

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPLICATION LODGING NO.1 OF 2016
IN
ELECTION PETITION NO.5 OF 2014**

Adam Narsayya Narayan]
34/260, Bapuji Nagar,]
“Jodgala”, Uttar Sadar Bazaar,]
Solapur]..... Petitioner.

V/s.

- 1] Praniti Shinde]
Candidate of the Indian National Congress]]
Jai Jui, 19, Ashok Nagar,]..... Applicant
Vijapur Road, Solapur – 413004] (Org.Respondent No.1)
]
- 2] Shekh Taufik Ismail]
Candidate of All India Majlis-E-Ittehadul]
Muslimeen]
145, Taj Hotel, Maingate Parisar, Railway]..... Respondent No.2
Lines, Solapur]
]
- 3] Kothe Mahesh Vishnupant]
Candidate of Shivsena]
Radhashree, 20/26, Murarji Peth,]
Solapur.]..... Respondent No.3.
]
- 4] Chief Election Commissioner of India]
Election Commission of India]
Nirvachan Sadan, New Delhi]..... Respondent No.4.
]
(Deleted vide Order dated 7th May 2015)]
- 5] Chief Electoral Officer, Maharashtra,]
Mantralaya, Mumbai 400032]..... Respondent No.5.
]
(Deleted vide Order dated 7th May 2015)]
- 6] Shahaji Pawar,]
Sub-Divisional Officer, Solapur-1]
The Returning Officer,]
Solapur City Central]

Assembly Constituency No.249]
District Collector Office,]
Solapur – 413003]..... Respondent No.6.
]
(Deleted vide Order dated 7th May 2015)]

Mr. Satish Maneshinde a/w Mr. Saket Mone, Ms. Snehal Khairnar, Mr. Vishesh Kalra, Mr. Subit Chakrabarti, Mr.Sadanand Shetty, Ms. Anandini Fernandes, Ms. Lakshmi Pamar, Ms. Deepal Thakkar and Ms. Namita Maneshinde i/by Saket Mone for the Applicant/Original Respondent No.1. Mr. Abhishek Pungaliya for the Original Petitioner.

CORAM : R. M. SAVANT, J.
Reserved on :- 10th February 2017
Pronounced on :- 7th March 2017

JUIDGMENT :-

1 The Respondent No.1 to the above Election Petition – Praniti Shinde i.e. the returned candidate has filed the instant Application for the following relief :-

(a) Summarily dismiss the above Election Petition in view of the facts, circumstances and grounds set out in the above application”

2 The dismissal of the above Election Petition is sought inter-alia on the following grounds :-

- i] Three copies of the Election Petition not duly attested;
- ii] Photo copies of the court fees stamps affixed on the original Election Petition are not reflected in the copies served on the Respondent No.1.
- iii] Official transcript of the Compact Discs (CDs) not furnished to the Respondent No.1

- iv] Date of verification not mentioned in the verification in support of the Index and the synopsis
- v] Allegations of corrupt practice made in the Election Petition are vague and lacking in material facts and material particulars. The Election Petitioner does not have personal knowledge and the allegations are based on hear-say.
- vi] In the copies of the Petition served upon the Respondent No.1, the court fees affixed on the original are missing.
- vii] The copy served on the Respondent No.1 is not attested by the Petitioner under his signature as true copy of the Election Petition.
- viii] The copy served on the Respondent No.1 cannot be said to be true copy of the original Election Petition.
- ix] The documents annexed to the Petition are neither verified nor supported by any affidavit.

x] The affidavit in support of the allegations of corrupt practice is not as per requirement of Rule 94A of the Conduct of Elections Rules 1961.

3 In the context of the application filed by the Respondent No.1 it would be apposite to briefly refer to the grounds averred in the Election Petition. The above Election Petition has been filed by the Election Petitioner questioning the election of the Respondent No.1 – Praniti Shinde from Solapur City Central Assembly Constituency No.249 in the elections held to the Maharashtra State Legislative Assembly in the year 2014. It has been averred in the Petition that the Respondent No.1 has secured 46907 votes whereas the Election Petitioner has secured 13904 votes. The election of the Respondent No.1 has been challenged on the basis of the allegations of corrupt practice particularly stated in paragraphs 12, 16 and 17 of the Election Petition.

In so far as paragraph 12 is concerned, the incident of the election agent of the Respondent No.1 Mr.Prakash Yalgulwar being caught red-handed by the flying squad of the Election Commission with cash of Rs.Six lakhs in Room No.103 of Hotel Pratham which is located in Constituency No.249 has been narrated.

In paragraph 16 the alleged incident which took place on 11.10.2014 in a Beedi factory called Langar Beedi factory within the Constituency No.249, wherein 4 agents of the Respondent No.1 were caught red-handed distributing cash to persons to induce them to vote in favour of the Respondent No.1 find a place. It is further averred in the said paragraph 16 that the said 4 persons were caught by the members of the flying squad No.6 of the Election Commission possessing cash of Rs.2.21 lakhs and the election posters/pamphlets of the Respondent No.1 which they were distributing to persons.

In so far as paragraph 17 is concerned, in the said paragraph the alleged incident which took place on 14.10.2014 in a sweet factory called Sharma Sweets located in Constituency No.249 in which it has been averred that the activists/workers of Shiv Sena caught the agents of the Respondent No.1 red-handed, distributing cash to persons to induce them to vote in favour of the Respondent No.1. It was further averred that despite complaining about the same to the police as well as the Returning Officer, no action was taken.

Except the said paragraphs 12, 16 and 17, other paragraphs of the Election Petition do not concern the Respondent No.1. In the said paragraphs general statements have been made, as also the allegations made against the other Respondents find a place. However, as indicated herein above the

Election Petition has been filed challenging the election of the Respondent No.1 and seeking the reliefs which are sought vide prayer clauses (a) and (b) in paragraph 29 of the Election Petition which are to the following effect :-

- (a) that this Hon'ble Court be pleased to hold that the agents and the election agent of the Respondent No.1 have committed corrupt practices within the meaning of section 123 of the Representation of People Act, with the consent of and at the behest of Respondent No.1.;
- (b) that this Hon'ble Court be pleased to declare as null and void and be pleased to set aside, the election of Respondent No.1 to the Maharashtra State Legislative Assembly (Vidhan Sabha), held on 15.10.2014 and declared elected on 19.10.2014, from Solapur City Central Assembly Constituency No.249; due to commission of corrupt practices by the agents and the election agent of Respondent No.1 with the consent of and at the behest of Respondent No.1; and due to non-compliance of the provisions of the Constitution of India and the Representation of the People Act, 1951 and the Rules and Order made under the said Act.

4 A reply has been filed to the above Application by the Election Petitioner. It is denied that there are any incurable defects in the Election Petition. It is stated that the Election Petitioner has paid the requisite court fees at the time of filing of the Election Petition. It is further stated that he has obtained copies of the CDs from the Election Commission and that he would produce the original CDs at the evidence stage. It is further denied that the allegations of corrupt practice are not supported by any documents. It is stated that the copies of the Election Petition have been stamped as “true copies” under the signature of the Election Petitioner and therefore the copy served

upon the Respondent No.1 has been attested by the Election Petitioner under his own signature to be a “true copy” of the Election Petition. It is stated that the Election Petition has been verified in compliance with all the applicable provisions of the Code of Civil Procedure. It is denied that there is any misjoinder of parties. It is asserted in the said reply that the Election Petition contains sufficient and detailed averments which disclose the corrupt practice committed by the Respondent No.1 and her election agents. Lastly it is stated in the said reply that in the alternative if for some reason this Court comes to a conclusion that there is a defect in the original Election Petition filed by the Election Petitioner along with the copy of the Election Petition, this Court be pleased to permit the Election Petitioner to cure the said defects.

5 Though the Respondent No.1 has filed the above Application seeking dismissal of the above Election Petition inter alia on the grounds which have been adverted to herein above, the learned counsel for the Respondent No.1 restricted the grounds on which dismissal of the above Election Petition is sought to two grounds, viz. that the allegations made in the Petition are vague and the Petition lacks in material facts and material particulars, and the 2nd ground was that the affidavit filed in support of the allegations of corrupt practice was not as per requirement of Rule 94A, Form 25 of the Conduct of Elections Rules 1961.

The learned counsel for the parties were heard in respect of the said two grounds.

6 **SUBMISSIONS ON BEHALF OF THE APPLICANT-RESPONDENT NO.1 BY THE LEARNED COUNSEL SHRI SATISH MANESHINDE :-**

A] That the allegations of corrupt practice are bereft of any material facts and particulars and the relevant paragraphs of the Election Petition only contain vague statements of the alleged corrupt practice committed by the Respondent No.1. The Election Petition as filed does not satisfy the requirements of Section 83 of the Representation of the People Act and is therefore required to be dismissed at the threshold under Order VII Rule 11 of the Code of Civil Procedure. Reliance is sought to be placed on the following judgments :-

- (1) **Azhar Hussain V/s. Rajiv Gandhi** reported in **1986 Supp. SCC 315**
- (2) **Jagabandu Bahera V/s. Subrat Tarai and ors.** reported in **(2016) 6 SCC 256**
- (3) **L.R.Shivaramagowda and ors V/s. T.M.Chandrashekhar (dead) by LRs and ors** reported in **(1999) 1 SCC 666**
- (4) **Jeet Mohinder Singh V/s. Harminder Singh Jassi** reported in **(1999) 9 SCC 386**

(5) Gajanan Krishnaji Bapat and Anr. V/s. Dattaji Raghobaji Meghe and ors reported in (1995) 5 SCC 511

(4) F.A. Sapa and ors V/s. Singora and ors reported in (1991) 3 SCC 375 and

(6) Unreported decision of a learned Single Judge sitting at Aurangabad dated 18/07/2016 in the matter of Annarao Govindrao Patil V/s. Amit Vilasrao Deshmukh and ors

B] That the affidavit filed in support of the allegations of corrupt practice is not in terms of Rule 94A in Form 25.

C] That the affidavit especially having regard to paragraphs 12, 16 and 17 states that the statements made therein are true to the information of the Election Petitioner, but does not state the source of information and therefore the affidavit filed is defective and in view thereof, the Election Petition is liable to be dismissed at the threshold. Reliance is sought to be placed on the following judgments of the Apex Court and this Court :-

(1) L.R.Shivaramagowda and ors V/s. T.M.Chandrashekhar (dead) by LRs and ors reported in (1999) 1 SCC 666

(2) Jeet Mohinder Singh V/s. Harminder Singh Jassi reported in (1999) 9 SCC 386

- (3) *Gajanan Krishnaji Bapat and Anr. V/s. Dattaji Raghobaji Meghe and ors reported in (1995) 5 SCC 511*
- (4) The judgment of this Court in *Application No.5 of 2016* in *Election Petition No.4 of 2014* dated 21/09/2016 in the matter of *Narayan Govindrao Patil V/s. The Maharashtra Election Commission and ors.*

7 ***SUBMISSIONS ON BEHALF OF THE ELECTION PETITIONER BY THE LEARNED COUNSEL SHRI ABHISHEK PUNGALIYA :-***

- i] That the Election Petition in so far as the allegations of corrupt practice are concerned, and especially with reference to paragraphs 12, 16 and 17 contain material facts and particulars especially the date, time place and the persons who are alleged to have committed the corrupt practice and therefore it cannot be said that the Election Petition is lacking in material facts and particulars.
- ii] That the averments in the Election Petition would have to be read along with the documents which have been filed in support of the case which is averred in the Election Petition, the documents which are appended to the Petition would ex-facie show that the amount found in Hotel Pratham was being used for bribing the voters and therefore it cannot be said that the Election Petition lacks in material

facts or particulars. Reliance is sought to be placed on the judgment of a learned Single Judge of the Delhi High Court in **Tilak Raj Bhagat v/s. Ranjit Kaur** in **IA Nos.4895 of 2010 and 4894 of 2010.**

- iii] That the affidavit in support of the Election Petition filed under Rule 94A in Form 25 the source of information having been stated in the concerned paragraphs of the Election Petition itself which in the instant case are the CDs obtained from the Election Commission, mere non-mentioning of the source of information in the affidavit would not make the affidavit defective so as to result in the Election Petition being dismissed on the said ground. Reliance is sought to be placed on the following judgments of the Apex Court and this Court :-

- (1) **Prabhu Narayan v/s. A.K.Srivastava** reported in **AIR 1975 SC 968**
- (2) **Kamalnath v/s. Sudesh Verma** reported in **(2002) 2 SCC 410**
- (3) **Anantrao Narayan Thopte V/s. Shri Kashinath Parvati Khutwad and others** reported in **2000(4) Bom. C.R.254**

- iv] That in so far as the judgments in **L.R.Shivaramagowda's** case and **Jeet Mohinder Singh's** case (supra) are concerned, the judgment in

Krishan Chander V/s. Ram Lal reported in *AIR 1973 SC 2513* was not brought to the notice of the Benches of the Apex Court which heard the said cases. The said judgment in *Krishan Chander's* case (supra) being prior in point of time would operate as a precedent rather than the judgment in *Gajanan Krishnaji Bapat's* case (supra). In support of the said contention, reliance is sought to be placed on the judgment of the Apex Court in *Sundeep Kumar Bafna V/s. State of Maharashtra* reported in *AIR 2014 SC 1745*.

v] That in so far as the judgment in *Jeet Mohinder Singh's* case (supra) is concerned, the issue of the affidavit in support of the corrupt practice being defective was not an issue before the Apex Court in the said case and therefore the said judgment cannot be said to be a judgment for the proposition that the Election Petition is required to be dismissed if the affidavit in support of the allegations of the corrupt practice does not mention the source of information.

vi] That there being discrepancy in the statements made by the election agent of the Respondent No.1 in the matter of accounting for Rs. Eight lacs withdrawn from the joint account of the Respondent No.1 and her election agent, a case for trial is made out.

8 In the context of the Application filed by the Respondent No.1 for dismissal of the Election Petition it would be necessary to refer to the judgments cited by the learned counsel Shri Maneshinde for the Applicant/original Respondent No.1.

 In *Azhar Hussain's* case (supra), the defect in the Election Petition on account of the material facts being not pleaded was in contention. The Apex Court held that since the Code of Civil Procedure applies to the trial of an Election Petition by virtue of Section 87 of the Representation of People Act, the Court trying the Election Petition can act in exercise of the powers of the Code including Order VI Rule 16 and Order VII Rule 11(a) of the Code. The Apex Court held that an Election Petition can be summarily dismissed if it does not disclose a cause of action. Hence the Apex Court held that failure to comply with Section 83 in the matter of pleading material facts relating to the alleged corrupt practice, can result in the dismissal of the Election Petition under Section 86. The Apex Court held that the Election Petition without material facts relating to corrupt practice being pleaded is not an Election Petition in the eyes of law.

 The Apex Court has in the said judgment further held that no amount of evidence could cure the basic defect in the pleadings. The said observation was made by the Apex Court in the context of the facts in the said

case wherein the allegation was that the pleadings were vague.

In *Jagabandhu Behera's* case (supra) the Apex Court, in the context of the pleadings in Para 7(B) of the Election Petition in the said case, held that Para 7(B) even if proved would not be sufficient to establish corrupt practice as detailed particulars about the time, place and persons to whom bribe of cash and gift of other articles were given and the amount of cash and the nature of articles given by way of gifts have not been pleaded.

In *L.R. Shivaramagowda's* case (supra), the Apex Court held that failure to plead material facts is fatal to the Election Petition and no amendment of the pleadings could be allowed to introduce such material facts after expiry of time limit prescribed for filing the Election Petition.

In *Jeet Mohinder Singh's* case (supra) the Apex Court held that material facts and particulars must be furnished in the Election Petition itself and cannot be set out for the first time in the replication.

In *Gajanan Krishnaji Bapat's* case (supra) the Apex Court observed 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.

The Apex Court thereafter held that suspicion, however strong, cannot take the place of proof, whether the allegations are sought to be established by direct evidence or by circumstantial evidence. The Apex Court further held that 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 the complete cause of action.

In *F.A.Sapa's* case (supra) the rationale of pleading the material facts as contemplated by Section 83 has been set out by the Apex Court. The Apex Court held that the underlying idea in requiring the Election Petitioners to set out in a concise manner all the “material facts” as well as the “full particulars”, where commission of corrupt practice is complained of, is to delineate the scope, ambit and limits of the inquiry at the trial of the Election Petition.

In the order in *Election Petition No.13 of 2014* in the matter of *Annarao Govindrao Patil v/s Amit Vilasrao Deshmukh's* case (supra), a learned Single Judge of this Court has dismissed the Election Petition on the ground of pleadings being vague and lacking in material particulars.

The aforesaid judgments are on the issue of dismissal of the Election Petition on the ground of non-compliance of Section 83 of the Representation of People Act.

9 In so far as the ground of material facts being not pleaded and the Election Petition containing vague pleadings is concerned, the relevant paragraphs of the Election Petition are Paragraphs 12, 16 and 17. The paragraphs antecedent to the paragraphs 12, 16 and 17 are concerned, the averments contained therein are relating to the facts antecedent to the election, the Election Petitioner's credentials, number of votes each candidate secured from the said Constituency No.249. The said paragraphs contain general statements relating to the alleged smear campaign against the Election Petitioner by other candidates contesting from the said Constituency No.249 including Respondent No.1. The allegations against the Respondent No.3 is in respect of the alleged publication/circulation of a false message on the mobile application "Whats-app", the alleged morphed photographs of the Election Petitioner being circulated so as to create an impression about the Election Petitioner in a particular manner. The same was done, according to the Election Petitioner to adversely affect and prejudice the Election Petitioner prospects in the election and the allegation that the said amounted to a corrupt practice and has had a prejudicial effect on the election prospects of the Election

Petitioner and explains why the Election Petitioner lost the said election despite all the meritorious work done by him to uplift the poor in Solapur.

10 Hence as indicated above in so far as the Respondent No.1 is concerned, the allegations of corrupt practice against her are found in paragraphs 12, 16 and 17. The said paragraphs are reproduced herein under for the sake of ready reference :-

“Para (12) :- The Petitioner states that on 13.10.2014, Respondent No.1's election agent, Mr. Prakash Yalgulwar, who is also Indian National Congress's Solapur City chief, was caught red-handed by the Flying Squad of the Election Commission with cash of Rs.six lakhs in room no.103 of hotel Pratham which is located in constituency no.249. The report of the said Flying Squad states that even before they reached there, the police as well as some journalists had already reached the said location where the said cash was recovered. The said Mr. Yalgulwar initially claimed that the cash belonged to him. However, while giving interviews to the journalists present, he stated that the said cash belonged to Respondent No.1 and that he had been entrusted with the said cash for Respondent No.1's election expenses. The Petitioner states that undue influence was exerted by the father of Respondent No.1 who is an ex-Cabinet minister to ensure that the said incident was not diligently pursued by the police. The report of the said Flying Squad records that several of its members had been threatened by members of the Indian National Congress. In the statement given to the police to explain his possession of Rs.six lakhs worth of cash, the said election agent of Respondent No.1 claimed to have withdrawn the said cash from a bank. As per the bank statement of Bank of Maharashtra No.60184863924, the joint account of Respondent No.1 and her said

election agent, opened specifically for the purposes of Respondent No.1's election expenses, over a period ranging from 26.9.2014 to 11.10.2014, Rs.18.75 lakhs had been withdrawn. In a statement submitted to the Election Commission, the said election agent showed election expenses of Rs.10.63 lakhs as having been incurred as on 12.10.2014. Instead of showing a balance of unused withdrawals of Rs.8.12 lakhs, the said election agent, in his said statement showed unused withdrawals of Rs.six lakhs in a malafide attempt to match the amount recovered from him during the said raid that occurred on 13.10.2014. As per the said statement, Rs.2.12 lakhs has not been unaccounted for. Despite this fact, no further action was taken against the Respondent No.1 and her election agent. It is also pertinent to note that the tag on the bundle of currency notes recovered was not of the Bank of Maharashtra. Hence, the entire explanation provided by the said election agent of the Respondent No.1 is false. The Petitioner states that the above facts prove beyond a shadow of doubt that the said amount of Rs.2.12 lakhs had been utilized by the said election agent of Respondent No.1, with the consent of Respondent No.1, to distribute among voters as bribes/gifts/gratification to induce them to vote in favour of Respondent No.1 and to refrain from voting for other candidates including the Petitioner. In fact, even the 6 lakhs recovered would have been utilized for the same purpose had the said election agent of Respondent No.1 not been caught red-handed. The said facts show that the said election agent of Respondent No.1 is guilty of having indulged in a corrupt practice, with the consent of Respondent No.1, within the meaning of section 123(1) r/w section 123(1)(A)(b) and section 123(1)(B)(b) of the Representation of the People Act 1951. The statement given by a member of the Indian National Congress to the said Flying Squad No.6, Constituency No.249, records that he had booked the room in which the said cash was recovered and further records that the said election agent of Respondent No.1 had stated that the said amount belonged to him and that he had forgotten it in the room when he left. Another statement by another member of the Indian National Congress, given

to the said Flying Squad No.6, Constituency No.249, records that the said cash of Rs.6 lakhs was recovered from the said room in his presence while waiting for the election agent of Respondent No.1 to return. The statement by the manager of the hotel where the said cash had been recovered, given to the said Flying Squad No.6, Constituency No.249, confirms that the room had been booked by the person whose statement records that Respondent No.1's election agent admitted that the said cash belonged to him and that he had forgotten it in the said room when he left. The statement of the bell-boy of the said hotel records that several police personnel and members of the said Flying Squad had visited the room from which the said cash of Rs.6 lakhs was recovered. A letter was written by Respondent No.1's election agent to the Returning Officer, Constituency No.249, in which he maliciously attempts to provide a false explanation for his possession of Rs.six lakhs. It is pertinent to note that while he falsely states that the six lakhs represents unutilized election expenses, he fails to account for Rs.2.12 lakhs which he withdrew from the said election expenses account. Hereto annexed and marked as **Exhibit D** is a copy of the certified copies, obtained from the Code of Conduct department of the Election Commission, of the case papers in respect of the complaint filed by the said Flying Squad No.6 in respect of the raid conducted on the said hotel Pratham. Annexed hereto as **Exhibit D1** is a copy of the CD recording by the said flying squad of the said raid which is handed over to the Learned Prothonotary and Senior Master at the time of filing of the captioned Petition.”

Hence in the above paragraph 12 the allegations in respect of the election agent of the Respondent No.1 one Prakash Yalgulwar found with cash of Rs.six lakhs in Room No.103 of Hotel Pratham which is located in the said Constituency No.249 are found. In the said paragraph the explanation given by the said Prakash Yalgulwar for possessing the said amount is also

mentioned. Thereafter the discrepancy between the amount withdrawn by the said Prakash Yalgulwar from the joint account held by him with the Respondent No.1 for meeting election expenses is mentioned. Thereafter the allegation of the amount of Rs.2.12 lakhs for which the election agent could not account for. being utilized by the election agent of the Respondent No.1 with the consent of the Respondent No.1 to distribute among the voters as bribes/gifts/gratification to induce them to vote in favour of the Respondent No.1 is made. It is thereafter stated that the amount of Rs.Six lakhs recovered from the election agent would have been utilized for the said purpose is made. It is on the said basis the allegation that the election agent is guilty of corrupt practice within the meaning of section 123(1)(r/w section 123(1)(A)(b) and section 123(1)(B)(b) of the Representation of the People Act is made. The Election Petitioner in support of the said allegation relied upon the CD obtained by the Election Petitioner from the Election Commission.

A reading of the said paragraph 12 therefore discloses the alleged recovery of Rs.Six lakhs from room No.103 of Hotel Pratham from the election agent of the Respondent No.1. However, the recovery of the amount by itself cannot amount to a corrupt practice as long as the person from whom it is recovered can explain for its possession. In so far as the amount being sought to be distributed is concerned, the allegations are lacking in material facts and can be said to be vague and speculative. In fact it is the Election Petitioner's

own case that the amount would have been utilized for inducing the voters to vote in favour of the Respondent No.1. The said allegation is probably based on the statement of the complainant wherein the complainant has also stated that the amount was likely to be used for inducing the voters to vote in favour of the Respondent No.1. Hence there is no allegation that the amount recovered from Room No.103 of Hotel Pratham was in fact being used to bribe the voters in the said Constituency No.249, but the allegation is that it was likely to be used. Hence the averments made in paragraph 12 fall short of the standards for even an enquiry to be caused in the allegations of corrupt practice. The judgment of the Delhi High Court in Tilak Raj Bhagat's case (supra) would therefore be of no assistance to the Election Petitioner.

“Para (16) :- The Petitioner states that on 11.10.2014, in a Beedi factory called Langar Beedi factory, within constituency assembly no.249, in Gandhi Nagar, Division 6, Akkalkot Road, Solapur, 4 agents of Respondent No.1, namely Vadibhai Manilal Patel, Nandkumar Narsingh Naik, Devidas Govind Bugde, Malinath Basanna Teli, were caught red-handed distributing cash to persons to induce them to vote in favour of Respondent No.1. They were caught by members of the Election Commission's Flying Squad No.6 possessing cash of Rs.2.21 lakhs and election posters/pamphlets of Respondent No.1 which they were distributing to persons. The statement of the complainant, i.e. the chief of the said Flying Squad, gives the details of the said raid on the said factory. On the basis of the said complaint, an FIR was filed. The Petitioner states that the said money was being distributed by the agents of Respondent No.1 as bribes/gifts/gratification within the meaning of section 123(1)(A)(b) and section 123(1)(B)(b) of the

Representation of the People Act 1951, at the behest of and with the consent of Respondent No.1 and her election agent in order to induce persons to vote in favour of Respondent No.1. As such, the said 4 agents of Respondent No.1, acting with the consent and at the behest of Respondent No.1 and her election agent and caught red-handed with the said cash, are guilty of having indulged in a corrupt practice within the meaning of section 123(1) r/w section 123(1)(A)(b) and section 123(1)(B)(b) of the Representation of the People Act 1951. The said corrupt practice has had a prejudicial effect on the election prospects of the Petitioner and explains why the Petitioner lost the said election despite all the meritorious work done by him to uplift the poor in Solapur. The report of the MIDC Police Station to the Assistant Police Commissioner, confirms the details of the said raid on the said factory. The report of the complainant, i.e. the chief of Flying Squad No.6, to the Police Commissioner's office gives details of the material recovered in the said raid as well as the details of the said complaint. Here to annexed and marked as Exhibit I is a copy of the certified copies, obtained from the Code of Conduct department of the Election Commission, of the case papers in respect of the said incident in which the said 4 agents of Respondent No.1 were caught red-handed, distributing cash to persons. Annexed hereto a Exhibit I1 is a copy of the CD recording by the said flying squad of the said raid which is handed over to the Learned Prothonotary and Senior Master at the time of filing of the captioned Petition.

In the so far as Paragraph 16 is concerned, it is alleged in the said paragraph that 4 election agents of the Respondent No.1, who are named in the said paragraph were caught red-handed distributing cash to persons in a Beedi factory called Langar Beedi Factory by the Flying Squad No.6 of the Election Commission. It is further alleged that they were found possessing cash of Rs.2.21 lakhs and election posters/pamphlets of the Respondent No.1 which

they were distributing to persons.

A reading of the said paragraph therefore discloses that though the incident is alleged to have taken place in Langar Beedi Factory, no details of the time when the incident took place or the names of the persons who were allegedly given cash by the election agents of the Respondent No.1 are mentioned. The said paragraph is therefore also lacking in material facts and therefore no enquiry can be held in respect of such vague allegations.

“Para (17) :- The Petitioner states that on 14.10.2014, in a sweet -factory called Sharma Sweet, located in constituency no.249, activists/workers of Shivsena caught the agents of Respondent No.1 red-handed, distributing cash to persons to induce them to vote in favour of Respondent No.1. Despite complaining about the same to the police as well as the Returning Officer, no action was taken. Thereafter, the evidence of the said distribution of cash was submitted to the Collector, Solapur. On basis of the said evidence presented to him, he directed the police to take action. However, no further investigative steps were undertaken by the police. Annexed hereto and marked as Exhibit J is copy of the CD recording by the said activists/workers of Shivsena of the said raid which is handed over to the Learned Prothonotary and Senior Master at the time of filing of the captioned Petition. The agents of Respondent No.1 have committed a corrupt practice within the meaning of section 123(1) r/w sections 123(1)(A)(b) and 123(1)(B)(b) of the Representation of the People Act 1951 by distributing cash persons as bribe/gratification/gift to induce those persons to vote in favour of Respondent No.1. The said corrupt practice has had a prejudicial effect on the election prospects of the Petitioner and explains why the Petitioner lost the said election despite all the meritorious work done by him to uplift the poor in Solapur.

In so far as paragraph 17 is concerned, the averments therein relate to an incident which has allegedly taken place in a Sweet factory called Sharma Sweets located in the said Constituency No.249. It is alleged that the activists/workers of Shiv Sena caught the agents of Respondent No.1 red-handed, distributing cash to persons to induce them to vote in favour of Respondent No.1.

A reading of the said paragraph 17 therefore discloses that the names of the activists/workers of the Shiv Sena have not been mentioned as also the names of the persons who were allegedly the recipients of the cash from the agents of the Respondent No.1. Hence the said paragraph 17 is also lacking in material facts and particulars in respect of the alleged incident and the averments can be said to be vague. The allegations of corrupt practice therefore in the said paragraph are such that they also do not warrant an enquiry into them in the above Election Petition.

Hence in so far as the allegations of corrupt practice are concerned, the pleadings do not satisfy the tests laid down by the judgments (supra) of the Apex Court. It would therefore have to be held that the Election Petition lacks in material facts in so far as the allegations of corrupt practice are concerned and are also vague. Hence applying the well settled dictum that

the election of a returned candidate should not be interfered with lightly, the above Petition would have to be dismissed on the application of Order VII Rule 11(a) of the Code of Civil Procedure on the ground that the allegations made do not make out a cause of action.

11 Now coming to the second ground of challenge namely that the affidavit filed under Rule 94A in support of the allegations of corrupt practice does not mention the source of information and is therefore defective, and the Election Petition is therefore required to be dismissed on the said ground.

As indicated in the earlier part of this judgment the allegations of corrupt practice against the Respondent No.1 are found in paragraphs 12, 16 and 17 of the Election Petition. The relevant paragraphs of the affidavit filed under Rule 94A are paragraphs (e), (f) and (g) which for the sake of ready reference are reproduced herein under :-

“(e) that the statements made in paragraph 12 of the accompanying Petition about the commission of the corrupt practice within the meaning of 123(1) r/w Section 123(1)(A)(b) and Section 123(1)(B)(b) of the Representation of the People Act 1951, of distributing cash among voters as bribes/gifts/gratification by the election agent of Shrimati Praniti Sushilkumar Shinde with the consent and at the behest of Shrimati Praniti Sushilkumar Shinde, to induce those voters to vote in favour of Shrimati Praniti Sushilkumar Shinde (Respondent No.1 in the said petition) and to refrain from voting for other candidates including me, and the particulars of such corrupt practice mentioned in paragraph 12 of the same petition are true to my

information.

(f) that the statements made in paragraph 16 of the accompanying Petition about the commission of the corrupt practice within meaning of 123(1) r/w Section 123(1)(A)(b) and Section 123(1)(B)(b) of the Representation of the People Act 1951, of distributing cash among voters as bribes/gifts/gratification by 4 agents of Shrimati Praniti Sushilkumar Shinde with the consent of and at the behest of Shrimati Praniti Sushilkumar Shinde, to induce those voters to vote in favour of Shrimati Praniti Sushilkumar Shinde (Respondent No.1 in the said petition) and to refrain from voting for other candidates including me, and the particulars of such corrupt practice mentioned in paragraph 16 of the same petition are true to my information.

(g) that the statements made in paragraph 17 of the accompanying Petition about the commission of the corrupt practice within meaning of 123(1) r/w Section 123(1)(A)(b) and Section 123(1)(B)(b) of the Representation of the People Act 1951, of distributing cash among voters as bribes/gifts/gratification by the agents of Shrimati Praniti Sushilkumar Shinde with the consent of and at the behest of Shrimati Praniti Sushilkumar Shinde to induce those voters to vote in favour of Shrimati Praniti Sushilkumar Shinde (Respondent No.1 in the said petition) and to refrain from voting for other candidates including me, and the particulars of such corrupt practice mentioned in paragraph 17 of the same petition are true to my information.”

Hence it is clear from the said paragraphs of the affidavit that though the Election Petitioner has stated that what is stated in paragraphs 12, 16 and 17 is as per his information, the Election Petitioner has not mentioned the source of his information. In the said context the judgments cited by the learned counsel for the parties would have to be referred to.

The judgments cited on behalf of the Applicant/Original Respondent No.1 :-

In *L.R.Shivaramgowda's* case (supra) a three judge bench of the Apex Court held that the grounds or source of information are to be set out in the affidavit whether the Code applies or not. Section 83 of the Act states that an election petition shall be verified in the manner laid down in the Code. The verification is as to information received. The Affidavit is to be modelled on the provisions contained in Order XIX of the Code. Therefore, the grounds or source of information are required to be stated prior thereto. The Apex Court has impressed upon the importance of setting out the source of information in affidavit. The Apex Court has referred to the judgment in *State of Bombay V/s. Purushottam Jog Naik* reported in *AIR 1952 SC 317*.

In *Jeet Mohinder Singh's* case (supra), a three judge bench of the Apex Court referred to the well settled legal principles in the field of election jurisprudence which according to it were relevant for the purposes of the case before it. In clause (iv) of para 40 of the said judgment, the Apex Court referred to the judgment in *Gajanan Krishnaji Bapat's* case (supra) and held that the Election Petitioner is obliged to disclose his source of information in respect of the commission of the corrupt practice so as to bind him to make

such a charge with full responsibility and to prevent any fishing and roving enquiry, and save the returned candidate from being taken by surprise.

In *Gajanan Krishnaji Bapat's* case (supra), the Apex Court in the said judgment impressed upon the need of setting out the source of information in the affidavit and held that the absence of the source of information in the affidavit makes the affidavit defective.

In *Narayan Govindrao Patil's* case (supra), this Court relied upon the judgments of the Apex Court in *L.R.Shivaramgowda's* case (supra), *Jeet Mohinder Singh's* case (supra) and *Gajanan Krishnaji Bapat's* case (supra) to hold that if the source of information is not set out in the affidavit, then the said affidavit is defective.

Per contra on behalf of the Election Petitioner reliance is placed on the judgments of the Apex Court and the judgment of a learned Single Judge of this Court mentioned herein under to contend that the non-mentioning of the source of information is not fatal to the maintainability of the Election Petition. It would therefore be necessary to consider the said judgments :-

In *Krishan Chander's* case (supra) the Appellant i.e. Krishan Chander had filed an affidavit in which he stated that paragraphs 11 and 12

amongst other paragraphs were based on information received and were believed to be true. A contention was raised that the Election Petition ought to be dismissed on the ground of non-compliance of Section 83 of the Representation of People Act. The Apex Court held that there is nothing in Form 25 which required the Petitioner to state under clause (b) of Form 25 the source of his information. Since reliance in the said case was placed on Order 11 Rule 3 of the Supreme Court Rules as also to Rule 12(a) of the Punjab High Court Rules, under which the deponent has to state the source of information. The Apex Court observed that when there are specific Rules made under the Representation of People Act which govern the election petitions, no other Rules are applicable, nor is the disclosure of the source of information a requisite under Order VI, Rule 15(2) of the C.P.C. The Apex Court went on to hold that non-mentioning of the source of information does not make the affidavit defective.

In *Prabhu Narayan's* case (supra) the Apex Court relied upon its judgment in *Krishan Chander's* case (supra). The Apex Court having regard to Section 83 of the Representation of People Act observed that though the section mandates an affidavit to be filed in support of the corrupt practice in the prescribed form 25, it does not say that the allegation of corrupt practice and the particulars thereof shall be given in the affidavit. This according to the Apex Court was the intention of the legislature.

In *Kamalnath's* case (supra) the Apex Court once again referred to the requirements of Section 83 of the Representation of People Act. In the facts of the said case wherein the corrupt practices mentioned in paragraphs 2 to 21 were said to be true to the information received from authorities/persons concerned, the Apex Court held that it was unable to persuade itself to accept the submission made by the learned counsel that the election petition is required to be rejected on account of infraction of Section 83(1) of the Representation of People Act.

In *Anantrao Narayan Thopte's* case (supra), a learned Single Judge of this Court R.M.Lodha, J. (as his Lordship then was) in the facts of the said case held that the affidavit filed under Rule 94A and in Form 25 meets the requirements since in the Election Petition the Petitioner had disclosed the source of information and therefore he is not obliged to disclose the same in the affidavit.

The learned counsel for the Election Petitioner in support of his contention that the judgment in *Krishan Chander's* case (supra) would hold the field, notwithstanding the judgment in *L R Shivaramgowda's* case (supra), Jeet Moh *Jeet Mohinder Singh's* case (supra) and *Gajanan Krishnaji Bapat's* case (supra) has relied upon the judgment in *Sundeep Kumar Bafna's* case

(supra). In the said judgment the Apex Court was concerned with the per incuriam rule. The Apex Court held that a decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench, or if the decision of a High Court is not in consonance with the views of the Supreme Court. The Apex Court observed that it is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. The Apex Court observed that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.

12 In so far as the ground of the affidavit filed in support of the allegations of corrupt practice being defective, the said ground is sought to be dealt with by the Learned Counsel for the Election Petitioner by making two fold submissions. The first submission is that the judgments of the Apex Court in *L R Shivaramgowda's* case (supra), *Jeet Mohinder Singh's* case (supra) and *Gajanan Krishnaji Bapat's* case (supra) would have no application in view of the judgment of the Apex Court in *Krishan Chander's* case (supra), which judgment has not been cited before the Apex Court in the aforesaid cases, and since the said judgment *Krishan Chander's* case (supra) is earlier in point of time than the aforesaid 3 judgments and therefore in terms of the law laid down in *Sundeep Kumar Bafna's* case (supra), the said judgment in *Krishan Chander's* case (supra) would hold the field and cover the issue in question.

Another limb of the said submission was that in *Jeet Mohinder Singh's* case (supra) the issue of the affidavit being defective and therefore the election petition was required to be dismissed was not an issue before the Apex Court in the said case.

The second submission is that though the source of information is not stated in para (e), (f) and (g) of the affidavit, however, since the paragraphs of the Petition, especially paragraphs 12 and 16 of the Petition, make a reference to the CDs which the Election Petitioner has procured from the Election Commission, the averments in the said paragraphs would be attributable to the information provided by the CDs. In so far as para 17 is concerned, it is stated in the said paragraph that activists/workers of Shiv Sena caught the agents of Respondent No.1 red-handed, distributing cash to persons to induce them to vote in favour of Respondent No.1. Hence the paragraphs of the Election Petition themselves contain the source of information and therefore the affidavit even if it does not specifically contain the source of information cannot be said to be defective.

Now dealing with the first submission urged on behalf of the Election Petitioner as regards the applicability of the judgment in *Krishan Chander's* case (supra). No doubt the judgment in *Krishan Chander's* case (supra) was not cited before the benches of the Apex Court in *L R Shivaramgowda's* case (supra), *Jeet Mohinder Singh's* case (supra) and

Gajanan Krishnaji Bapat's case (supra). However it would have to be noted that the judgments in *L R Shivaramgowda's* case (supra), *Jeet Mohinder Singh's* case (supra) are rendered by a three judge bench of the Apex Court whereas the judgment in *Kishan Chander's* case (supra) is rendered by a two judge bench of the Apex Court. Hence as per the law of precedents the judgment of a three judge bench is required to be followed, hence it is the judgments in *L R Shivaramgowda's* case (supra), *Jeet Mohinder Singh's* case (supra) case that would be required to be followed.

Now coming to the next contention that the issue of the affidavit being defective was not an issue which was before the Apex Court in *Jeet Mohinder Singh's* case (supra). As indicated in the earlier part of this judgment the Apex Court in *Jeet Mohinder Singh's* case (supra) had culled out the broad principles which have developed in election jurisprudence one of the principles which the Apex Court has referred to is that an Election Petition is required to be dismissed on the ground of the affidavit which is required to be filed under Rule 94A and in Form 25 being defective. The Apex Court has referred to its judgment in *Gajanan Krishnaji Bapat's* case (supra). Hence the ratio laid down in *Gajanan Krishnaji Bapat's* case (supra) has been referred to with approval by the three judge bench of the Apex Court in *Jeet Mohinder Singh's* case, and hence assuming that the issue of the affidavit under Rule 94A being defective did not directly fall for consideration, the same

would not make any difference as the ratio in *Gajanan Bapat's* case (supra) has been quoted with approval by the Apex Court in *Jeet Mohinder Singh's* case (supra).

Now coming to the next contention that since paragraphs 12 and 16 of the Election Petition make a reference to the CDs provided to the Election Petitioner by the Election Commission, the averments in the said paragraphs would have to be attributed to the CDs, and therefore, the non-disclosure of the information in the affidavit under Rule 94A would not make the affidavit defective.

In so far as paragraph 17 is concerned, the averments in the said paragraph contain a reference to the activists/workers of Shiv Sena and therefore the non-mentioning of the source of information in the affidavit does not make the affidavit defective.

In so far as paragraphs 12, 16 and 17 of the Election Petition are concerned, this Court has already held in the earlier part of this Judgment that the pleadings in the said paragraphs are bereft of material facts and are also vague and the Election Petition is required to be dismissed on the said ground. No doubt the said paragraphs 12 and 16 make a reference to the CDs provided to the Election Petitioner by the Election Commission, however, the Election Petitioner has not stated in the said paragraphs that the averments made

therein are on the basis of the information gathered from the CDs. Hence the reference to the CDs would not extricate the Election Petitioner from the situation where he has failed to mention the source of information in the affidavit which he has filed in support of the allegations of corrupt practice. Applying the rules of strict construction of the pleadings in an Election Petition, the Election Petitioner's case cannot be accepted.

In so far as paragraph 17 is concerned, the Election Petitioner has merely mentioned that activists/workers of Shiv Sena caught the agents of Respondent No.1 red-handed, distributing cash to persons to induce them to vote in favour of Respondent No.1. No names etc. have been mentioned. Hence the mere mention of "Shiv Sena" in the said paragraph would not save the Election Petitioner from the obligation of giving the source of information in support of the facts stated in the said paragraph. The judgment in *Kamalnath's* case (supra) of the Apex Court and the judgment of a learned Single Judge of this Court in *Anantrao Narayan Thopte* case (supra) would be of no assistance to the Election Petitioner as it is in the facts of the said cases where the paragraphs of the Election Petition specifically referred to the source of information, that the affidavit in those cases was found not to be defective.

However as indicated herein-above in the instant case no such specific averment is found in paragraphs 12, 16 and 17 of the Election Petition attributing the source of information to a particular person or authorities.

Hence in the facts of the present case the affidavit under Rule 94A and in Form 25 would have to be held to be defective.

13 The upshot of the above discussion would be that the above Election Petition would have to be dismissed on the twin grounds urged on behalf of the Applicant i.e. the material facts being not pleaded and the affidavit in support of the allegations of corrupt practice being defective. The above Application is accordingly allowed and made absolute in terms of prayer clause (a). Resultantly the above Election Petition would stand dismissed.

[R.M.SAVANT, J]