

HIGH COURT OF CHHATTISGARH, BILASPUR

EP No. 16 of 2014

Rupdhar Pudo S/o Jalluram Pudo Aged About 30 Years R/o
Village- Dargarh, P.O. Sadhu-Michgaon, Tah. Durgukondal, P.S.
Kodekhurse, Distt. Kanker C.G., Pin- 494669 **--- Petitioner**

Versus

1. Bhojraj Nag S/o Laxminath Nag Aged About 42 Years R/o
Village- Himoda, P.O., P.S. & Tah. Antagarh, Distt. Uttar Bastar
Kanker (C.G.)
2. Manturam Pawar S/o Subran Singh Pawar Aged About 47 Years
R/o Pakhanjur, P.O. And P.S. Pakhanjur, Tah. Pakhanjur, Distt.
Uttar Bastar Kanker C.G.
3. Jaiprakash Padmakar Padda S/o M.R. Padmakar Padda Aged
About 30 Years R/o Gawdepara, Ward No. 15, P.O. & P.S.
Bhanupratappur, Tah. Bhanupratappur, Distt. Uttar Bastar,
Kanker C.G.
4. Anil Netam S/o Daniram Netam Aged About 38 Years R/o
Chikhli, P.O. Useli, Tah. Antagarh, Distt. Uttar Bastar, Kanker
C.G.
5. Bhim Singh Usendi S/o Mayaram Usendi Aged About 36 Years
R/o Bade Jaitpur, Post Office- Kamta, P.S. And Tah. Antagarh,
Distt. Uttar Bastar Kanker C.G.
6. Devnath Hidko S/o Sunher Hidko Aged About 27 Years R/o
Pufgaon, P.O. & P.S. Antagarh, Tah. Antagarh, Distt. Uttar
Bastar Kanker C.G.
7. Mahadev Mandavi S/o Vishalram Mandavi Aged About 27 Years
R/o Koilibeda Chandni Chowk, P.O. And P.S. Koilibeda, Tah.
Pakhanjur, Distt. Uttar Bastar Kanker C.G.
8. Parsuram Pawar S/o Jagoram Pawar Aged About 44 Years R/o
Belgal Sitlapara, P.O. Tekameta, P.S. Bande, Tah. Pakhanjur,
Distt. Uttar Bastar Kanker C.G.
9. Raghunath Kumeti S/o Late Samrath Kumeti Aged About 42
Years R/o Tehkal Patelpara, House No. 26, P.O. And P.S.
Antagarh, Tah. Antagarh, Distt. Uttar Bastar Kanker C.G.
10. Savita Pawar W/o Manturam Pawar Aged About 35 Years R/o
Pakhanjur, P.O. And P.S. Pakhanjur, Tah. Pakhanjur, Distt. Uttar
Bastar Kanker C.G.
11. Shankarlal Netam S/o Late Sukhlal Netam Aged About 25 Years
R/o Imlipadar, P.O. And P.S. Antagarh, Tah. Antagarh, Distt.
Uttar Bastar Kanker C.G.
12. Virendra Kumar Hidami S/o Sagruram Hidami Aged About 25
Years R/o Sarandi Uparpara, P.O. Sarandi, P.S. And Tah.
Antagarh, Distt. Uttar Bastar Kanker C.G. **--- Respondents**

For the Petitioner : Mr. Sudeep Verma, Advocate
For the Respondent No.1 : Mr. Ramakant Mishra, Advocate
For the intervener : Mr. Himanshu Kr.Sharma, Adv.

Hon'ble Shri Justice Goutam Bhaduri

C.A.V. JUDGMENT

Judgment reserved on 15.11.2017

Judgment delivered on 08.12.2017

1. The primary relief sought in this petition is to declare the election of returned candidate Bhojraj Nag who was declared elected in the by-election of Chhattisgarh State Legislative Assembly Area No.79 of Antagarh Constituency as held on 13.09.2014.
2. The instant petition is under Sections 80 & 80-A read with section 81 of the Representation of the People Act, 1951 (hereinafter referred to as the Act of 1951). The grounds which are urged in this petition are that respondent No.1 has resorted to corrupt practice thereby the result of election is liable to be set aside.
3. The brief facts of the case are that initially in the year 2013, the general election to the Antagarh Legislative Assembly was conducted by the Election Commission. The present election petition is concerned with the result of by-election of Legislative Assembly Area no.79 of Antagarh Constituency held on 13.09.2014. After the initial election of 2013, the returned candidate who was

elected in the year 2013 had vacated the seat therefore new notification for election was issued. The election commission thereafter issued notification on 20.08.2014 to conduct by-election for the Antagarh Constituency and the following dates were fixed for conducting the election :

S.No	Event	Date
1.	Issue of notification	20.08.2014
2.	Last date for filing nominations	27.08.2014
3.	Scrutiny of nominations	28.08.2014
4.	Last date for withdrawal of candidatures	30.08.2014
5.	Date of Polling	13.09.2014
6.	Counting of votes	16.09.2014
7.	Date before which the election shall be completed	19.09.2014

4. After the result of polling, respondent no.1 was declared as returned candidate.
5. (i) Mr. Sudeep Verma, learned counsel appearing on behalf of the petitioner would submit that as per the election programme, the last date of withdrawal of candidature was on 30.08.2014 and out of 13 candidates who had filed their nominations, 11 had withdrawn their candidatures. The petitioner belongs to Ambedkarite Party of India and the respondent returned candidate belongs to Bhartiya Janta Party. It is stated that in order to pressurize withdrawal of the candidates who were 11 in number, undue influence and pressure tactics were adopted by the respondent returned candidate. It is stated that the petitioner was also approached and request was made to him for withdrawal of his candidature through mobile of one Omprakash Gupta

and money was offered but the petitioner did not accept the same.

(ii) It is further stated that during such conversation it was also disclosed that the candidature of Indian National Congress has withdrawn his candidature by use of undue influence and by payment of money, therefore, the corrupt practice was adopted by the respondent. It is further submitted that the petitioner had visited various polling booths on the date of polling on 13.09.2014 and it was found that different voters were carried to the polling booths in different vehicles. It was stated that having enquired, it was revealed that the voters were being brought to the polling stations at the behest of respondent no.1 and in lieu of thereof amount was paid by respondent No.1, therefore, the same also amounts to corrupt practice. Further, it is submitted that free supply of fruits was made to the voters apart from various means of conveyance used to carry the voters to the polling booths.

(iii) Referring to the pleadings and statements, learned counsel would submit that the oral evidence in this respect has been adduced before the Court and the petitioner has examined as many as 4 witnesses including the petitioner and all have equivocally supported the fact that during the polling, the voters were being carried on payment of money and the work was delegated to few persons. He went through to the statements of petitioner Rupdhar Pudo and 3 witnesses namely Arjun Singh Thakur (P.W.2), Santosh Yadav

(P.W.3) and Rajesh Kumar Pudo (P.W.4) and submitted that all the videos were also recorded and the complaint was also made to the Election Commission. Therefore, the petitioner has placed all the evidence on record to show that corrupt practice was adopted by respondent No.1 Bhojraj Nag by payment of money and by other allurements to the voters. Therefore it would be termed as corrupt practice and the election of respondent no.1 be set aside.

6. Per contra, Shri Ramakant Mishra, learned counsel appearing for respondent No.1 would submit that the pleadings in the petition are completely vague and no primary evidence has been adduced by the respondent. It is further submitted that though the reference of one O.P. Gupta, has been made but no efforts were made to call and examine him as a witness. He further submitted that mere pleading of fact that the other candidates who were contesting the election have withdrawn their candidatures, will not prove the fact that money was paid by the returned candidate. He further submitted that no pleading has been made and despite the fact that it is stated that occurrence of incidents was captured in camera, no evidence has been led in this behalf. Therefore, the petition is devoid of merits and deserves to be dismissed at the threshold.
7. On the basis of pleadings of the parties, this Court has framed the following issues on 19.02.2016 :

S.No.	Issues	Findings
01.	Whether the respondent No.1 (returned candidate) exercised	"Not proved"

	undue influence, threat and pressure and if so whether it amounts to commission of corrupt practices ?	
02	Whether the respondent No.1 (returned candidate) had offered free food and other articles to the electors to influence the electors to vote for him, therefore, it amounts to corrupt practices ?	"Not proved"
03.	Whether the election of Respondent No.1 (returned candidate is liable to be set aside) ?	No

8. I have heard learned counsel for the parties and have also perused the record and documents filed along-with the petition as well as the evidence adduced during the counsel of trial.
9. After closure of the trial, on the last day of closure of arguments of respondents, an application has been filed by one Shri Pankaj Mahawar u/s 151 of CPC read with Order 1 Rule 10(2) to implead the applicant Pankaj Mahawar as a party in the case. Along-with the petition certain documents have also been placed and the allegations have been made that the petitioner was not able to bring evidence properly before the Court and therefore he may be allowed to be impleaded as a party. The said argument was vehemently opposed by the petitioner and the respondent and submits that the applicant Pankaj Mahawar has neither any locus-standi nor has any interest instead he is trying to protract the trial and the effort is to keep this petition pending. The counsel for the petitioner further refutes the allegation that the case was not contested properly. It is

contended that the like nature of allegation at the closure of case casts a stigma on the petitioner, therefore, the application be dismissed with heavy cost.

10. Section 81 of the Representation of People's Act 1951 says that the election petition may be presented on the grounds enumerated u/ss 100 and 101 by any candidate or the elector of concerned constituency within 45 days. The document which has been filed along-with the application by the applicant Pankaj Mahawar would show that the applicant is resident of Gujrati Colony, Dhamtari, Tahsil and District Dhamtari, therefore, apparently as appears he is not an elector/voter of the Antagarh constituency. Along-with the application, the order sheets of 2015 have been placed on record which would show that the applicant was also in know of the fact that the election petition is pending before this Court. The word "elector" has been defined in the Act of 1951 that person to vote at the election to which the election petition relates. The election petition is of Antagarh constituency, therefore, applicant even remotely can be considered within the definition of elector. The documents i.e., order sheets of this petition suggest that the applicant was aware of the fact that the case was pending since 2015. At the fag end when the final argument of the respondents were in concluding stage, the said application has been filed with an averment that the petitioner was unable to place the evidence which was existing in the case.

11. I am afraid that if such like nature of third party's

application is allowed to intervene in such a manner then the entire object of section 81 of the R.P. Act, 1951 would be defeated. At the same time, the applicant cannot claim himself to be the repository of the entire wisdom and casts stigma on the petitioner especially when the petitioner was also a candidate who contested the election and having lost the election, has filed the election petition before the High Court to set aside the election of the returned candidate on the grounds of undue influence and corrupt practice. As such, the said application appears to have been filed with an oblique motive and to protract the trial of election petition or to keep it alive for some reason or the other. In the result, on overall evaluating the facts, I am of the opinion that the said application is devoid of merits and is liable to be rejected.

12. The record would show that the petitioner has examined himself as P.W.1 and one Arjun Singh Thakur has been examined as P.W.2, Santosh Yadav has been examined as P.W.3, Rajesh Kumar Pudo has been examined as P.W.4 whereas the respondent no.1 has examined himself alone.
13. Section 100 (1)(b) lays down that the commission of corrupt practice is a ground for declaring the election void. In this context, Section 100(1)(b) (d) is relevant here and quoted below.

Section 100 of the R.P. Act, 1951

100. Grounds for declaring election to be void

—(1) Subject to the provisions of such sub-section (2) if the High Court is of the opinion –

1.

- (a) xxx xxx xxx
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) xxx xxx xxx
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected---
 - (i) xxx xxx
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent or.
 - (iii) xxx xxx
 - (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

The High Court shall declare the election of the returned candidate to be void.”

14. Further coming back to the point of pleading, reading of Section 83 would show that where an election petition alleges commission of corrupt practice by a candidate, the pleading must contain (a) direct and detailed nature of corrupt practice as defined in 1951 Act; (b) the details of every important particulars giving the time, place, names of persons, use of words and expressions, etc. it must also clearly appear from the allegations that the corrupt practice was indulged with either express or implied consent of the candidate or his election agent.
15. In the present case, with respect to issue no.1 whether the returned candidate has exercised undue influence threat and pressure to pressurize the withdrawal of his opponent candidates, the respective pleadings made by

the petitioner was perused. At Para 8.8 of the petition, the pleading has been made that one Om Pakash Gupta had given a call to him by his mobile number and offered money for withdrawal of candidature and tried to allure, influence and pressurize the petitioner. In the pleading and evidence of the petitioner, it is stated that on Mobile No.9406466221 he had received the call from one Om Prakash Gupta. In the pleading though it has been stated that apart from allurements, influence pressure was exerted, but in the statement nothing particulars have been described. Only omni-bus averments have been made and in the evidence it is stated that in lieu of withdrawal of his candidature, he was offered whatever he would have asked that would be fulfilled. It has also not been made clear that how much amount was offered and what sort of pressure was exerted. Though a particular mobile phone number has been stated, but no evidence is adduced or on record to show that to whom the said number belonged. The evidence is further absent to show that whether the phone number which received the call, whether it was of the petitioner or any of the other persons. It is also not clear that what was the identity of the alleged caller O.P.Gupta. If the petitioner who was also a contesting candidate had received such phone call, the best evidence to prove the call details could have been placed on record along-with the identity of the caller. Nothing has been placed on record to show that when it was called, what was the timing, who was the caller and his identity.

16. The petitioner though claimed that the receiving number belonged to him but that too has not been established. Only bald oral statement has been adduced about the call. The official records to prove the identity of receiver and caller could have been proved by evidence, but the same was withheld by the petitioner. Despite the best evidence available to the petitioner, the petitioner has chosen not to place it on record. Only by mere submission that the petitioner was offered money and allured for withdrawal of candidatures, no inference can be drawn in absence of proof beyond doubt. Furthermore, the statement of petitioner in this regard would show that it was the opinion and inference of the petitioner that the other candidates barring respondents have received the money for withdrawal. If the petitioner was so sanguine of the fact that the money was offered to other 11 candidates then in order to prove the facts and denial any one could have been summoned as a witness. Therefore, the opinion of the petitioner cannot take place of evidence to prove the facts.
17. Further in evidence the petitioner had given a specific date of call. it was stated by the petitioner that on 29.08.2014 one Johan Gawade, who was the ex-president of Durgkondal and one Narendra Besre, who was one of the worker of the BJP, contacted the petitioner on his mobile and asked the petitioner to meet and thereafter it was suggested to the petitioner to take back his name as candidate. It is further stated that in lieu of withdrawal of names of Jagannath Sahu, Anil

Chandel and Narendra Besre offer was made to pay heavy amounts. Subsequently, the petitioner came to know that one Manturam Pawar who was authorised candidate of Congress Party, had also taken back his name.

18. So again inference has been made that respondent had paid different amounts to the contesting candidates and the other candidates have withdrawn their names to contest the election after acceptance of such money. However, except the inference nothing is on record to come to a definite finding. Despite the fact that specific date has been given that on 29.08.2014, the petitioner had received the phone call from Johan Gawade and Narendra Besare, the call details which could have been placed on record as a proof of a positive call on a particular date has not been produced. Therefore, even if the conversation was not recorded in order to draw a little inference, the petitioner could have produced the call details along with the identity of caller and phone number to show that he received certain phone calls from a particular person on a particular date. So the minimum evidence too is completely absent. There is no reason assigned by the petitioner that why such evidence was withheld, which would have been otherwise available so as to climb even the first ladder of evidence.
19. The statement would further show that the petitioner has stated that on 30.08.2014 while he was with Arjun Singh Thakur at his residence, he received a phone call on his

mobile number. The mobile number is again stated to be 9406466221. There is no evidence on record to show that the said mobile number belongs to the petitioner. Further the statement is made that similar phone call was received by Arjun Singh Thakur and Narendra Bansod, who were the post holders in the party from which the petitioner was contesting. Arjun Singh Thakur has been examined as PW-2. He has stated that he was holding the mobile no.9406371295. It is stated that the Secretary of Chief Minister, Raman Singh had called him disclosing his identity as Om Prakash and he was asked to advise Rupdhar Pudo to take back the name and in lieu thereof money was offered. Neither the evidence thereof has been produced nor any document has been placed to show with reference to the phone number that it belongs to him. Similar analogy also applies here that when the details of particular date and the mobile number was given by the witness of the petitioner, then in such case, the petitioner could have placed on record the minimum fact that the said number belongs to Arjun Singh Thakur (PW-2), who had received the alleged phone call. The caller identity could have been proved by the record, but nothing has been placed on record. In the cross-examination the witness has referred the hearsay conversation with Rupdhar Pudo about receipt of the phone call, which too is not admissible in evidence.

20. Arjun Singh Thakur (PW-2) has further stated the petitioner had made complaint to the Chief Election Officer, but the same fact is not stated by the petitioner.

No document is also placed on record to show that the offer was made to the petitioner Rupdhar Pudo and party workers have complained to the Election Officer. In the statement, the further reference is also made to one Narendra Bansod, who was shown as National Secretary of Ambedkarite Party. It was stated that he also received phone call, whereby the offer was made to take back the candidature in lieu of the money. The said Narendra Bansod has not been examined before the Court. It is not clear that why his evidence was withheld when he was also available as a primary witness and could have disclosed the facts with respect to the allegations made by the petitioner, therefore, the evidence that the petitioner and the witness PW-2 have deposed about the offer made for withdrawal of candidature, in both the statements though the specific phone number with particular timing has been stated, but nothing has been placed on record to show and prove that the recipients of the number were the witnesses i.e. the petitioner and PW-2. In absence of reliable evidence of the petitioner, who was in the hold of such evidence to show his identity of holding a particular number the adverse inference would follow that he has withheld the evidence himself, therefore, only on the basis of bald statement the facts cannot be accepted as a gospel truth that he had received the phone call with offer of money to withdraw the candidature.

21. The degree of proof as required in an election petition

has been laid down by the Supreme Court in a case law reported in *(1995) 5 SCC 347 – Gajanan Krishnaji Bapat vs. Dattaji Raghobaji Meghe* wherein Their Lordship held that “in order 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. The suspicion however 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.”

22. With respect to undue influence and corrupt practice nothing is pleaded that the named person Omprakash Gupta was acting on behalf of the respondent or he was acting on behalf of any other candidate. Only by making reference that offer was made to withdraw the candidatures, it cannot be conclusively proved that Omprakash Gupta was acting on behalf of the respondent.
23. With respect to pleading of undue influence, the petitioner has failed to furnish concise material particulars as to in what manner the undue influence was exercised. On reading of Section 83 of the Act, 1951

it shows that substantive part of Section 83 consists of three important elements namely the election petition should contain concise statement of material facts which the election petitioner relied upon. The emphasis is on the material facts which should be stated in the concise form. Hon'ble Supreme Court in case of ***Charan Lal Sahu Vs. Giani Jail Singh (1984) 1 SCC 390*** while considering the “undue influence” as enumerated in Section 18 (1), emphasizing the need of precise, specific and unambiguous pleading of corrupt practice particularly with reference to undue influence held thus :-

“Therefore, in order that the offence of undue influence can be said to have been made out within the meaning of Section 171-C of the Penal Code, something more than the mere act of canvassing for a candidate must be shown to have been done by the offender. That something more may, for example, be in the nature of a threat of an injury to a candidate or a voter as stated in sub-section (2) (a) of Section 171-C of the Penal Code or, it may consist of inducing a belief of Divine displeasure in the mind of a candidate or a voter as stated in sub-section (2) (b). The act alleged as constituting undue influence must be in the nature of a pressure or tyranny on the mind of the candidate or the voter. It is not possible to enumerate exhaustively the diverse categories of acts which fall within the definition of undue influence. It is enough for our purpose to say, that of one thing there can be no doubt: The mere act of canvassing for a candidate cannot amount to undue influence within the meaning of Section 171-C of the Penal Code.”

24. The Supreme Court in case of *Krishnamoorthy v. Sivakumar (2015) 3 SCC 467* has reiterated the law laid down in *Aad Lal v. Kanshi Ram 1980 (2) SCC 350* with respect to degree of pleading and proof of undue influence. Para 55 of the decision rendered in *Krishnamoorthy v. Sivakumar (supra)* is relevant here and quoted below:

“55. In *Aad Lal v. Kanshi Ram*, while deliberating on undue influence as enshrined under section 123(2) of the 1951 Act, it has been held thus : (SCC pp.353-54, para 11)

“11. it has to be remembered that it is an essential ingredient of the corrupt practice of “undue influence” under sub-section (2) of Section 123 of the Act, that there should be any 'direct or indirect interference or attempt to interfere' on the part of the candidate or his agent, or of any other person with the consent of the candidate or his agent, 'with the free exercise of any electoral right. There are two provisos to the sub-section, but they are obviously not applicable to the controversy before us. It was, therefore, necessary, for the purpose of establishing the corrupt practice of 'undue influence', to prove that there was any direct or indirect interference or attempt to interfere with the exercise of any electoral right.

(Emphasis supplied)

25. With respect to undue influence, the principles have been explained in *(2015) 3 SCC Para, 58* which reads thus :

“58. From the aforesaid authorities, the following principles can be culled out :

58.1 The words “undue influence” are not to be

understood or conferred a meaning in the context of “English Statutes”

58.2 *The Indian election law pays regard to the use of such influence having the tendency to bring about the result that has been contemplated in the clause.*

58.3 *If an act which is calculated to interfere with the free exercise of electoral right, is the true and effective test whether or not a candidate is guilty of undue influence.*

58.4 *The words “direct or indirect” used in the provision have their significance and they are to be applied bearing in mind the factual context.*

58.5 *Canvassing by a Minister or an issue of a whip in the form of a request is permissible unless there is compulsion on the electorate to vote in the manner indicated.*

58.6 *The structure of the provisions contained in Section 171-C IPC are to be kept in view while appreciating the expression “undue influence” used in Section 123(2) of the 1951 Act.*

58.7 *The two provisos added to Section 123(2) do not take away the effect of the principal or main provision.*

58.8 *Freedom in the exercise of the judgment which engulfs a voter's right, a free choice, in selecting the candidate whom he believes to be best fitted to represent the constituency, has to be given due weightage.*

58.9 *There should never be tyranny over the mind which would put fetters and scuttle the free exercise of an electorate.*

58.10 *The concept of undue influence applies at both the stages, namely, pre-voting and at the time of casting of vote.*

58.11 *“Undue influence” is not to be equated with*

“proper influence” and, therefore, legitimate canvassing is permissible in a democratic set up.

58.12 *Free exercise of electoral right has a nexus with direct or indirect interference or attempt to interfere.”*

26. In the instant petition, it would reveal that though different names have been stated by the petitioner but nowhere the returned candidate has been named to be instrumental in such allurement for withdrawal. The evidence is completely blurred and ambiguous because the fact that the persons who have been named and at whose behalf they were working has not been clearly stated. The identity of the said callers who rang up to different associates of the petitioner is also not clear. The associates of the petitioner who received the Phone calls have also not come up in evidence and one of the witnesses i.e., P.W.2 has given shaky evidence which also do not substantiate any fact, therefore, in absence of such evidence when the proof is required to be akin to the evidence like a criminal case no presumption can be drawn. Consequently, after evaluating the entire evidence with respect to the offer made by phone calls, the same has not been established by acceptable cogent evidence which may lead to show that undue influence was exercised. In the result, it is held that the petitioner has failed to bring any evidence on record that the returned candidate has exercised undue influence threat or pressure for withdrawal of the candidature of petitioner as also the other contesting candidates.

Accordingly, the finding to issue no.1 is answered in negative i.e., “as not proved”.

27. Now with respect to Issue No.2 that “whether the respondent No.1 (returned candidate) had offered free food and other articles to the electors to influence the electors to vote for him”, the respective pleading and evidence is examined. At paras 8.11 to 8.14 the petitioner has made different pleadings in this regard. The reading of petition would show that it is stated that the petitioner visited different polling booths along-with Arjun Singh Thakur, Rajesh Kumar Pudo, Shri Santosh Yadav and Shri Pankaj Sarkar. They saw that the voters were brought to the polling booths in transport vehicle bearing No.C.G.19T 0841 driven by one Vikas Gaine and in another vehicle bearing No.C.G.04ZD-7891 Driven by one Asim Das. It has also been stated that the food articles were also given to the different voters. A perusal of statements of Rupdhar Pudo, the petitioner; Arjun Singh (P.W.2), Shri Santosh Yadav (P.W.3) and Rajesh Kumar Pudo (P.W.4) would show that similar statements have been made. The drivers of the vehicles who have been named as Vikas Gaine or Asim Das have not been examined. Even they were not summoned. Reading of the statements would show that the witnesses have deposed that having asked the drivers, they have disclosed that the voters were being brought at the instance of Bhoj Raj Nag, the returned candidate, and Rs.200/- was paid for each voter. Except the oral evidence no other supporting evidence in support of fact

has been placed on record. Another person who disclosed the fact is named as Uttam Das. Uttam Das was said to be the worker of BJP. He has also not been examined.

28. Therefore, the evidence which has been adduced by witnesses P.W.1 to P.W.4 are in similar line that having asked the drivers of the vehicles, they disclosed the fact that they had brought the voters at the instance of the returned candidate is only hearsay. The petitioner did not make any effort even to call for the witnesses so as to make enlightenment of facts. The said statements are not direct and they contain only bald allegations which have been denied by the respondent No.1 flatly, therefore, in order to prove the fact that the voters were being carried at the instance of respondent/returned candidate, it is presumptive to attach the liability with the returned candidate and such presumption cannot be drawn in an election petition.
29. Further more it is stated that near the voting booths within 100 meters foods were distributed and having asked, it was disclosed that it was at the instance of Bhojraj Nag. Likewise statements have been made by witnesses P.W.1 to P.W.4. The statements would show that carrying of voters and the distribution of food were recorded in the video camera and mobile by the witnesses. No evidence has been placed about such electronic evidence. The petitioner has stated that no complaint was made about the bringing or carrying the voters by vehicle at Booth No.18 either to the election

observer or to the returning officer but phone calls were made to SDM, Baikunthpur and the Collector was also informed by Mobile. The said Collector or SDM of Baikunthpur have not been examined or called as a witnesses. P.W.2 Arjun Singh Thakur has also affirmed the same facts that about such bringing of voters to the polling booths and distribution of food, no complaint was made either to Chief Election Commissioner or the Returning Officers. He further admits that if any report was made it was made by the petitioner and not by him, therefore, such evidence is also hearsay. Likewise, the statements of P.W.3 Santosh Yadav and PW.4 Rajesh Kumar Pudo also do not support the fact and the same is only a hearsay.

30. Further perusal of statement of P.W.4 Rajesh Pudo would show that he also never complained that the voters were being brought to the polling booths and admits the fact in respect of such carrying of voters no complaint was made to any of the officers. Therefore, only oral statements have been made by the petitioner which have been completely denied by the returned candidate. Though petitioner's statement would show that after their complaint, the police force came to object the distribution of food within 100 meters of polling booth, but no evidence of even single voter has been produced to substantiate those facts. Therefore, on complete evaluation, it would show that the nature of evidence is completely hearsay.

31. Therefore, if the evidence of the present case is

examined in the light of above principles it shows that there is no iota of evidence or whisper of any fact that any undue influence was exercised contrary to the voters right of free choice. As has been held in *M.J. Jacob V. A. Narayanan (2009) 14 SCC 318*, in an election petition for proving allegation of corrupt practice, the standard of proof is like that in a criminal case. The Supreme Court has held that the allegation must be proved beyond reasonable doubt and held thus in paras 13, 15, 16, 17, 18.

“13. It is well settled that in an election petition for proving an allegation of corrupt practice, the standard of proof is like that in a criminal case. In other words, the allegation must be proved beyond reasonable doubt, and if two views are possible then the benefit of doubt should go to the elected candidate vide *Manmohan Kalra v. Yash (1984) 3 SCC 499*, vide SCC p. 502, para 7 in which it is stated :

“7..... It is now well settled by several authorities of this Court that an allegation of corrupt practice must be proved as strictly as a criminal charge and the principle of preponderance of probabilities would not apply to corrupt practices envisaged by the Act because if this test is not applied a very serious prejudice would be caused to the elected candidate who may be disqualified for a period of six years from fighting any election, which will adversely affect the electoral process.”

15. In *Surinder Singh v. Hardial Singh (1985) 1 SCC 91*, vide SCC p.104, Para 23 it was observed :

“23. ... It is thus clear beyond any doubt that for over 20 years the position has been uniformly accepted that charges of corrupt practice are to be equated with criminal charges

and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in criminal trials.”

16. The above decision has been followed in *Mercykutty Amma v. Kadavoor Sivadasan (2004) 2 SCC 217*, vide *SCC pp.225-26, para 27* where it was observed :

“27. Allegations of corrupt practices are quasi-criminal charges and the proof that would be required in the support thereof would be as in a criminal charge. The charges of corrupt practices are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in a criminal trial.”

17. A basic principle in the law relating to elections and election petitions is that the mandate of the people as expressed in the election results should ordinarily be respected by courts, and the election of a successful candidate should not be lightly set aside, vide *R.P. Moidutty v. P.T. Kunju Mohammad (2000) 1 SCC 481*, vide *SCC pp.488-89, para 14*, where it was observed :

“14. It is a basic to the law of elections and election petitions that in a democracy, the mandate of the people as expressed at the hustings must prevail and be respected by the courts and that is why the election of a successful candidate is not to be set aside lightly. A heavy onus lies on the election petitioner seeking setting aside of the election of a successful candidate to make out a clear case for such relief both in the pleadings and at the trial. The mandate of the people is one as has been truly, freely and purely expressed. The electoral process in a democracy such as ours is too sacrosanct to be permitted to be polluted by corrupt practices. If the courts arrive at a

finding of commission of corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent then the election of the returned candidate shall be declared to be void. The underlying principle is that corrupt practice having been committed, the result of the election does not echo the true voice of the people. As a consequences flowing from the proof of corrupt practice at the election are serious, the onus of establishing commission of corrupt practice lies heavily on the person who alleges the same. The onus of proof is not discharged merely on preponderance of probabilities; the standard of proof required is akin to that of proving a criminal or quasi-criminal charge. Clear cut evidence, wholly credible and reliable, is needed to prove beyond doubt the charge of corrupt practice.”

18. The same view has been taken by this Court in *Mahant Shreo Nath v. Choudhary Ranbir Singh* (1970) 3 SCC 647, SCC at p. 649 para 4; *Manphul Singh v . Surinder singh* (1973) 2 SCC 599, SCC at p.608, para 13; *Rahim Khan v. Khurshid Ahmed* (1974) 2 SCC 660, SCC at p. 666, para 9, *Bir Chandra Barman vl Anil Sarkar* (1976) 3 SCC 88 , SCC at p.91, para 5; *Lakshmi Raman Acharya v. Chandan Singh* (1977) 1 SCC 423, SCC at p.424, para 2; *Amolakchand Chhazed v. Bhagwandas Arya* SCC at p. 573 (1977) 3 SCC 566, SCC at p.573, para 13.”

32. Similar view was also taken in *Anvar P.V. Vs. P.K. Basheer and others* (2014) 10 SCC 473 wherein it was held that the corrupt practice is substantially akin to the criminal charges and has held as under.

“39. It is now the settled law that a charge

of corrupt practice is substantially akin to a criminal charge. A two judge bench of this Court while dealing with the said issue in *Razik Ram v. Jaswant Singh Chouhan* (1975) 4 SCC 769 held as follows (SCC p. 776 Para 15) :

“15. ... The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is requisite for a conviction. The same is largely true about proof of a charge of corrupt practice, which cannot be established by mere balance of probabilities, and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the mind of the Court is left rocking with reasonable doubt—not being the doubt of a timid, fickle or vacillating mind—as to the veracity of the charge, it must hold the same as not proved.”

33. The same view was followed by the Supreme Court in *P.C. Thomas v. P.M. Ismail* (2009) 10 SCC 239 wherein it was held thus:

“42. As regards, the decision of this Court in *Razik Ram* and other decisions on the issue, relied upon on behalf of the appellant, there is no quarrel with the legal position that the charge of corrupt practice is to be equated with criminal charge and the proof required in support thereof would be as in a criminal charge and not preponderance of probabilities, as in a civil action but proof 'beyond reasonable doubt'. It is well settled that if after balancing the evidence adduced there still remains little doubt in proving the charge, its benefit must go to the

returned candidate. However, it is equally well settled that while insisting upon the standard of proof beyond a reasonable doubt, the courts are not required to extend or stretch the doctrine to such an extreme extent as to make it well-nigh impossible to prove any allegation of corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process. (*See S. Harcharan Singh v. S. Sajjan Singh (1985) 1 SCC 370.*)

34. Thus having regard to the pleadings and evidence on record, this Court is of the opinion that neither the petitioner is able to prove the undue influence that the respondent or his associates have offered any amount for withdrawal of the candidature to the petitioner by any acceptable cogent evidence and the evidence which is on record do not substantiate the facts that the money was offered for withdrawal of the candidature.
35. Further the evidence of bringing the voters to the polling booth as also supplying them food has neither been proved by any acceptable evidence except the oral bald averments. The incidents though were stated to have been captured by videography, but the same is not placed on record. The alleged complaint made to the officials about the same incidents i.e., distribution of food and bringing of the voters to the polling booths has also not been placed on record. Therefore, no reliable evidence has been placed on record to show that it was at the behest of returned candidate and the voters were influenced to exercise their free choice by such offering.

As a result, the petitioner has failed to bring the evidence in view of the law laid down by the Supreme Court (supra).

36. As a result, the election petition is liable to be and is hereby dismissed.

**Sd/-
GOUTAM BHADURI
JUDGE**

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