commission of this corrupt practice, it is in our opinion idle for the appellant now to contend that there was

consent express or implied, as required by s.100 (1) (b). The inference whether there was consent or not from the facts and circumstances proved is still an inference of fact from other facts and circumstances and cannot be a question of law as urged by learned counsel for the appellant. Reference in this connection may be made to *Meenakshi Mills, Madurai v. The Commissioner of Income-Tax, Madras* (1), where it was held that a finding of fact, even when it is an inference from other facts found on evidence, is not a question of law and that such an inference can be a question of law only when the point for determination is a mixed question of law and fact. **In the present case the only question is whether the corrupt practice was committed with the consent of the candidates, whether express or implied, and the question whether such consent was given in the circumstances of this case is a question of fact and not a mixed question of law and fact and therefore the finding of the High Court as well as the tribunal that there was no consent, either express or implied, in our opinion, concludes the matter.** There is no force in this point either."

16.10. The next decision relied on by the learned counsel appearing for the petitioner is reported in AIR 2005 Supreme Court 2515, *Mahendra Singh V. Gulab*, wherein it was held how the corrupt practice has to be proved? It would be appropriate to incorporate paragraph 9 of the said decision:

"9. Learned counsel for the appellant relied on *Sheopat Singh V. Ram Pratap*, [1965 (1) SCR 175] in support of his contention that the statement indicated above is one relating to the personal character or conduct of the appellant. On going through the said decision, it is seen that their Lordships have stated that it is a question of fact in each case, under what category a particular statement falls. Therefore, it is really a question of assessing the scope and the effect of the statement quoted above, in the circumstances of the case. As we have noticed in relation to the statement dealt with earlier, the appellant did not adduce enough evidence at least to make out how the statement attributed to the respondent was understood by the audience at the meeting. The statement is also not definite. No doubt, learned counsel for the appellant rightly pointed out that the respondent, when examined, has admitted that the residence of the appellant was known as the bungalow, which was the expression used in the quoted speech. But then, we find that the respondent has also stated that the house he was residing in, was also called a bungalow. Therefore, the so called admission of the respondent relied on by learned counsel for the appellant is not sufficient to justify interference with the finding of the trial Court that the above statement attributed to the respondent would not amount to a corrupt practice within the meaning of Section 123 (4) of the Act. On the whole, we find it not possible to disagree with that finding of the trial Court".

16.11. The other decision relied on by the learned counsel for the petitioner is reported in 1994 AIR 853, **S.P. Chengalvaraya Naidu V. Jagannath**. The said citation is not relevant to the facts of the present case. Non-disclosure of relevant material documents with a view to obtain advantage amount to fraud. It would be appropriate to incorporate the relevant portion in paragraph 5 of the said decision.

"The High Court, in our view, fell into parent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence" The Principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. we are constrained to say that more often than not, process of the court is being abused. property-grabbers., tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. we have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

17. Considering the above citations along with the facts of the present case. now this Court has to decide whether the corrupt practice levelled against the returned candidate by the election petitioner was proved beyond preponderance of probabilities and beyond all reasonable doubt. As per the decision reported in 1969 (3) supreme Court cases 236, Sanant N. Balkrishna and Another V. George Fernandex and others, the corrupt practice must be proved on par with a criminal case. Now this Court has to decide whether that has been proved by the election petitioner. Hence, it would be appropriate to consider each and every incidents put forth by the election petitioner.

18. Before dealing with the incidents, it is the case of the election petitioner that each and every incidents has been videographed. He filed application seeking the copies of those CDs from the Returning Officer and on receipt of the same, the CDs were marked as Ex.P.5. According to the election petitioner, the Ex.P.5/CDs are admissible and reliable, since it was videographed while discharging the official duty. He would further submit that though the videographer has not indentified the CDs, he has recorded the same while discharging his officiaial duty. Hence the learned counsel for the election petitioner prayed to relly upon those CDs and

submit that after the amendment of the Indian Evidence Act, 1872 Section 65-A and 65-B deals with the Electronic records. It would be appropriate to incorporate the said provisions.

"65-B. Admissibility of electronic records.

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—

(a) The computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) During the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) Throughout the material part of the said period, the computer was operating properly or, if not; then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) The information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) By a combination of computers operating over that period; or

(b) By different computers operating in succession over that period; or

(c) By different combinations of computers operating in succession over that period; or

(d) In any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

All the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any, of the following things, that is to say—

(a) Identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) Giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) Dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it—

5) For the purposes of this section,—

(a) Information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) Whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;”

(c) A computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.’

19. It is an admitted fact that the first respondent/Returned Candidate has also obtained the copies of the CDs by giving the requisition letter to the election commission which has been marked as Ex.P.23. Further, though the Returned Candidate has obtained a copy of the Ex.P.5/CDs, though notice has been issued to him to produce the same, he has not produced the same and hence, adverse inference has to be drawn against him.

20. Now this Court has to decide whether Ex.P.5/CDs are admissible in evidence?

20.1. According to the learned counsel appearing for the election petitioner, when an application has been filed to issue subpoena to the District Collector to produce the CDs and other documents, the District Collector who was the District Election Officer has produced three CDs. Even though the said CDs were not marked, it is only a replica of Ex.P.5/CDs. Hence, the said CDs are admissible in evidence.

20.2. On the other hand, the learned counsel appearing for the first respondent/Returned Candidate relied on the decision of the Hon'ble Apex Court reported in (2010) 4 Supreme Court Cases 329, *Tukaram S. Dighole V. Manikrao Shivaji Kokate*, wherein it was held that tape records are documents as defined in Section 3 of the Evidence Act and stand on no different footing than photographs. However, it was specifically mentioned therein that the said document has to be proved. It is appropriate to incorporate paragraphs 23 to 27 of the said decision:

"23. The second issue, in our opinion, is of greater importance than the first one; It is well settled that tape-records of speeches are "documents" as defined in Section 3 of the Evidence Act and stand on no different footing than photographs. (See: *Ziyouddin Burhanuddin Bukhari VS. Brijmohan Ramdass Mehra & Ors.*4). There is also no doubt that the new techniques and devices are the order of the day. Audio and video tape technology has emerged as a powerful medium through which a first hand information about an event can be gathered and in a given situation may prove to be a crucial piece of evidence. At the same time, with fast development in the electronic techniques, the tapes/cassettes are more susceptible to tampering and alterations by transposition, excision, etc. which may be difficult to detect and, therefore such evidence has to be received with caution. Though it would neither be feasible nor advisable to lay down any exhaustive set of rules by which the admissibility of such evidence may be judged but it needs to be emphasised that to rule out the possibility of any kind of tampering with the tape, the standard of proof about its authenticity and accuracy has to be more stringent as compared to other documentary evidence.

24. In *Yusufalli Esmail Nagree VS. State of Maharashtra*, this Court observed that since the tape-records are prone to tampering, the time, place and accuracy

of the recording must be proved by a competent witness. It is necessary that such evidence must be received with caution. The Court must be satisfied, beyond reasonable doubt that the record has not been tampered with.

25. In *R.Vs. Maqsd Ali*, it was said that it would be wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved and the voices recorded are properly identified. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case.

26. In *Ziyauddin Burhanuddin Bukhari (supra)*, relying on *R.Vs. Maqsd Ali (supra)*, a Bench of three judges of this Court held that the tape-records of speeches were admissible in evidence on satisfying the following conditions:

“(a) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it.

(b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record.

(c) The subject-matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act.”

Similar conditions for admissibility of a tape-recorded statement were reiterated in *Ram Singh &Ors. Vs. Col. Ram Singh?* and recently in *R.K. Anand Vs. Registrar, Delhi High Court*.

27. Tested on the touchstone of the tests and safeguards, enumerated above, we are of the opinion that in the instant case the appellant has miserably failed to prove the authenticity of the cassette as well as the accuracy of the speeches purportedly made by the respondent. Admittedly, the appellant did not lead any evidence to prove that the cassette produced on record was a true reproduction of the original speeches by the respondent or his agent. On a careful consideration of the evidence and circumstances of the case, we are convinced that the appellant has failed to prove his case that the respondent was guilty of indulging in corrupt practices.”

20.3. In the present case on hand, even though the videographer C.W.5/ Kulanthaiswamy was examined, neither the owner of the studio nor the flying squad Tahsildar V. Balu was examined to prove that Ex.P.5/CDs are true and genuine.

20.4. In such circumstances, I am of the view that the reliability of Ex.P.5/CDs has not been proved in accordance with law.

21. At this juncture, the learned counsel for the election petitioner would submit that three incidents has been videographed. It is pertinent to note that one Kulanthaiswamy, the videographer was examined before this Court as C.W.5. However, he has not identified the CDs videographed by him. It is appropriate to incorporate the evidence let in by him.

Examination by the Hon'ble Court:

"I took video during the assembly election in 2011. I worked for a studio called "Alayam digital" and this studio assigned me the job to videograph the election process of 2011. When I took video of the election work, a Tahsildar and sub Inspector was present. I do not know to which area the Tahsildar belongs to. I also do not know from which police station the Sub-Inspector came from. I handed over the film along with the camera to my owner. My owner converted the film into DVD to be submitted to the election officials. (Three CDs which were deposited with the registry were brought to the Court and shown to the witness and he deposed that he do not remember about it".

Corss Examination:

"I gave the video film to the owner and be converted it into DVD. I do not know, where and in whose presence it was done. Only my owner knows all the details contained in the CD. I am not aware that the Election Commission had given an order to videograph the election process.

The camera in which I videographed contained a DV cassette in which the video was recorded directly. The transfer from the DV cassette to the CD should happen through a computer only. There is no mark on the video shot by me to shat that it has been taken by me".

22. The above extract would reveal that neither the chief examination, nor the cross-examination of C.W.5/Kulanthaiswamy supports the case of the election petitioner, as he has gone to the extent of saying that he is unable to identify the CDs. He had further deposed that only his owner has converted the DV casette into CDs. However, the election petitioner has not taken any steps either to examine the owner of the studio or to examine the person who used to accompany the videographer for recording the incidents, before this Court.

23. It is also true that the Special Tahsildar V. Balu was summoned. Since he has retired from service, the summons were returned. However, no further steps were taken. Further more, the flying squad not only contains the Tahsildar but also the police officials. However, the election petitioner has not taken any steps to

examine the police officers who formed part of the flying squad headed by the Special Tahsildar V. Balu and also the persons who accompanied the Special Tahsildar Balu.

24. So, there is no evidence to show that the Ex.P.5/CDs were recorded during the official duty and furthermore, they, are not identified by the witnesses during the course of examination. In such circumstances, the document viz., Ex.P.5/CDs are not admissible in evidence.

24.1. Now this Court has to decide whether the new items published in the daily newspapers are admissible in evidence ?

24.2. The new items in respect of the alleged corrupt practices have been marked as Exs. P.4, P.6, P.7, P.9, P.11 and P.19. However, as already stated, since the authors of the news items had not been examined before the Court to prove the same, it cannot be admitted as evidence. Moreover, there are different versions in different newspapers about a particular incident and hence, no relevance can be placed on the hear say evidence, as per the dictum laid down by the Hon'ble Apex Court in the decision reported in 1994 supp (3) Supreme Court Cases 5, Quamarul Islam v. S.K. Kanta and others. With regard to the Ex.P.5/CDs already a decision had been arrived at by this Court that the same is not admissible in evidence.

25. Now this Court has to decide whether the election petitioner has proved the corrupt practice of the first respondent/Returned candidate (R.W.1) ?

First Incident - Thirupurambiyam Village

26. The first incident pertains to Thirupurambiyam Village. On 07.04.2011, in Utharai hemlet of Thirupurambiyam Village in the Kumbakonam Assembly constituency, the first respondent's agent and party workers were found distributing money to the voters at 8.00 p.m. by one Iyyamperumal of AIADMK party who informed the Union Secretary of the AIADMK party one Azhagu Chinnayan and stated that he has caught hold of one Ramaiyan along with the money to be distributed to the electors on behalf of the first respondent. Now, this Court has to decide whether the said incident has been proved in accordance with law. As per the dictum of the Hon'ble Apex Court, the corrupt practices has to be proved on par with criminal case and the guilt has to be proved without any doubt. In order to prove the same, the election petitioner was examined as P.W.1. The complaint was preferred by one Iyyamperumal/P.W.2 who informed the incident to the flying squad. Ex.P.3 is the FIR and Ex.C.11 is the report of the Returning Officer forwarded to the District Election Officers/District Collector. Ex.C4 is the requisition

letter given by the election petitioner to furnish the copy of FIR, CD's and 7 other documents mentioned therein. As already stated, this Court has held that Ex.P5/CDs are not reliable. Before considering the oral evidence, this Court has to consider the Ex.P.3/FIR, which was filed based on the complaint preferred by Balu, the flying squad Tahsildar.

"இரவு 8.30 மணிக்கு திருபுரம்பியம் சென்றேன் அப்பொழுது எனது செல்லுக்கு ஒரு அழைப்பு வந்தது அதில் தான் அதிமுக கட்சியை சேர்ந்த திரு. ஐயம்பெருமாள் எனவும் பாலகரைக்கு உடன் வாருங்கள் எனவும் பணம் கொடுத்து கொண்டிருப்பவர்களை பிடித்து வைத்திருக்கிறோம் எனவும் தெரிவிக்கப்பட்டது. நாங்கள் அந்த இடத்திற்கு சென்று பொழுது திரு. ராமையன் என்பவரை மட்டும் பிடித்து வைத்திருப்பதாகவும் பணம் கொடுத்து கொண்டிருந்த திரு. முருகேசன் மற்றும் ராஜேந்திரன் என்பவர்கள் பணத்துடன் ஓடிவிட்டனர் எனவும் திரு. ஐயம்பெருமாள் தெரிவித்தார். திரு. ராமையனை விசாரித்த போது திரு. முருகேசன் மற்றும் ராஜேந்திரன் ஆகியோர் வாக்காளர்களுக்கு பணம் கொடுக்க கொடுக்க எழுதி கொண்டு வா என சொன்னதால் லிஸ்டு எழுதியதாகவும் தனக்கும் ரூ.500/- ஒட்டுக்காக வைத்துக் கொள் என திரு. முருகேசன் கொடுத்ததாகவும் ரூ.300/- தனது சொந்த பணம் எனவும் சொன்னார். அவரிடம் இருந்து ரூ.800/- கைப்பற்றுகை செய்யப்பட்டது. திரு. ராமையான் தெரிவித்தவாறு திரு. முருகேசன் வீட்டிற்கு சென்று தேடுதல் மேற்கொள்ளப்பட்டது. எந்த பணமும் சிக்கவில்லை. திரு. முருகேசனும், திரு. ராஜேந்திரனும் எங்கு சென்றார்கள் என தெரியவில்லை. அப்போது கும்பகோணம் காவல் துணை கண்காணிப்பாளர் அங்கு வந்து பாதுகாப்பு கொடுத்ததால் திரு. ராமையன் என்பவரால் ஒட்டுக்காக பணம் கொடுக்கப்பட்ட சில வாக்காளர்களிடம் கைப்பற்றுகை பட்டியலில் கண்டவாறு பணம் திரும்ப பெறப்பட்டது. அப்போது வாக்குமூலமும் பெறப்பட்டது. எனவே, ஒட்டுக்காக பணம் கொடுத்த திரு. ராமையன், S/O. திருவேங்கடம் என்பவர் மீது உரிய குற்றவியல் நடவடிக்கை எடுக்குமாறு கேட்டு கொள்கிறேன்."

27. A perusal of the FIR would reveal that a case has been registered in Crime No. 131 of 2011 under Section 171 E of IPC which relates to punishment for bribery. In the FIR itself, it was clearly stated that one Iyyamperumal has given the intimation and immediately, the flying squad rushed to the place. One Ramaiyan was caught hold, whereas Murugesan and Rajendran of the DMK party filed from the place with money. At that time, the said Ramaiyan confessed that one Murugesan and Rajendran of the DMK party had requested him to prepare a list of the electors for whom the money has to be given for voting in favour of the DMK. He further stated that he was given Rs.500/- to vote for DMK and he was previously having Rs.300/- in his pocket. Thus, a total of Rs.800/- was seized by the officer. But, the whereabouts of both Murugesan and Rajendran were not known. Admittedly, the chargesheet is yet to be filed.

28. It is well settled dictum of the Hon'ble Apex Court that FIR is not a substantial piece of evidence and it can be used only for corroboration and contradiction. It is pertinent to note that the author of the document i.e., V. Balu, flying Squad Tahsildar has not be examined to prove its contents. So, this Court has to consider Ex.C11/letter, which is the report submitted by the Returning

Officer to the District Election Officer. Merely because a report has been sent, it cannot be taken as a gospel truth as it has not been corroborated by the witness.

29. Now, this Court has to consider the evidence of P.W.2 / Iyyaperumal.

P.W.2/Iyyamperumal, in his chief examination has stated as follows:

"I am the Group Secretary of AIADMK at Palakarai. The election to Kumbakonam Assembly constituency was held on 13.04.2011. I worked for the AIADMK candidate Mr. Ramaramanathan in the election. On 07.04.2011, Mr. Ramaiyan, who is the Head Quarters Propaganda speaker and DMK Avaithalaivar, Mr. Murugesan and Mr. Rajendran were distributing money to the voters in the Utharai Village. After seeing this, I phoned up to our Union Secretary Alagu Chinnayan. He told me to ring up to the election officer and I also rang up to him. The election officer told me to catch hold of those persons and told me that they would be reaching soon to the spot. All the three aforesaid persons moved from Utharai village to Palakarai. At that time there was power failure. I caught hold of Ramaiyan. He told me to release him and to catch hold of Murugesan and Rajendran. I told him that since you are having the list and money, I would catch hold of you only. In the meanwhile, the election officer and police arrived. I handed over Ramaiyan to them. They seized Rs.500/- as well as Rs.300/- totally Rs.800/- from him and they also seized a list of persons to whom the money was given. They also took video. They also went to the persons found in the list and seized the money from them. They returned Rs.100/- and Rs. 500/- to the officers. They recovered Rs.4,700/-. I asked for the CD but the officers told me that I can apply for the certified copy and get it."

P.W.2/Iyyamperumal, in his cross-examination has stated as follows:

"About the incident occurred in Utharai, I was examined by the Police on 07.04.2011. It was at about 07.00 or 07.30 p.m. The time taken between my witnessing the above incident and the Statement given by me to the police would be around one hour. I have spoke about the incident to two persons viz., Azhagu Chinnayan, Union Secretary and the Police officials. After that, the police arrived at the spot. About ten election officials came to the spot. I asked them the evidence that I handed over to them and I did not ask for the CD. I have seen the names of persons found in the list seized from Ramaiyan. They are voters of that area. The list contained names of persons to whom the money was distributed and also names of persons to whom the money was to be distributed. Against certain names there was a tick mark which indicates, according to me, that money was paid to them. I saw the three persons viz., Ramaiyan, Murugesan and Rajendran distributing money to voters in their houses. I know the election petitioner for the past ten years. I am also in the AIADMK Party for the past ten year. In the year 2006, I contested the election for the post of Union Councillor as a candidate of AIADMK party. But I did not succeed in that election. In the year 2011 also, I contested the election for the post of president of Tiruppurambiyam Panchayat Union. In the Union Councillor Election held in the year 2006, DMK candidate won and in 2011 Panchayat election, DMK and Congress alliance won the election. I deny the suggestion that no such incident took place as deposed by me and that I am deposing falsely to support the election petitioner and the party. What I have deposed is true."

30. Admittedly, P.W.2/Iyyamperumal is a member of the AIADMK party for the past 10 years. In the year 2006, he contested the election for the post of Union Councillor as a candidate of AIADMK party. Again, in the year 2011, he contested the election for the post of President of Tiruppurambiyam Panchayat Union. He also denied the suggestion that no such incident took place as deposed by him.

31. Considering the above evidence let in by P.W.2/Iyyamperumal, I am of the view that he is an interested witness and hence, his evidence is not wholly reliable and it requires corroboration. However, no other witness has been examined to corroborate the evidence of P.W.2/Iyyamperumal. In such circumstances, the evidence at P.W. 2/Iyyamperumal. In such circumstances, the evidence of P.w.2/Iyyamperumal is not trustworthy and his evidence cannot be looked into. Furthermore, there is no evidence to show that Ramaiyan belongs to DMK party. So, I am of the view that the first incident has not been proved by the election petitioner, in accordance with law.

32. The election petitioner, in paragraph 12 of the election petition has stated that the first respondent and his agents and men were involved in corrupt practices in Maruthanallur Village which forms part of No. 171, Kumbakonam Assembly Constituency. One prakasam/P.W.3 belonging to AIADMK party gave a complaint to the Returning Officer through land line phone that money is being distributed in Karuvulachery sector of Maruthanallur Village. Prakasam/P.W.3 also informed the same to the petitioner. However, the above incident has been categorically denied in paragraph 14 of the counter affidavit. FIR has been registered on the basis of the complaint/Ex.P.8. The returning officer has sent a report to the District Election Officer which has been marked as Ex.P.12. The news items has been marked as Ex.P.9. P.W.1/Rama. Eramanathan, P.W.3/Prakasam and C.W.2/Ashok Kumar has deposed about the said incident. Ex.P.5/CDs also covers the said incident. The learned counsel for the election petitioner also taken me through the relevant portion of the evidence let in by P.W.1/Rama.Eramanathan, P.W.3/Prakasam, C.W.2/Ashok Kumar and Ex. R3/letter addressed by the election officer and prayed that the corrupt practice of the returned candidate/R.W.1 has thus been proved.

33. Resisting the same, the learned counsel appearing for the first respondent would submit that the in Ex. P.8/FIR, it has been stated that one Rajendran of Karuvulachery village, on coming to know that the DMK party men were distributing money, went to the house of one Sundaram and seized Rs. 7,400/-. The complaint was preferred by V. Balu, the flying squad Tahsildar. However, it was not specifically mentioned from whom Mr. V. Balu, the flying squad Tahsildar had gathered the particulars of the said incident, even though it was stated in the election petition that Elangovan, Ganesan, Paramasivam and Pappa alias Loganathan were

distributing money in each and every house, one rajendran of AIADMK went to the house of one sundaram and seized the money while he was receiving his share. The investigation has revealed that Sundaram does not belong to any party. Whereas, it was not mentioned in the FIR that money was seized from Sundaram while he was receiving the money. Furthermore, the evidence of P.W.3/Prakasam cannot be looked into, as he is an interested witness. There is also contradiction in the evidence let in by P.W. 3/Prakasam during the course of his chief examination and cross-examination. It is the case of P.W.3/Prakasam that Sundaram was caught hold by the flying squad Tahsildar V. Balu and a sum of Rs. 7,400/- was seized in the denominations of Rs. 100/-. So, the learned counsel for the first respondent would submit that the said incident has not been proved in accordance with law.

34. Now this Court has to consider the document Ex.P.8/FIR, wherein it was stated that one Rajendran of Karuvulachery Village after receiving information that money was being distributed by the DMK party men went to the spot and found that Elangovan, Ganesan, paramasivam and Pappa *alias* Loganathan had entered the house of Sundaram. On seeing the said Rajendran, they fled the scene and a sum of Rs. 7,400/- was seized from Sundaram. On the basis of the complaint, Sundaram was interrogated. He stated that when he was coming out of his house for going to shop, the aforesaid Elangovan, Ganesan, Paramasivam and Pappa *alias* Loganathan were perusing the both slips standing in front of his house and he was showing the three booth slips of his family members to Elangovan who handed over the 100 rupees notes to him and the same was taken over by Rajendran and Thangavelu. Sundaram had further stated that he does not belong to any party. It is also pertinent to note the case has been registered under Section 171(E) of IPC against Elangovan, Ganesan, Paramasivam and Pappa *alias* Loganathan. Further, neither Sundaram was examined, nor Thangavelu was examined. Ex. P. 9/News item is not a substantial piece of evidence, as it is only a hear say evidence and no relevance could be placed on Ex.P.9/New item as the author/reporter of the same has not be examined before this Court. So, merely filing the Ex.P.9 document will not prove the incident.

35. It is true that on the basis of the complaint, the Returning Officer has addressed Ex.C.12/letter to the District Collector, Thanjavur. As already held in the prevision incident, FIR is not a substantial piece of evidence and it can be used only for corroboration and contradiction. A mere perusal of the FIR would show that the complainant is also not personally aware of the incident. Only clinching evidence is the evidence of P.W.3/Prakasam. The evidence of P.W.3/Prakasam has to be considered with great care and caution, as he belongs to the rival party.

36. In such circumstances, this Court ought to scrutinize both the chief examination as well as the cross examination of P.W.3/Prakasam. P.W.3/Prakasam in his Chief-examination had fairly conceded that he is the Joint Secretary of Kumbakonam Ondriya Amma Peravai, Marudhanallur. It is appropriate to incorporate the relevant portion of his chief examination:

“I went to Karuvilaicherry Road where the money was being distributed and I found Elangovan, son of Gurusamy, who was the DMK party's Branch Secretary, Ganesan, Paramasivam, Pappa S/o. Natesan Nainar, standing near the house of Sundaram along with Sundaram. On seeing them distributing money. I rang up to Revenue Divisional Officer, Kumbakonam. He told me that he will inform the flying squad and they would arrive at the spot and asked me to wait there. I also rang up to the election Petitioner. He asked me whether I rang up to RDO and further told me he would also come to the spot. After around twenty five minutes, Mr. Balu, the flying squad Sub-Inspector and police from Nachiyarkoil Police Station came to the spot. By the time police arrived at the spot, all the aforesaid persons reached the house of Sundaram. After seeing the police, the crowd dispersed and ran away here and there. Mr. Balu caught hold of Sundaram and found Rs.7,400/- in denomination of Rs.100/- was in his hand and seized the same. As soon as the flying squad reached the spot, they started videographing. At the time of enquiry, the election petitioner also reached the spot. When I was describing the incident to the election petitioner, the said Elangovan came out of the residence and said that in the year 2009, he also distributed money for Lok Sabha election and those, who did not vote for DMK after obtaining money, had blood vomiting.”

37. The relevant portion of the cross-examination of P.W.3/prakasam is as follows:

“In the morning as I was getting ready to leave for election campaigning on 08-04-2011, one of the boys, who work for the party, came to my residence and informed me about the distribution of money in Karuvilaicherry. The incident that I speak of occurred on karuvilaicherry Road. Sundaram's house is situated in Karuvilaicherry Road. The gathering of the people adjacent to Sundaram's house all do not belong to DMK. I rang up RDO between 07.30 a.m and 08.00 a.m. Immediately on the arrival of flying squad, the people near the residence of Sundaram ran away. Sundaram's house is located on Karuvilaicherry Road, where there are row of houses next to each other.

In the year 1996, I contested the election for the post of union Councillor against G. Anbalagan, returned candidate. Thereafter, I also contested panchayat election in the year 2006 and 2011 and I was unsuccessful. In both these elections, the candidate belonging to DMK party won.”

38. The above extract of the deposition of the P.W.3/prakasam would show that he was having previous enmity with the Returned Candidate. There is also contradiction between the chief examination and cross examination of P.W.3/prakasam. So, the evidence of P.W.3/prakasam is not trustworthy and reliable.

39. In such circumstances, I am of the view that the second incident has not been proved by the election petitioner in accordance with law.

Third Incident - Perumandi Village.

40. The next incident of corrupt practice is stated to be done by the DMK people in the Perumandi Village. The election petitioner has mentioned about the incident in paragraph 15 of the election petition and the same was countenanced in paragraph 18 of the counter affidavit filed by the first respondent/returned candidate. The election petitioner has stated that on 10-04-2011, when the flying squad team was patrolling in the Perumandi Village, Mr. V. Balu, the flying squad Tahsildar received a phone call that the money is distributed by DMK with a request to vote for the 1st respondent in the Autonagar locality. The Autonagar locality of Perumandi Village comprises Autonagar, Maruthi Nagar, Ram Nagar, Perumandi and Karuppu housing unit. When the Jeep was moving in the Maruthi Nagar area the team found that large number of women electors were present in the house of one Leema Rose wife of Amalraj. On seeing the Jeep almost all of them ran away. The officer interrogated Leema Rose who confessed that the DMK functionary Thangaraju, former president requested 73 persons for canvassing for the DMK candidate G. Anbalagan and he gave Rs.6,700/- to be distributed to them at Rs.100/- for elders and Rs.50/- for boys. After distributing the money Rs.3,500/- is with her and the same was seized. It is submitted that it is given only as bribe to the elector as the fact of taking 73 persons for canvassing has not been entered in the expenditure account of the first respondent, when the same was perused by one Singaram, the account agent of the petitioner, on 11-04-2011, the date on which the expenditure account of all the candidates were submitted before the Accounts officer.

41. Now this Court has to consider the Ex.p.10/FIR. It would reveal that case has been registered under section 171 H of IPC, which deals with illegal payments in connection with an election. section 171 H is incorporated here under:

“171H. Illegal payments in connection with an election.

whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate."

42. In the above provision, it was specifically stated "whoever without the general or special authority in writing of a candidate" is liable to be punished under Section 171H of IPC. So, the fact that FIR has been registered under the said section would presume that the returned candidate has not given any authority for the said Leema Rose to spend money on his behalf. It is also pertinent to note that the said Leema Rose was fined for the said offence and she had also paid the same, which could be evidenced from Ex. C.2/ Acknowledgment for receipt of the fine amount.

43. So, I am of the view that there is no evidence to show that the said Leema Rose, w/o. Amalraj has paid the money to the voters with the authority of the returned candidate. In such circumstances, I am of the view that the election petitioner has also not proved the third incident in accordance with law.

44. At this juncture, the learned counsel for the election petitioner would submit that there is connection between the said Leema Rose and Thangaraj, who is none other than the election agent of the first respondent, which could be evidenced from page 17 of Ex. C.20. The relevant portion in page 17 of Ex. C.20 is extracted here under:

உங்கள் தேர்தலில் யாதொரு சங்கம்/ அமைப்பு/தனி நபரால் தொகை செலவிடப்பட்டுள்ளதா? / செலவு செய்ய அதிகாரம் அளிக்கப்பட்டுள்ளதா?	ஆம் / இல்லை
ஆம் எனில் அதனுடைய / அவருடைய / அவர்களுடைய பெயர் (பெயர்கள்) மற்றும் முழு முகவரியை அளிக்கவும்	(1) திரு. குருசாமி திராவிடர் கழகம், தாராகுரம் (2) தங்கராசு, பெருமாண்டி

45. One Thangaraj of perumandi Village is authorised to spend money on behalf of the first respondent / returned candidate. In Ex.C.19/Accounts Statement, it was mentioned as Rs. 11,500/- unpaid. The learned counsel for the election petitioner also drawn my attention to Ex.C.22/Cash Bill of Varsha Cards where notices had been printed for Rs. 11,500/- and submit that though the said amount has been paid, no correct particulars were given. However, it is pertinent to note that the Ex. C.19/Accounts Statement has been accepted by the election commission. In such circumstances, I am of the view that the argument advanced by the learned counsel for the election petitioner does not merit acceptance.

46. Now, it would be appropriate to consider Ex.P.10/FIR.

“இன்று 10-04-2011 பிற்பகல் ரோந்து பணியில் இருந்தபொழுது மாலை சுமார் 05.15 மணியளவில் எனது மொபைலுக்கு வந்த அழைப்பில் கும்பகோணம் ஆட்டோ நகரில் -----தொகை பட்டுவாடா செய்து கொண்டு இருக்கிறார்கள் என்ற தகவல் கிடைத்தது. ஆட்டோ நகர் பகுதிக்குள் சென்றபொழுது ஆட்டோ நகரின் ஒரு பகுதியில் அமைந்துள்ள மாருதி நகரில் ஒரு வீட்டில் சில பெண்கள் கூடியிருந்தனர். எங்கள் ஜீப்பை கண்டதும் அனைவரும் ஓடிவிட்டனர். அந்த வீட்டின் உரிமையாளர் திருமதி. லீமாரோஸ் என்பவருது கையில் ரூ. 3500/- இருந்ததை பறிமுதல் செய்து விசாரணை செய்யப்பட்டது. சில தெருவாசிகளிடமும் விசாரணை செய்யப்பட்டது. விசாரணையில் 09-04-2011 அன்று திரு. தங்கராஜ், முன்னாள் ஊராட்சி மன்ற தலைவர், வாக்கு சேகரிக்க அழைத்ததாகவும்----- 73 நபர்கள் வாக்கு சேகரிக்க சென்றதாகவும் அதற்கு கூலியாக பெரியவர்களுக்கு ரூ.100/-ம் சிறியவர்களுக்கு ரூ. 50/-க்கு ஆக மொத்தம் ரூ. 6,700/-ம், தன்னிடம் கொடுத்ததாகவும், அதை பட்டுவாடா செய்து கொண்டிருந்ததாகவும் ஓட்டு போடவோ குறிப்பிட்ட கட்சிக்கு வாக்களிக்காததற்குக்காகவோ தான் பணம் கொடுக்கவில்லை எனவும் பணம் கொடுத்தது போக மீதம் ரூ. 3,500/- தான் பரிமுதல் செய்ததாகவும் திருமதி லீமாரோஸ், க/பெ. அமல்ராஜ் தெரிவித்தார். இதர கட்சியினரும் இதனையே தெரிவித்தனர். பணம் கொடுத்தாக சொல்லப்பட்ட திரு. தங்கராஜ் என்பவரையும் விசாரித்ததில் நான் 09-04-2011 அன்று ஆட்டோ நகர் ஏரியாவில் ஓட்டு கேள்வாஸ் செய்கின்ற பொழுது அங்குள்ள கட்சிகாரர்களை சேர்ந்த ஏழை மக்களை கேள்வாஸ் செய்ய அழைத்து சென்றதாகவும்-----”.

47. Even though, it was stated that only on the instructions of the said Thangaraj, Leema Rose distributed money to the voters, the same was not proved. Furthermore, Leema Rose was prosecuted only under Section 171H IPC. She has admitted the offence and paid the fine amount which could be evidenced from Ex.C.2. Hence, the argument advanced by the learned counsel for the revision petitioner does not merit acceptance.

48. The next argument advanced by the learned counsel appearing for the election petitioner is with regard to Kalaigiar Insurance Scheme (Kalaigiar Kappitu Thittam).

49. The election petitioner, in paragraph 16 of the election petition has stated that the first respondent is running a Hospital by name “Anbu Hospital” and the said hospital covers the patients under “Kalaigiar Kappitu Thittam”, a government scheme. The specific allegation is that even after the declaration of the election and the implementation of the model code of conduct, the said scheme was advertised in the local television channels at the cost of the Government.

50. However, the above averment is countenanced by the first respondent/ returned candidate in paragraph 19 of the counter affidavit. The Learned counsel for the returned candidate has taken me through page 203 of the typed set of papers which contain the evidence let in by R.W.1/G. Anbalagan. In his deposition, R.W.1/G. Anbalagan has stated that he is running a hospital by name Anbu Hospital at Kumbakonam and before the announcement of the elections, Anbu Hospital has given advertisement in respect of Kalaighar Insurance Scheme and also the facilities available in Anbu Hospital in local TV channels. He had further deposed that since the Government has given advertisement through local channel, he is not bound to give account for the same in his election expenses. After the announcement of the elections, he has stopped advertising about the scheme, but he has given advertisement only in respect of Anbu Hospital. Further, he has stated that he is not aware whether any other candidates have given any advertisement in local Television channels.

51. At this juncture, the learned counsel for the election petitioner drawn by attention to Ex.C.5/letter dated 18-03-2011 addressed by an Rajendran, Ex-Town Secretary of AIADMK to the Revenue Divisional Officer-cum-Election Officer, Kumbakonam Assembly Constituency wherein it was stated that in the advertisement given on behalf of the Anbu Hospital, the advertisement pertaining to the Kalaighar Insurance Scheme has also been telecasted and hence, the same has to be stopped immediately. In pursuance of the same, the Revenue Divisional Officer-cum-Election Officer, Kumbakonam Assembly Constituency addressed Ex.C.6/letter dated 18-03-2011, to the local TV channels insisting upon them to telecast advertisements following the election rules. Thereafter, on the very same date, Ex.C.7/letter was addressed by the partner of New TV to Revenue Divisional Officer informing him that they are only telecasting advertisement pertaining to business establishments and not pertaining to politics. He also sought permission to telecast the political advertisements which was authorized by the election officer.

52. Now, this Court has to consider the evidence of C.W.3/Suresh, who is a partner in Sai TV. He has stated that Ex.C.14 is the copy of the order passed by the competent authority, which had been produced before him for telecasting in his TV Channel. C.W.3/Suresh during the course of his cross-examination would submit that Ex.C.14 is the document that has been furnished by the election petitioner. He had further deposed that he did not ask the original of Ex.C.14 and that he did not receive any amount from the election petitioner for telecasting the publicity material contained in the CD. He did not give any acknowledgment for receiving Ex.C.14 and Ex.P.17. However, he has given a letter stating that the CD cannot be telecasted. He further submitted that Ex.P.17 was not given by the election petitioner, but it was given by one Rajendran. He further deposed that the

persons from Sumangali Cable Vision (SCV) asked him to return the letter and the CD and hence, he returned the same. He would also submit that he do not have any acknowledgment either for receiving Ex.P.17 and the CD or for returning them to SCV. He further stated that from his control room nothing can be telecasted directly and that it has to go through SCV and so, when any item is telecasted, signal goes to SCV and they have access to curtail any item. It is appropriate to note Ex.P.21 is the letter addressed by Rajendran of AIADMK to SCV requesting them to permit the local TV channels to telecast the election propaganda CD of the election petitioner. EX.P.22 is the letter addressed by Rajendran of AIADMK to the Chief Election Officer complaining that the election propaganda CD of the election petitioner could not be telecasted in the local TV channels because of the undue influence of the first respondent/returned candidate. Ex.C.8 is the letter addressed by the C.W.2/Ashok Kumar, Revenue Divisional Officer to the District Revenue Officer/President, Media Certification and vigilance Committee, seeking his advice with regard to the complaints received from the election petitioner. Ex.C.10 is the certificate given to telecast the election propaganda of the election petitioner Rama Eramanathan for 3 minutes and 37 seconds from 09-04-2011 to 11-04-2011.

53. The case of the election petitioner is that the first respondent/returned candidate has prevented the local TV channels to telecast the election propaganda of the election petitioner. So, it is appropriate to consider the evidence let in by the election petitioner, P.W.1/Rama Eramanathan. In his chief-examination, he has stated that on 18-03-2011 and 19-03-2011, immediately after the advertisement, the returned candidate appeared on the TV channel and requested the voters to cast votes for the DMK and himself being the candidate of that area. So, he immediately lodged a complaint on the said issue. He further submitted that the returned candidate has not sought for permission for such telecast seeking votes for himself and the amount spend for that has not been accounted by him.

54. P.W.1/Rama Eramanathan in his cross-examination had denied the suggestion that the statement given by him about the advertisement of Kalaignar Kaapeetu Thittam being offered in ANBU Hospital owned by Mr.Anabalagan of DMK was advertised in the local TV channels daily at the cost of the Government is incorrect.

55. There is no evidence to show that only at the instance of the first respondent/returned candidate, the local TV channels had not telecasted the election campaign of the election petitioner. Even though C.W.3/Suresh, who is a partner in Sai TV was examined, no suggestion was posted to him as to whether the first respondent/Returned Candidate prevented him to telecast the campaign video of the election petitioner.

56. In such circumstances, the allegation that after the notification of the election and the implementation of the model code of conduct, the returned candidate advertised the Kalaingar Insurance Scheme at the cost of the Government in the local television channels and that he prevented the election petitioner from canvassing in the local television channels cannot be held to be proved.

Booth Slip Distribution

57. The next issue raised by the learned counsel appearing for the election petitioner is that booth slips were distributed by one Nandakumar, the Municipal Councillor belonging to DMK Party. As per the election rules, booth slips have to be distributed only by the Government Officials and not by party men, whereas the Returned Candidate had utilized the services of R. Nandakumar, Municipal Councillor.

58. The said allegation was denied by the first respondent/returned candidate in paragraph 18 of the counter affidavit. In Connection with the above allegation, P.W.6/Sankar was examined, who deposed that he is the ward secretary of the 36th ward, Kumbakonam, AIADMK party and he was a booth agent for AIADMK candidate, before the day of election i.e., on 12-04-2011, he went for verification of voters list by going to every house. At the time of verification, one Murthy asked him whether he was verifying only the voters list or booth slip will be distributed. P.W.6/Sankar told him that he cannot give booth slip and that booth slip shall be given only by Municipal bill collector. At that time, Moorthy told him that DMK councillor Nandakumar and others distributed booth slips and also money to the voters. When P.W.6/Sankar went to Ravi Silk House situated at Thuvarangurichi Keela Theru, he saw the DMK councillor and other office bearers of DMK distributing booth slips and money to the voters. Immediately, he telephoned to the flying squad and identified the place. Thereafter, when he went to that place, he found no person there and so, he returned back through north street. Later, DMK party men were found near the junction of Thuvarangurichi north street and east street i.e., near Sourashtra Sabha building. Again he rang up to the flying squad and immediately, they came in the east street. After seeing the vehicle of the flying squad, the DMK party men proceeded to north street and some of them proceeded to east street. But Nandakumar and 4 others went to the house of one S.K. Krishnamurthy, DMK party men. P.W.6/Sankar further deposed that the bill collector did not answer the question raised by the flying squad and the flying squad noted something in the diary. Admittedly, the diary was not produced before the Court.

59. Now, it is appropriate to consider the cross-examination of P.W.6/Sankar:

In his cross-examination, he has stated that he did not give any written complaint to the flying squad. He has also stated that he did not enter inside the Ravi Silk House, but he was standing outside the house, which would show that the evidence of P.W.6/Sankar is not reliable.

60. It is an admitted fact that the booth slips had to be distributed by the bill collector of the municipality and there is no quarrel over the same. However, there is no proof to show that the said Nandakumar, Municipal Councilor belonging to DMK party has distributed the booth slips and no independent witness had been examined to prove the same.

61. In such circumstances, I am of the view that the election petitioner had failed to prove that the first respondent/returned candidate had violated the election Code of conduct by distributing the booth slips to the voters through one Nandakumar, the Municipal Councilor belonging to DMK party. Moreover, there is no evidence to show that the returned candidate had misused the Government machinery.

62. Though Ex.P.5/CDs were filed to prove the aforesaid incidents involving corrupt practices alleged to be done by the first respondent/returned candidate, as stated already, it is not admissible in evidence, since the person who recorded the same had failed to identify the same. C.W.5/Kulanthaiswamy in his evidence has stated that after videographing the incidents, he had handed over the film along with the camera to his owner and his owner converted the film into DVD to be submitted to the election officials. He further submitted that only his owner knows all the details contained in the CD. It is pertinent to note that the owner of the studio was not examined before this Court. In such circumstances, as already stated, no relevance can be placed on the Ex.P.5/CDs.

63. Further, the witnesses examined on the side of the election petitioner belong to his own party viz., AIADMK and so, this Court has scrutinized their evidence with great care and caution, as their witnesses are interested witnesses and cannot be looked into. No independent witnesses have been examined on the side of the election petitioner. The official witness viz., flying squad Tahsildar V. Balu was summoned to depose before the Court, however, it was returned since he had retired from service and no further steps were taken on behalf of the election petitioner to summon him.

64. Considering all the above facts and circumstances, I am of the view that the election petitioner has not proved the corrupt practices alleged to be committed by the first respondent/returned candidate in accordance with law. Hence, the Issue No.2 & 3 is answered against the election petitioner.

Issue No.4 & 5

65. In view of the answer given to Issue No.2 & 3, the election petitioner has failed to prove the corrupt practice alleged to be committed by the first respondent/returned candidate, in accordance with law. Hence, the election petitioner is not entitled to any relief as prayed for in the election petition.

65. 1. Thus, the Issue No.4 & 5 is answered against the election petitioner.

66. In fine, the election petition deserves to be dismissed and the same is hereby dismissed. No costs.

Witness the Hon'ble Thiru Sanjay Kishan Kaul, The Chief Justice, High Court at Madras Aforesaid, This the 5th day of August 2014.

sd/-
Assistant Registrar,
Original Side – II

//Certified to Be True Copy//

Dated This the 23rd Day of September 2015

Court Officer (OS)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this

(By Order)

TAPAS KUMAR
*Senior Principal Secretary,
Election Commission of India.*

Secretariat,
Chennai-600 009,
16th December 2015.

RAJESH LAKHONI.
*Chief Electoral Officer &
Secretary to Government,
Public (Elections) Department.*