

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.100 OF 2018

Ashok Rajaram Raul,]
Age : About 67 years, Occ.]
R/at 5B/11, Pereira Nagar Co-op. Hsg. Society,]
Khopat, Thane (West).] Applicant

Versus

1. Mandar Pramod Vichare,]
Age : About 41 years,]
R/at Flat No.601, Samarth Ganga Niwas,]
Govind Bachaji Road, Charai, Thane (West).]
2. Mahesh Parshuram Kadam,]
Age : About 38 years,]
R/at Lad Chawl, Almeida Road,]
Opp. Vidhata Society, Chandanwadi,]
Thane (West).]
3. Tushar Ramesh Gaikwad,]
Age : About 33 years,]
R/at 6A/21, Pereira Nagar,]
Near S.T. Workshop, Khopat, Thane (West).]
4. Yogesh Vishwanath Godbole,]
Age : About 40 years,]
R/at A3/301, Jasmine Building,]
Parijat Garden C.H.S., G.B. Road,]
Thane (West).]
5. The Returning Officer, Ward 12-D,]
C/of Thane Municipal Corporation,]
Mahapalika Bhavan, Dr. Almeida Road,]
Panchpakhadi, Thane (West).]

6. Thane Municipal Corporation,]
Headquarters at Mahapalika Bhavan,]
Dr. Almeida Road, Panchpakhadi,]
Thane (West).] Respondents

Mr. Sagar A. Joshi for the Petitioner.

Mr. Shriram S. Kulkarni, with Ms. Megna Pujari and Ms. Madhura Deshmukh, for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 14TH MARCH 2018.

PRONOUNCED ON : 22ND MARCH 2018.

JUDGMENT :

1. Heard Mr. Joshi, learned counsel for the Applicant, and Mr. Kulkarni, learned counsel for Respondent No.1.

2. This Revision Application takes an exception to the order dated 5th December 2017 passed by the 6th Joint Civil Judge, Senior Division, Thane, below the application at “Exhibit-37” in Election Petition No.2 of 2017.

3. The application at “Exhibit-37” was preferred by the present Applicant, under Order 7 Rule 11 of the Code of Civil Procedure, 1908,

for rejection of the Election Petition on the count that, it does not disclose the material particulars.

4. As per the case of the Applicant, this Election Petition is filed by Respondent No.1 challenging the election of the Applicant for the post of the 'Councillor' to Thane Municipal Corporation, which was held in the month of February, 2017. The reason given for challenging the election is that, in the Nomination Form, the Applicant has not disclosed complete information, which was mandatory for him to do so. It is contended in the Election Petition that, the Applicant herein has stated only about one criminal case pending against him, whereas, according to Respondent No.1, there were two more criminal cases pending against the Applicant, which pertain to the offences involving moral turpitude. Respondent No.1 has given the particulars of the two criminal cases, which read as under :-

- (a) *Regular Criminal Case No.294 of 2015 (F.I.R. bearing No.CR-I 231 of 2000, registered at Naupada Police Station, Thane), wherein the Applicant is Accused No.2 and which is pending before the Court of 1st Chief Judicial Magistrate, Thane, for the offences punishable under Sections 406 and 409 r/w. 34 of IPC.*
- (b) *Case No.4414/SS/05 pending before the Court of 43rd Metropolitan Magistrate, Mumbai, wherein the Applicant is arrayed as Accused No.1.*

5. As per the case of the Applicant, the second case No.4414/SS/O5 is dismissed long back in 2009 and hence, there is no question of not disclosing the said information in the Nomination Form.

6. As regards Regular Criminal Case No.294 of 2015, it is urged that, Respondent No.1 has not stated the material fact as to whether the Court has taken cognizance of this case and whether the charges are framed; if yes, when? It is submitted by learned counsel for the Applicant that, in order to attract the allegation pertaining to corrupt practice, undue influence or misconduct, these materials were necessary, to be stated in the Election Petition. Hence, as the averments in the Election Petition do not disclose the material facts to constitute the corrupt practice, undue influence or misconduct, the Election Petition is liable to be rejected, as per Order 7 Rule 11 of CPC.

7. The Trial Court has, after considering the submissions advanced at bar by learned counsel for both the parties and relying upon the various earlier judgments of this Court and the Apex Court, rejected the said application, finding that, though it was not stated in the Election Petition that the cognizance was taken of the offences mentioned in the first case, i.e. Regular Criminal Case No.294 of 2015, the documents filed along with the Election Petition, which are required to be taken into consideration, show that the summonses were issued in the said

Criminal Case. Therefore, the contention raised by the present Applicant that the material particulars were not given in the Election Petition, cannot be accepted.

8. This order of the Trial Court is challenged in this Revision Application by learned counsel for the Applicant by submitting that, when the averments made in the Election Petition are silent to show as to which offences are involved in Case No.4414/SS/O5 and whether such offences were punishable with imprisonment of two years or more and whether the 'Charge' is framed or the cognizance is taken by the concerned Court in any of these two cases and if yes, on which date; then, on the basis of such incomplete pleading, the Election Petition is filed; then, it has to be rejected on the ground that, it does not disclose complete cause of action. It is urged by learned counsel for the Applicant that, the Election Petition on the ground of election being vitiated due to corrupt practice, being quasi-criminal in nature, which entails disqualification to the person found guilty of committing it, the person alleging the corrupt practice has a heavy burden to discharge and, therefore, the pleadings in the Election Petition are required to be scrutinized strictly, in order to ensure whether they disclose the material facts to constitute the corrupt practice.

9. In support of his submission, learned counsel for the Applicant has

placed reliance on the Judgment of this Court in the case of *Satish Mahadeorao Uke Vs. Devendra Gangadhar Fadnavis, 2016 (2) Mh.L.J. 613*, wherein the election of the Respondent therein was challenged, under the Representation of the People Act (43 of 1951), on the ground that, the Respondent had not disclosed the criminal cases pending against him. The application was filed by the Petitioner therein contending *inter alia* that, the Election Petition does not disclose the material fact that, prior to delivery of nomination paper, the 'Charge' was framed against the Respondent in a case pending in respect of any offence punishable with imprisonment for a period of two years or more; hence, such defect was of a substantial character, requiring the rejection of the Election Petition for want of giving material particulars. While deciding the said contention, it was held by this Court that, as the date of framing of 'Charge' is relevant for the purpose of deciding whether there was suppression of any material fact and as there was no pleading of the specific date of taking cognizance or as to whether the cognizance was taken prior to the date of delivery of nomination paper, absence of such pleading was fatal for the Court to proceed on the trial of the Election Petition. It was further held that, the Petitioner cannot be permitted to cure such defect, after the period of limitation has expired and no amount of evidence can be permitted to be led on this aspect. It was further held that, as the Election Petition has to contain concise statement of all the material facts, which are essential to clothe the

Election Petition with complete cause of action and failure to plead even a single material fact, would amount to disobedience of mandate of Section 83(1) of the Representation of the People Act, resulting in dismissal of the Election Petition at the threshold itself, under Order 7 Rule 11 of CPC. In paragraph No.50 of the said Judgment, it was held that, so far as the Election Petition filed on the ground that the material facts relating to the pending criminal cases were not disclosed in the Nomination Form, it must contain following particulars :-

- “(i) The fact that Respondent No.1 is an accused in the offences under specific section/s of specific Act/s with short description of such offence/offences together with Cases/FIR number with the details of the concerned Police Station;*
- (ii) The fact that the offence/offences alleged against Respondent No.1 is/are punishable with imprisonment for a period of two years or more;*
- (iii) The fact that such case/cases were pending against Respondent No.1 on the date of delivery of nomination paper under Section 33 of the said Act, along with the Case No./Nos. and the name of the Court, where the matter is pending;*
- (iv) The fact that the charge/charges were framed against Respondent No.1 prior to the date of delivery of nomination paper under Section 33 of the said Act in respect of the offence/offences alleged against him along with the specific date of framing of*

*charge/charges by the Court of competent jurisdiction;
and*

- (v) *The fact that there is a failure to disclose or non-disclosure or concealment or suppression of the aforesaid material facts by Respondent No.1 in his affidavit in Form No.26 delivered along with the Nomination Form under Section 33-A(2) of the said Act to the Returning Officer.*

If all the aforesaid facts are pleaded or found in the Petition, then, it can be said that, a cause of action is made out to attract the provisions of Section 33-A(1)(i) of the said Act and to claim rejection of the Nomination Paper under Section 36(2) therein. It is thereafter the Court can proceed further to complete the trial.”

10. In the above-said judgment, as it was found that, the material fact that the ‘Charge’ was framed against the Respondent in a case pending in respect of the offence punishable with imprisonment for a period of two years or more and the date of framing of such ‘Charge’ or the date of taking cognizance of the said case being not pleaded, the Petition was liable to be rejected under Order 7 Rule 11(a) of CPC.

11. Relying heavily on this Judgment, learned counsel for the Applicant has submitted that, in the present case also, Respondent No.1 has not stated in the Election Petition this material fact as to whether the cognizance of the criminal case was taken by the Court and, if yes,

when ? Merely relying on some document to show that the summonses were issued in the said criminal case is not sufficient, unless it is shown that the summonses were duly served on the Applicant. Then only, the Applicant can be implicated with the knowledge of the said criminal case, so as to disclose the same in the Nomination Form. It is urged that, in the absence of such material pleading in the Election Petition, the Election Petition is liable to be rejected at the threshold itself.

12. Further it is submitted by learned counsel for the Applicant that, the pleadings in the present Election Petition also do not disclose as to whether the offences alleged against the Applicant are punishable with imprisonment of two years or more. Hence, according to learned counsel for the Applicant, this is a fit case, where the Election Petition is required to be rejected for non-disclosure of the material facts and cause of action. The impugned order passed by the Trial Court, therefore, rejecting the Applicant's application to that effect, filed under Order 7 Rule 11(a) of the CPC, needs to be quashed and set aside.

13. Per contra, learned counsel for Respondent No.1 has supported the impugned order of the Trial Court by pointing out that, even if in the Election Petition it is not stated that the cognizance of the said case is taken by the Court, the documents produced along with the Election Petition, which are also verified and attested and, therefore, required to

be taken into consideration, clearly go to show that the summonses were issued in the said case, thereby indicating that the cognizance of the said case was taken. It is urged that, even the offences, for which the said criminal case is filed against the Applicant, are also stated in the Election Petition, namely, Sections 406 and 409, r/w. 34 of IPC. Therefore, the judicial notice can be taken of the fact that, the offences are punishable with imprisonment of more than two years, according to learned counsel for Respondent No.1; therefore, all the material facts were definitely pleaded in the Election Petition. Moreover, it is submitted that, if it is found necessary that certain facts are not appearing therein, even amendment to the Election Petition can also be permitted. In this respect, he has placed reliance on the Judgment of the Apex Court in the case of *Balwan Singh Vs. Lakshmi Narain and Ors.*, AIR 1960 SC 770.

14. As regards the Judgment of this Court in the case of *Satish Mahadeorao Uke (Supra)*, learned counsel for Respondent No.1 has distinguished the same on the count that, in the said case, 'Election' was challenged for non-disclosure of material facts and not on the count of 'undue influence' and 'corrupt practice', as in the present case. Hence, the law laid down therein cannot be applicable to the facts of the present case.

15. The law about impact of non-disclosure of full particulars of criminal cases at the time of filing of Nomination Form for the Election has been summed up by the Hon'ble Apex Court in the case of *Krishnamoorthy Vs. Sivakumar and Ors.*, 2015 ALL SCR 2409, as follows:-

“The law about impact of non-disclosure of full particulars of criminal cases at the time of filing nomination be summed up thus :-

- (a) Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper, as mandated by law, is a categorical imperative.*
- (b) When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.*
- (c) Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.*
- (d) As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared*

null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.

(e) The question whether it materially affects the election or not will not arise in a case of this nature.”

16. Even the principles as to what amount to “undue influence” have also been culled out in this Judgment of the Apex Court and it has been held that,

“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.”

17. It has been held in the said Judgment that,

“While filing the Nomination Form, if the requisite information, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice. In an Election Petition, the Election Petitioner is required to assert about the cases, in which the successful candidate is involved, as per the rules and how there has been non-disclosure in the affidavit. Once that is established, it would amount to corrupt practice and it has to be determined in an Election Petition by the Election Tribunal.”

18. In this backdrop, if one sees the Nomination Form filed by the Applicant herein, in the column of 'Criminal Antecedents', he has

disclosed only one case, bearing No.250, for the offences punishable under Sections 143 and 145 of IPC, which, according to him, was filed on 27th January 2011 in the Thane Court.

19. Respondent No.1 has produced on record the material to show that the Applicant has not disclosed the other case, bearing Regular Criminal Case No.294 of 2015, which was filed on the basis of the First Information Report bearing No.231 of 2000 registered at Naupada Police Station, Thane. The said case is pending in the Chief Judicial Magistrate's Court, Thane, and it involves the offences punishable under Sections 406 and 409, r/w. 34 of IPC.

20. He has also stated that, there is one more criminal case, pending against the Applicant, bearing Case No.4414/SS/05, which is pending before the 43rd Metropolitan Magistrate's Court, Bombay.

21. Admittedly, Respondent No.1 has not pleaded whether the 'Charge' is framed against the Applicant or cognizance is taken against him in both these cases or not. Moreover, he has also not pleaded as to what is the nature of the offence involved in the case bearing No.4414/SS/05. It is apart that the said case is dismissed long back in the year 2009. The Election Petition is, thus, silent on the aspect of framing of 'Charge' or taking cognizance by the Court and also on which date such 'Charge', if

any, and the cognizance, if any, was taken. In respect of the second case, even the offences involved are also not stated and hence, it is also not revealed as to whether the punishment provided therefor is more than two years or not.

22. Thus, the Trial Court has rightly come to the conclusion that, so far as the pleadings on these aspects are concerned, they are silent. Therefore, if the law laid down by this Court in the case of *Satish Mahadeorao Uke Vs. Devendra Gangadhar Fadnavis, 2016 (2) Mh.L.J. 613*, as referred above, is to be applied to the facts of this case, then, as the Election Petition does not contain the material facts; as to when the 'Charge' was framed or cognizance was taken and whether the offences in the second case are punishable with imprisonment for more than two years or not, then, it will have to be held that, for want of material particulars in the pleadings, the Election Petition, as held in this reported case, is liable to be rejected under Order 7 Rule 11(a) of the CPC.

23. However, as rightly pointed out by learned counsel for Respondent No.1, there is material difference in the Petition, which was filed in the case of *Satish Mahadeorao Uke (Supra)* and the present Election Petition. In the case of *Satish Mahadeorao Uke (Supra)*, the 'Election' was challenged on the ground of non-disclosure of material facts in the Nomination Form. In paragraph No.26, it was specifically observed that,

“The said Petition was not filed on the ground mentioned in Section 100(1)(b) of the Representation of People Act, alleging that Respondent No.1 is guilty of corrupt practice of ‘undue influence’, as defined under Section 123(2) of the said Act and this position was conceded by the Petitioner, in response to such question put to him during the course of arguments.”

24. It was further held that,

“Even otherwise also, the Petition cannot be treated as raising a ground of corrupt practice, because, it is not supported by an affidavit in the prescribed form in support of such allegation, along with the particulars thereof, as contemplated by the Proviso in Section 83(1) of the said Act.”

25. Thus, the ground for challenging the election, which was raised in the said Election Petition, did not pertain to the corrupt practice of undue influence, but, it was purely and sheerly for non-disclosure of material fact. As against it, in the present case, Respondent No.1 has challenged the election on the specific ground of the Applicant being guilty of the corrupt practice of exercising undue influence. It is stated in paragraph No.7 of the Election Petition that,

“The Applicant has, by making incomplete, false and misleading statements in his Nomination Form, misled and misrepresented the voters of the Constituency about his clean image, resulting in supremacy over other candidates.”

26. In paragraph No.8 of the Election Petition, it is further alleged that,

“These false, incomplete and misleading statements made by Respondent No.1 about pending criminal cases against him, have materially affected the results of the 'Election', resulting in the Applicant herein being elected as a 'Councilor / Corporator'.

27. In paragraph No.13 of the Election Petition, it is further stated that,

“An incorrect or incomplete statement and information relating to any of the matters, like the conviction and acquittal in a criminal case or pendency of any criminal case relating to assets of the candidates and his spouse, his liabilities, including liabilities to Public Financial Institutions and Government dues, and his educational qualifications etc., certainly amounts to undue influence, as every voter has a fundamental right to know about the pendency of the criminal cases of a candidate.”

28. In paragraph No.16 of the Election Petition, it is again re-iterated that,

“The Applicant has resorted to corrupt practices, which includes false, incomplete and misleading information about criminal cases pending against him, thereby misleading the voters in the said Constituency.”

29. In paragraph No.21 of the Election Petition, it is stated that,

“As this non-disclosure of the pending criminal cases against him by the Applicant has resulted into the

interference with free exercise of the right to vote by the electorate and it has also amounted to undue influence.”

30. Thus, the basic premise of the Election Petition is that, the Applicant has adopted corrupt practice to mislead the candidates by undue influence and it was done by him by non-disclosure of two criminal cases pending against him. Hence, here the main allegation is of 'corrupt practice' of 'undue influence', which was not the case in the matter of *Satish Mahadeorao Uke Vs. Devendra Gangadhar Fadnavis (Supra)*. Hence, in the facts of that case, it was held that, as the entire Election Petition was filed on the ground of non-disclosure of material facts in the Nomination Form, the absence of the pleadings relating to the specific date as to when the 'Charge' was framed or the cognizance was taken by the Court, which facts were material, made it necessary to reject the plaint under Order 7 Rule 11(a) of the CPC. Here the crux of the case of Respondent No.1 is that, by non-disclosure of these pending criminal cases, the Applicant has exercised undue influence on the voters by projecting his clean image and this corrupt practice has vitiated the 'Election'.

31. The second distinguishing factor is that, in the case of *Satish Mahadeorao Uke (Supra)*, no supporting documents, like the verified affidavit and annexures, were produced, as forming part of the Election Petition. Here in the case, as observed by the Trial Court, even if in the

Election Petition it was not stated as to whether the cognizance was taken or not, along with the Election Petition, Respondent No.1 has filed on record the 'Case Status Report Extract', which was taken by him from the official website “*e-Courts India Services*” and this 'Case Status Report Extract' showed the name of the Applicant as 'Accused No.2' in the criminal case, bearing Regular Criminal Case No.294 of 2015, pending in the Court of Chief Judicial Magistrate, Thane, at the stage of “awaiting summons” on 7th February 2017. Thus, the stage of the proceedings clearly goes to show that, the cognizance has been taken by the Court against the Applicant and the order of issuance of summons is also passed. The offences, for which the said case is filed, are also punishable under Sections 406 and 409, r/w. 34 of IPC, for which the punishment prescribed is of imprisonment for a period of more than two years and as can be seen from the fact that the summonses were issued, thereby indicating that the cognizance is already taken.

32. Now question raised for consideration, by learned counsel for the Applicant, is, *'whether in the absence of pleadings, the document annexed with the Election Petition can be taken into consideration, at the stage of deciding the application under Order 7 Rule 11 of CPC ?'* In this respect, learned counsel for Respondent No.1 has relied upon the Judgment of the Apex Court in the case of *Ashraf Kokkur Vs. K.V. Abdul Khader and Ors., (2015) 1 SCC 129*, wherein, exactly the similar

question as to '*whether Schedule or Annexure to the Election Petition is an integral part of the Election Petition and it can be considered for deciding such application or not*', was raised for consideration before the Hon'ble Apex Court and it was held that, if such Annexures or Schedules are signed or verified, then, they can be treated as integral part of the Election Petition. In the present case, the annexure to the Election Petition, namely, the 'Case Status Report', is signed and verified by Respondent No.1 and hence, it can be treated as part of the Election Petition.

33. In this Judgment of *Ashraf Kokkur (Supra)*, while considering as to what amounts to the 'material facts', for the purpose of deciding the application under Order 7 Rule 11 of CPC, the Apex Court has relied upon its earlier Three-Judge Bench decision in the case of *V.S. Achuthanandan Vs. P.J. Francis, (1999) 3 SCC 737*, which has taken the view that, only because full particulars are not given, an Election Petition is not to be thrown at the threshold. It is stated in paragraph Nos.15 and 16 thereof, as follows :-

“15.An Election Petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. It is, therefore, evident that, material facts are such primary facts, which must be proved at the trial by a party to establish existence of a cause of action.

Whether in an Election Petition, a particular fact is a material fact or not and as such, required to be pleaded is a question which depends on the nature of the Charge levelled, the ground relied upon and in the light of the special circumstances of the case.

“16. So long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that, the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that, it discloses no reasonable cause of action, are generally more known than clearly understood.... the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars.”

[Emphasis Supplied]

34. Here in the case, the material fact for the purpose of challenging the election of the Applicant on the ground of ‘corrupt practice of undue influence’, is non-disclosure of the two more criminal cases pending against him. Even if the contention of the Applicant is accepted that, out of these two Criminal Cases, one case bearing No.4414/SS/05 is already dismissed, the fact remains that, the Regular Criminal Case No.294 of 2015 is still pending. This material fact is pleaded by Respondent No.1 in the Election Petition by giving particulars of this criminal case and in which Court it is pending and even giving the particulars of the offences for which it is filed. The annexure to the Election Petition further shows that, the summonses were issued in the said case, thereby implying that

the cognizance is also taken. Therefore, if, as held by the Apex Court in the case of *Ashraf Kokkur Vs. K.V. Abdul Khader and Ors. (Supra)*, in paragraph No.22, that, an inquiry under Order 7 Rule 11(a) of CPC is only as to whether the facts, as pleaded, disclose a cause of action and not complete cause of action, then, the pleading in the present Election Petition discloses such cause of action. As held, the expression “*material facts*” plainly means, ‘*facts pertaining to subject-matter and which are relied on by the Election Petitioner*’. Whether in the Election Petition, a particular fact is material or not and as such required to be pleaded, is depending on the nature of the ‘Charge’ levelled on the circumstances of the cases. The ‘Charge’ levelled in the present Election Petition is that of the Applicant not disclosing in the Nomination Form the two other criminal cases pending against him and as out of that, one case is definitely still pending against him, that fact being pleaded in the Election Petition, it cannot be said that, in this limited inquiry, under Order 7 Rule 11 of CPC, the Election Petition should be dismissed in limine at the threshold itself.

35. In the facts of the case of *Satish Mahadeorao Uke Vs. Devendra Gangadhar Fadnavis (Supra)*, the material fact was the specific date of taking cognizance and / or framing of ‘Charge’ in the case, as the entire Election Petition was based on “non-disclosure” of the criminal cases and there was no allegation of undue influence or corrupt practice, therefore,

the said fact was relevant. As against it, in the present case, even the pendency of these two criminal cases, now one case, is the material fact, as the suppression of this information has, according to Respondent No.1, resulted into exercising undue influence on the electorate by creating an impression of clean image. Therefore, here the date of framing of 'Charge' or of taking cognizance may not be so material as to hold that, the absence of such particulars in the Election Petition is sufficient to reject the Election Petition at the threshold itself in limine.

36. According to learned counsel for Respondent No.1, if at all some particulars are remained to be pleaded, an Election Petition is not liable to be dismissed in limine. He has, in this respect, placed reliance on the Judgment of the Apex Court in the case of *Balwan Singh Vs. Lakshmi Narain and Ors.*, AIR 1960 SC 770, wherein, in paragraph No.8, it was observed that,

“8. The practice to be followed in cases where insufficient particulars of a corrupt practice are set forth in an Election Petition is this. An Election Petition is not liable to be dismissed in limine, merely because full particulars of a corrupt practice alleged in the Petition are not set out. Where an objection is raised by the Respondent that a Petition is defective, because full particulars of an alleged corrupt practice are not set out, the Tribunal is bound to decide whether the objection is well-founded. If the Tribunal upholds the objection, it should give an opportunity to the Petitioner to apply for

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

37. In the instant case, as the Election Petition is accompanied with the requisite documents, giving the particulars as to the cognizance being taken, as the summonses are issued, the question of causing prejudice also, as observed in this Judgment, does not arise.

38. To sum up, therefore, in the instant case, having regard to the allegation of corrupt practice on account of undue influence by suppression of the pending criminal cases, as the election of the

Applicant is challenged and as the material particulars relating to two pending criminal cases are given in the Election Petition, out of which one is still pending, the Trial Court has, vide its impugned order, rightly held that, at this stage, the Election Petition discloses the cause of action and, therefore, it cannot be rejected at the threshold in limine, under Order 7 Rule 11(a) of CPC.

39. Civil Revision Application, therefore, being without merits, stands dismissed.

40. It is clarified that, whatever observations made here-in-above are for the purpose of deciding this Civil Revision Application and the Trial Court is not to be swayed or influenced by them in any way at the time of deciding the 'Election Petition'.

[DR. SHALINI PHANSALKAR-JOSHI, J.]