

Atul

REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ELECTION PETITION NO. 26 OF 2014**

VINOD RAMCHANDRA GHOSALKAR,
Adult, Indian Inhabitant, residing at 401,
Kumar Kunj, Daulat Nagar Road No. 9,
Borivali (East), Mumbai 400 066

... **PETITIONER**

versus

MANISHA ASHOK CHAUDHARY,
Adult, Indian Inhabitant, residing at 602,
Guruvihar, DN Mhatre Road, Aksar,
Borivali (West), Mumbai 400 092

... **RESPONDENT**

APPEARANCES

FOR THE PETITIONER

Mr V Parikh, i/b BD Joshi.

FOR THE RESPONDENT

**Mr Mukesh Vashi, Senior Advocate,
i/b Amarendra Mishra.**

CORAM : G.S.Patel, J.

DATED : 21st/22nd February 2019

JUDGMENT:

CONTENTS

A.	AMBIT OF THE CHALLENGE.....	2
B.	FACTUAL BACKGROUND.....	4
C.	ISSUES	7
D.	EVIDENCE.....	9
E.	RE: ISSUES NOS. 1, 2 AND 3	9
F.	RE: ISSUE NO. 4.....	10
G.	RE: ISSUES NOS. 5 AND 6.....	10
H.	FINAL ORDER.....	39
	<i>SECTIONS 100 AND 123 OF THE RP ACT</i>	40

A. AMBIT OF THE CHALLENGE

1. The Petitioner was the nominated candidate of the Shiv Sena for the 2014 Maharashtra Legislative Assembly elections from the Dahisar Assembly Constituency No. 153. The Petition challenges the election of the Respondent, Smt Manisha Ashok Chaudhary, the official candidate of the Bharatiya Janata Party (“BJP”). In opposition to the Petitioner, amongst others, Smt Chaudhary secured 77,238 votes at the election. The Petitioner garnered 38,440 votes. Smt Chaudhary was declared elected.¹

¹ While the matter was pending in this court, it travelled to the Supreme Court at least once at the instance of the Respondent but without success. I do not think it is necessary to go into greater detail in that regard.

2. When first filed in 2014, the Petition mounted the challenge to Ms Chaudhary's election on two grounds. First, that Smt Chaudhary's nomination papers were improperly accepted, and that her Affidavit required to be filed in accordance with the directives of the Election Commission of India was misleading. Specifically, the allegation was that the Affidavit, a photocopy of which is at Exhibit "B" to the Petition, did not mention in clauses 3(ii)(a) and (b) sufficient particulars of a previous criminal proceeding. I will pass over this very quickly at the forefront of this judgment for two reasons. First, it was not seriously canvassed at the final hearing. Second, it could not be seriously canvassed because the entire argument proceeded on this basis that the contents of that Affidavit were so vague that none could understand the true nature of the offence to which that portion of the Affidavit referred. This argument more or less defeated itself during the cross-examination of the Petitioner. Asked whether he himself fully understood the reference in that Affidavit, his answer was to say that he did. His allegation of insufficiency of the Affidavit and its particulars could not survive, once he agreed that the disclosure was sufficient.

3. The second and more significant challenge to the elections is in regard to an alleged electoral malpractice. The entire Petition, as we shall see, is focused on an interpretation of Section 123(1) read with Section 100 of the Representation of Peoples Act 1951 ("**RP Act**"). For convenience, and ready reference, I have reproduced Sections 100 and 123 in full in an annexure to this judgment.

B. FACTUAL BACKGROUND

4. The election was announced in 2014. Smt Chaudhary submitted her nomination papers on 27th September 2014 (along with the Affidavit to which I have earlier referred). Her nomination papers were found to be in order. The last date for withdrawal of nomination was 4th October 2014. The election results were declared on 19th October 2014. Ms Chaudhary won the election from that constituency. This puts us in the time frame of 5th October 2014, the day after the last date for withdrawal of nominations and 14th to 19th October 2014, the date of the election and the day when results were announced. This is the time window with which we are concerned.

5. The specific allegation in the Petition is that at about 5.47 pm on 9th October 2014, the Static Surveillance Team (“SST”) deployed at the Sudhir Phadke Flyover at Dahisar apprehended a vehicle supposedly with the number plate MH-48-M-3. There is no dispute that this was Smt Chaudhary’s vehicle, and that it was this vehicle she had registered with the Election Commission as her official vehicle for use during campaigning at these elections.

6. When the SST apprehended the car it found in the vehicle some Rs. 50 lakhs in cash in various bundles of denominations of Rs. 500/- and Rs. 1,000/-. The car was being driven by one Chandrakant Pande. Also in the vehicle was one Shashikant Kadam. Pande was Smt Chaudhary’s driver, and Kadam was at some point the General Secretary for the BJP from the ward where the

Respondent was earlier a Municipal Councillor. According to Smt Chaudhary, he was also her PA at the relevant time.

7. The SST informed the Flying Squad, then headed by one Ravindra Trimbak Sadansingh. What followed might have been the subject of a slapstick lampooning, were it not true. The car was first taken to the Returning Officer, who then directed it to the Borivali Police Station. Once there, at that police station, its keys went missing. I do not even pretend to understand how this could have happened. I presume that from its travel from Sudhir Phadke Flyover to the Returning Officer to the Borivali Police Station the car needed its keys, but at some point thereafter having entered those precincts, the keys were lost. But that is not all. The keys were lost with the cash still inside the car, and there it lay unattended and uncounted overnight. It was not until the next morning, and this is the evidence now on record, that the police managed to find somebody at a Kandivali outlet of the vehicle manufacturer, Mahindra & Mahindra, to open the car. No duplicate keys seem to have been made. It is only then that the cash was counted. I am told that there was so much of this money that it was not possible to photograph every note. Instead there was some videography.

8. Although it emerged later, there is now evidence to show that on 9th October 2014 itself one Chimanlal Mehta, the Treasurer of the BJP, had a certificate that this amount of Rs. 50 lakhs was withdrawn from the BJP's account at the Jan Kalyan Bank, Sion Branch, for election expenses. There is also a certificate issued by the Jan Kalyan Bank, Sion regarding the withdrawal.

9. At about 3.30 pm on 10th October 2014, Sadansingh filed NC Complaint No. 100 of 2014. Statements were recorded and a panchanama was drawn. That NC complaint was then sent to the Metropolitan Magistrate in the 26th Court at Borivali and numbered as Criminal Case No. 1354/N/2014. That very day, Chimanlal Mehta wrote to the Deputy Director of the Income Tax asking for release of the amount and enclosing a sworn Affidavit affirming that the amount belonged to the BJP. He also produced a bank statement of the account from which the amount was withdrawn and a bank certificate of the previous date. On 13th October 2014, Chimanlal Mehta was told by PSI Jadhav that this cash had been seized.

10. While this process was being independently pursued, the election went ahead and Smt Chaudhary was declared elected. On 17th October 2014, Chimanlal Mehta applied to the Magistrate for return of the seized property. Annexed to this application was a certificate by Chimanlal Mehta and a copy of the certificate by the Jan Kalyan Bank, Sion Branch both dated 9th October 2014.

11. On 30th October 2014, on Chimanlal Mehta's return of property application the Magistrate issued notice. The Senior Inspector of Police responded. On 10th November 2014, the Returning Officer submitted his parawise remarks on the application. On 12th November 2014, the Magistrate issued notice to the Income Tax Officer enquiring into the matter. On 25th November 2014, the Deputy Director of Income Tax submitted a report in respect of the seized cash to the Metropolitan Magistrate. On 30th November 2014, the Borivali Police filed their reply to Chimanlal Mehta's application.

12. While this application was thus yet pending disposal on 3rd December 2014 the Petitioner instituted the present Election Petition. On 15th December 2014, the Magistrate took on record the say filed by Smt Chaudhary on Chimanlal Mehta's application. On 22nd December 2014 the Magistrate passed an order allowing that application for return of property and returning the seized cash of Rs. 50 lakhs to the office.

13. The Petition was served on Smt Chaudhary on 6th February 2015. It is not necessary to go into great detail regarding the various intervening applications. A written statement was filed on 8th March 2016. There were some amendments. Ms Chaudhary denied all allegations. She specifically averred that the cash was not hers, but was drawn by the BJP from its account to meet the expenses of rallies in the six constituencies, of which hers was one. She said she had no use for the vehicle on that day and allowed it to be used by Kadam on his request. She completely disassociated herself from the cash found in the vehicle.

C. ISSUES

14. Issues were framed on 16th September 2016 with Issues Nos. 1, 2 and 3 being agreed to be treated as preliminary issues. I decided preliminary issues Nos. 1, 2 and 3 against the Respondent and held against the Respondent on her application under Order VII Rule 11 of the Code of Civil Procedure 1908. The matter went to trial before

me. Various parties were examined and documents were marked. These issues are set out below with my answers against each.

Sr. No.	Issues	Findings
1.	Whether the Respondent proves that the Election Petition is liable to be dismissed on account that Exhibit "B" to the Petition as filed is illegible?	No.
2.	Whether the Respondent proves that the Election Petition is liable to be dismissed because Form No. 25 read with Rule 94(A) annexed to the Petition is not in the prescribed form?	No.
3.	Whether the Respondent proves that the Petition is filed is barred by limitation for the reasons alleged in paragraphs 6B and 6C of the amended Written Statement?	No.
4.	Does the Petitioner prove that the Nomination Form of the Respondent was improperly accepted and not in the manner contemplated under Section 100(1)(d)(i) of the Representation of the Peoples Act?	No.
5.	Does the Petitioner proves that the Respondent had not complied with the Rules and Orders made under the R. P. Act as contemplated under Section 100(1)(d)(iv)?	No.
6.	Does the Petitioner proves that the Respondent has committed a corrupt practice as defined in Section 100(1)(b) read with Section 123(1)(A) of the Representation of the People Act and as alleged by the Petitioner in paragraphs 13, 14 and 15 of the Petition?	No.
7.	What relief and what order?	As per final order.

D. EVIDENCE

15. The Petitioner examined himself as PW1. PW2 was Ravindra Trimbak Sadansingh, a former member of the Flying Squad. PW3 was one Tushar Dinkar Mathkar, the Returning Officer at the relevant time. PW4 was Ramprakash Rastogi, the Deputy Director and Commissioner of Income Tax in 2014 who made an enquiry and submitted an IT Report. PW5 was Deepak Shankar Jadhav posted at the relevant time as a PSI at the Borivali Police Station. The Respondent examined herself and then examined Jaiprakash Mishra as RW2. He was the President of BJP, North Mumbai. Mr Chimanlal Mehta was not called to give evidence since he was unwell and is over 80 years of age.

16. Various documents came to be marked in evidence. There is in fact no dispute on the documentation in the sense of there being any rival or contesting documentation between the two sides. The short question that falls for consideration is whether the seizure of the cash of Rs. 50 lakhs in Smt Chaudhary's registered vehicle constitutes corrupt electoral practice sufficient for the purposes of Sections 123 and 100 of the RP Act.

E. RE: ISSUES NOS. 1, 2 AND 3

17. Issues Nos. 1, 2 and 3 are the one where burden is on the Respondent. I have held against the Respondent on each of these.

18. I am also not addressing the question of improper service or legibility of parts of the Petition. It is enough to note that the officer of this Court who received the Petition, Mr Shirish Agate, was called as a witness, was cross-examined, and Mr Vashi for Smt Chaudhary has not pursued this opposition about the Petition being improper for want of legibility or being improperly served. The third issue of limitation was satisfactorily concluded with the cross-examination of Mr Agate and was not seriously pressed thereafter.

F. RE: ISSUE NO. 4

19. What remains for consideration, therefore, are the three issues the burden of which is on the Petitioner, namely, Issues Nos. 4, 5 and 6. As I have noted, issue No. 4, regarding improper acceptance of the nomination paper, was not pressed. There is no case made out under Section 100(1)(d)(i) of the RP Act. This leaves only issues Nos. 5 and 6.

G. RE: ISSUES NOS. 5 AND 6

20. These are, therefore, the only two issues that I am required to consider. The corrupt practice is in issue No. 6 but it is tied to issue No. 5 at least in the manner in which it has been argued. This case is mounted under Section 123(1) read with Section 100(1)(b) of the RP Act. Issue No. 5, squarely placed within Section 100(1)(d)(iv) has, as we shall see, of necessity been sought to be linked to the alleged

corrupt practice. It is not a standalone ground, and I do not find in the body of the Petition an accurate or sufficient delineation of a case made out in regard to Section 100(1)(d)(iv) of the RP Act.

21. The construct of the Petitioner's case seems to be, at least in the Petition when it was filed, that since the money was found in Smt Chaudhary's car, therefore it is her money, that she withdrew it, and that she 'intended' to use it or it was 'meant to be used' to bribe the voters in her constituency to secure to herself an electoral victory. On its own this requires very many presumptions. Once there is some evidence from the BJP claiming ownership of the money, the task before the Petitioner is no longer that simple. There must be a demonstration clearly and categorically that the money did not belong to the BJP, that it was Smt Chaudhary's money, that it was she who had it withdrawn and there must be some definite nexus or link between the money and Smt Chaudhary. Even if it was not her own money, that connection between Smt Chaudhary and the money must be established. Mr Parikh for the Petitioner has argued that if this money was found in Smt Chaudhary's official registered vehicle, given that there are restrictions on how that vehicle could be used, that money had to be hers. Having considered his arguments carefully and those of Mr Vashi for the Respondent, I am unable to accept this argument. In the course of his address, as also in the cross-examination, Mr Parikh has attempted to show that there is a discrepancy in the wrappers of these notes and some are said to have come from other banks such as HDFC or other banks or even from other cities, and cannot be linked to the Jan Kalyan Bank account. There may be many explanations for this but that is not in itself sufficient to establish the necessary linkage in the manner the

law requires, and this is a reference not only to the RP Act but also to the Evidence Act.

22. The evidence of RW2, Mishra was that he was asked by Chimanlal Mehta to collect this amount from the Jan Kalyan Bank at Sion. It is true that the money was in Smt Chaudhary's car, but her constituency was one of six such constituencies in the region. The evidence from the Respondent's witness is that this money was to be spent on various rallies being arranged—and this is important—by the BJP and not for Smt Chaudhary's personal use. The evidence is also that at least one such rally, on 12th October 2014, was organized for the Hon'ble Prime Minister Shri Narendra Modi in Borivali (West), and that these funds were required for various payments related to all these rallies planned.

23. The immediate problem in Mr Parikh's way is the decision of 23rd March 2018 of SC Gupte J of this Court in *Balaram Dattatray Patil v Prashant Ram Thakur*,² also an election petition. A brief narrative of the facts in that case is necessary. The parties were contesting candidates for the Parnel Assembly Constituency No. 188 at the very same election of 2014. The challenges there too were to an improper acceptance of the respondent's nomination form and a corrupt practice of bribery. The petitioner there was a candidate of the Peasants and Workers Party of India. The respondent, the successful candidate at the election, won on a BJP ticket (and was also represented in Court by Mr Vashi).

² 2018 (8) BCR 468.

24. The relevant portion in *Patil v Thakur* in regard to the allegation of bribery at the election, and the reference to the Supreme Court decision in *R Puthunainar Alhithan v PH Pandian*,³ is from paragraph 9 onwards.⁴ On facts, what happened in that case was, as set out in paragraph 2, that a vehicle owned by a company controlled by the respondent's family, and used for election propaganda by the respondent or his election agent, was found to contain cash. In addition, there was other material such as election pamphlets, voters' lists and so on. The allegation was that the cash was 'to be used' to bribe voters. The actual ownership of the vehicle was irrelevant. What mattered was whether, on account of cash being found in this vehicle, an electoral malpractice within the meaning of Section 123(1) could be said to have been committed, i.e. whether or not this constituted a corrupt practice. Gupte J set out several principles that he culled from the authorities (also cited before me and which I see no reason to reiterate). Paragraphs 9 to 14 of that decision read thus:

"9. Before we come to the merits of the two grounds, on which the election of the Respondent is sought to be set aside, it is appropriate to deal with the question of standard of proof, on which there was much debate at the hearing of the petition. Mr. Vashi for the Respondent argues that the charge of bribery, constituting corrupt

³ AIR 1996 SC 1599.

⁴ The portion of the judgment dealing with the improper acceptance of the nomination form also need not detain us because it has not been pressed in this case. Also, the defence there was almost the same as the defence here, for there, as here, a preliminary objection was about the frame of the petition. Gupte J decided that in the course of his judgment. The only difference is that I have had occasion to deal with that preliminary objection at an earlier stage, when I held against the present Respondent.

practice, is in the nature of a criminal charge and must be proved beyond reasonable doubt. Learned Counsel relies on the judgments of the Supreme Court in the cases of *Omprakash vs. Lalchand*, *Ramanbhai Nagjibhai Patil vs. Jasvantsingh Udesingh Dabhi* and *N.C. Zeliang vs. Aju Newmai* (AIR 1981 SC 8) in this behalf. On the other hand, it is submitted by Mr. Gavnekar for the Petitioner that the rule of strict standard of proof referred to in election cases should not be extended to an extreme limit. Learned Counsel submits that the ordinary rule of a civil trial of shifting of the legal burden, which is inapposite in a criminal trial, can very well be resorted to in an election petition. In my opinion, learned Counsel is right here. **There is no doubt that, as stated by the Supreme Court in the cases of *Omprakash*, *Ramanbhai Nagjibhai Patil* and *N.C. Zeliang* (*supra*), the charge of bribery in an election petition being in the nature of a criminal charge, a stricter standard of proof is required to prove the same. The ordinary standard of preponderance of probabilities, which is adopted in a civil trial, is not apposite in such a case. Yet, at the same time, there is a caution to be exercised here. An election petition is not strictly like a criminal trial, where the Court rules on commission of an offence and considers a penalty. There are important differences between the two and these spring from the very purpose or *raison d'être* of the relevant election law.** After considering the various tests laid down to determine the standard of proof required to establish corrupt practice under election law, the Supreme Court in the case of *S. Harcharan Singh vs S. Sajjan Singh* (AIR 1985 SC 236) held as follows :-

"While insisting on standard of strict proof, the Court should not extend or stretch this doctrine to such an extreme extent as to make it well-nigh impossible to prove an

allegation of corrupt practice.

Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process."

The object of the law being maintenance of the purity of the electoral process, extending the doctrine of strict proof to such an extent, where it would be well-nigh impossible to prove any allegation of corrupt practice, is, thus, not warranted. **As held by the Supreme Court in the case of *R. Puthunainar Alhithan vs. P.H. Pandian* (AIR 1996 Supreme Court 1599), though the charge of corrupt practice under Section 123 of the Representation of the People Act is akin to a charge in a criminal trial and the doctrine of preponderance of probabilities, which is typically followed in a civil action, is not extended to the proof of corrupt practice, the burden of proof, unlike in a criminal case, can shift on the returned candidate, if the election petitioner adduces cogent evidence to prove that the returned candidate had committed a corrupt practice. Unlike in a criminal trial, the accused candidate here cannot simply keep mum and refuse to lead any evidence in defence. He must take upon himself the burden of rebuttal of the evidence brought by the election petitioner.** If not so rebutted, the proof tendered by the petitioner may be accepted, even if such proof may not be conclusive in itself. Another case in point is the case of *Thiru John vs. The Returning Officer* ((1977) 3 Supreme Court Cases 540). That was a case where the election petitioner relied on several admissions and declarations made by the returned candidate concerning his age. The Court held that an admission, if clearly and unequivocally made, is the best evidence against the party making it and though not conclusive, shifts the onus on to the maker on

the principle that "what a party himself admits to be true may reasonably be presumed to be so and until the presumption was rebutted the fact admitted must be taken to be established". This principle ordinarily would not apply in a criminal trial, but can be applied proprio vigore to an election petition.

10. The law being, thus, put in place, let us now examine the two grounds of challenge to the election of the Respondent. The first ground, covered by Issue Nos. 1 and 2, concerns corrupt practice under Section 123 (1)(A) read with Section 100 (1)(b) and Section 100 (1)(d)(ii) of the Representation of the People Act. Under Section 100 (1)(b), the election of a returned candidate is liable to be declared void if any corrupt practice has been committed by him or his election agent or any person with his or his election agent's consent. 'Bribery' is defined by Section 123 (1)(A) as a corrupt practice. Section 123(1)(A) defines "bribery" to be any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any gratification, to any person, with the object, directly or indirectly, of inducing an elector to vote or refrain from voting at an election, or as a reward to an elector for having voted or refrained from voting. **There are two incidents referred to in this behalf by the Petitioner, which, according to the Petitioner, make out a case of an offer of gratification made by the Respondent or his agent or any other person with his, or his election agent's, consent to the electors for voting at the election. The Petitioner's pleadings in this behalf are to be found in paragraphs 29 to 42 of the election petition. The first incident is of seizure of 500 envelopes containing Rs.500/- each along with election pamphlets and voters' list found in a vehicle, being a Scorpio Jeep of Mahindra Company, bearing Registration No.MH-06-AS-3963, registered in the**

name of M/s. Thakur Infraprojects Pvt. Ltd., a company owned by the family members of the Respondent and which was used by the Respondent for the purpose of election propaganda between 11 and 12 October 2014.

The Petitioner relies on materials such as the seizure panchnama, FIR bearing No.II-30/14 dated 12 October 2014 registered with Kharghar Police Station against unknown persons, the information issued by RTO, Pen, Raigad, concerning registration of the vehicle, the application of M/s. Thakur Infraprojects Pvt. Ltd. filed before Judicial Magistrate, First Class, Panvel, for return of the vehicle, etc. According to the Petitioner, the material supports his case that this vehicle belonged to M/s. Thakur Infraprojects Pvt. Ltd.; and that the shares of this company were owned by the Respondent's brother and father. Relying on the oral testimony of the Police Naik, who gave the FIR, the Police Sub-Inspector, who recorded it, and two panchas, who signed the seizure panchnama, **it is claimed that the vehicle was used by the Petitioner or his agent or any other person with his or his election agent's consent for offering gratification to the electors to vote at the election.**

11. From the evidence referred to above, it can very well be said to be established that a vehicle owned by the company — Thakur Infra Projects Pvt. Ltd. — was apprehended by the police and that 500 envelopes containing Rs.500 each were found in this vehicle. It can also be said to be established that relations of the Respondent, namely, his brother and father, held substantial shareholding in this company. **Taking an inductive leap from these established facts, even if we were to hold that this vehicle was actually used by the Respondent or his election agent or by any other person with the consent of the Respondent or his election agent for election propaganda, though there is**

no such concrete connection established at the trial, there is absolutely no case here of any offer made by the Respondent or his election agent or any person with the consent of the Respondent or his agent of any gratification to any elector. The word "offer", as a transitive verb, implies presenting or tendering for acceptance or refusal or holding out (a thing) to a person to take, if he or she so desires. As is obvious, any plea of offer implies that there are two individuals or entities, who must be present in the case of an offer. There must be an offerer, who presents or tenders or holds out (a thing) and the offeree, to whom (the thing) is presented or tendered or held out. In the absence of an offeree, there cannot be an offer. The presentation or thing tendered or held out must be to an individual. In the present case, there was clearly no offeree, to whom the presentation or tender of gratification was made or to whom any gratification was held out to take, if he or she so desired.

12. Mr. Gavnekar, learned Counsel for the Petitioner, relies on the judgment of the Supreme Court in the case of *Rajendra Prasad Jain vs. Sheel Bhindra Yajee* ((1967) 3 SCR 19). Relying on this judgment, learned Counsel submits that it cannot be said that for a tender or presentation or holding out to be an offer of gratification, there needs to be any specific amount offered as a gratification. Relying on the case of *C. Narayanswamy vs C.K. Jaffer Sharief* (1994 Supp (3) SCC 170), learned Counsel submits that the **nexus between the offer and direct or indirect inducement thereby to the elector to vote or to refrain from voting can very well be established from circumstantial evidence.** Relying on *S. Iqbal Singh vs S. Gurdas Singh* ((1976) 3 SCC 284), learned Counsel further submits that it is enough if the candidate or his agent is shown to have made a gift, offer or promise; there is no

need to establish any bargain for votes against such gift, offer or promise. It is true that, as held by these judgments, an offer need not be of any specific amount; there need not be any evidence of negotiation between the offerer and the elector; the object of offer must be shown to have a nexus with direct or indirect inducement of an electoral result through votes in favour of the candidate and this nexus can be established by circumstantial evidence; there is no need to establish in particular that there was any bargain for votes; and it is certainly enough if the candidate or his election agent or any other person with the consent of the candidate or his election agent makes such offer. But these propositions, well established as they are, are still besides the point in the present case. They do not detract from the elementary requirement of there being an offeree to whom such offer is made.

13. If we look at the allegations in the petition and evidence led at the trial in support thereof, what emerges at the highest, as mentioned above, is that a vehicle used by the Respondent for his election propaganda was found to be containing cash kept in individual envelopes along with voters' list. All that one can possibly say, though even that is in the nature of a surmise, is that this cash was meant to be offered to the voters whose names were contained in the list. There is still no offer of any cash to any individual voter or even voters generally. There may be a preparation for commission of an offence of bribery, but no actual commission. Since before the cash could be distributed, assuming that such was the intent, the vehicle was apprehended, the potential offender was stopped in his tracks and bribery was averted.

14. Even the other incident shows that two employees of Thakur Infra Projects Pvt. Ltd. were found to be carrying cash in envelopes (31 envelopes containing Rs.500/- each) along with voters' slips. **It may well be that this cash was meant to be offered to the individual voters whose names were in the slips, but it still stops short of materialising into an offer made.** So long as there is no offer, there is no offence of bribery. **Preparations for making an offer are not sufficient for entering the verdict of bribery."**

(Emphasis added)

25. As I noted, Mr Parikh must demonstrate that this judgment is not binding on me. Every principle of jurisprudence indicates otherwise. So does the doctrine of *stare decisis*. It is a decision of a bench of coordinate strength of this very High Court and, following the well-settled law of precedents,⁵ unless it be shown that this judgment has been set aside in appeal, or that it is per incuriam, that is to say it has been delivered in ignorance of some binding precedent or statute, or that it is so manifestly incorrect that I should differ from it and refer the question to a larger Bench, I am bound by it. Mr Parikh has laboured long and hard to say that Gupte J was utterly wrong; that I should not take the view that he did; and that I should, therefore, refer the question to a larger Bench. The point of distinction he seeks to make is between the official vehicle being apprehended in this particular case, i.e. Smt Chaudhary's own vehicle and the vehicle in *Patil v Thakur* case. This is not, in my view, material for two reasons. First, paragraph 2 of the *Patil v*

⁵ *National Insurance Company Ltd v Pranay Sethi & Ors*, (2017) 16 SCC 680, paragraphs 16 to 21 and 28.

Thakur decision indicates that while the vehicle may have actually been owned by a company it was the vehicle being used for election propaganda at the instance of the Respondent or his election agents. Second, the very rules Mr Parikh cites, and to which I will shortly turn, require that every candidate must nominate a vehicle as an official vehicle for campaigning use. The requirement is not that the candidate must *own* the vehicle or that it must be registered to his or her name, but merely that the candidate will use this vehicle and none other for campaigning purposes. This distinction will not assist Mr Parikh.

26. To Mr Vashi's submissions in *Patil v Thakur* that the bribery charge must be proved like a criminal charge beyond reasonable doubt,⁶ Gupte J held that the charge of bribery requires a stricter standard of proof than the ordinary preponderance of probabilities applicable to a civil case. Yet, Gupte J cautioned, an election petition was not exactly like a criminal trial. A Court hearing an election petition does not rule on the commission on an offence and decide the penalty. Gupte J referenced the Supreme Court in *S Harcharan Singh v S Sajjan Singh*⁷ to say that the purpose of this statute is to maintain the integrity of the election process but not to demand from a person alleging corruption so high a standard of proof as to render any petition virtually impossible. What is, however, required is that the petitioner must bring forward sufficiently cogent evidence to prove that the returned candidate did commit a corrupt practice. If that is done, the respondent must rebut the evidence led.

⁶ *Abdul Hussain Mir v Shamsul Huda & Anr*, (1975) 4 SCC 533.

⁷ AIR 1985 SC 236.

27. I will accept, as indeed I must, the correctness of each of the following propositions:

- (a) It is enough if the candidate or his agent is shown to have made a gift, offer or promise;
- (b) There is no need to establish any *bargain* for votes against such gift, offer or promise;
- (c) An offer need not be of any specific amount;
- (d) There need not be any evidence of negotiation between the offerer and the elector;
- (e) The nexus between the offer and the direct or indirect inducement thereby to the elector to vote or to refrain from voting can be established from circumstantial evidence.

28. But at least this minimal requirement must be proved. It is one thing to say that circumstantial evidence is enough—but circumstantial evidence of what, exactly? ‘Circumstantial evidence’ is still evidence; it is not a phrase to substitute for no evidence at all; and ‘circumstantial evidence’ is not start-to-finish conjecture. That the candidate made an offer must be proved—this cannot be surmised. The actual bargain, the amount offered, or the negotiations conducted perhaps need not be proved. But the offer must be proved, and it is only the *nexus* that can be established circumstantially, not the offer itself. As Gupte J held, there has to be *proof of an offer*. In the present case, we do not even have that.

29. In paragraphs 10 and 11 of *Patil v Thakur*, Gupte J set out the relevant provisions of the RP Act. He also looked at the pleadings. The evidence before him was that the vehicle did in fact belong to a company controlled by the respondent's relatives, or in which they had substantial shareholding. Gupte J found that there was nothing to show any offer being made by the successful respondent or his election agents or any person with his consent or his agent of any gratification to any electoral. This is not to suggest that there has to be direct evidence of the negotiation or that the offerer and offeree must, for the purposes of this Act, be caught *in flagrante delicto*. That is not what the law mandates. Yet there must be proof of an offer.

30. What did Gupte J find? In paragraph 13, he said that all the averments and evidence taken together showed, at best, that a vehicle being used by the respondent for election campaigning or propaganda was found to have cash. At the highest, Gupte J said, this was cash '*meant* to be offered'. There was still no *proof of an offer*. There may have been the preparation for bribery, but no actual bribery itself. Bribery, he said, was nipped in the bud. It was averted.

31. But there is one important distinction here that is against Mr Parikh. The vehicle in *Patil v Thakur* did not just have cash. That cash was found along with a voters' list, and that cash was carefully distributed or divided between envelopes with names endorsed on them. In other words, the facts before Gupte J were several degrees closer to the actual commission of a bribe than they are in the case before me today.

32. Gupte J described the arguments before him as needing an ‘inductive leap’. What was presented to him—inductive reasoning—was that the premise should be viewed as furnishing evidence of the truth of the conclusion. In other words, the submission was that the conclusion, based on the evidence, was at least *probable*, not certain. This should be set against the construct of deductive reasoning: if all premises are true, and logic is followed, then the conclusion is necessarily true and certain. The latter is a higher degree of certainty than the former. Gupte J found that even with inductive reasoning, a lower standard of proof, the conclusion he was asked to draw did not follow. It failed the probability standard, simply because the premise was not established. In another manner of speaking, circumstantial evidence, a standard of probability, can be applied to a conclusion, but not to the starting premise. The initial premise—that there was an offer—must be proved. On facts, Gupte J had before him a case where there were segregated envelopes with a voters’ list and names on the envelopes, and cash within. We are a very great distance from that; and, therefore, if those facts in *Patil v Thakur* were insufficient to prove bribery, then our facts, being further removed, cannot possibly be sufficient.

33. It is never enough in a situation such as this to set aside an election merely on the basis that something said to be alarming or morally unconscionable has been found to have happen. Nobody disputes the seizure of the cash. Nobody disputes the identity of the vehicle. Nobody disputes that it was Smt Chaudhary’s official vehicle. The question is whether this evidence adduced by the Petitioner is sufficient within the confines of the RP Act to set aside

the election. Mr Parikh's submission, therefore, that the existence of such a large amount and his contention that Smt Chaudhary's explanation is not credible, coupled with his further contention that the testimony of RW2 is false, lies squarely and only in the realm of conjecture, for it is even now his submission that this concatenation "establishes without any doubt that the said amount was *meant to be utilized* for the purposes of bribe to voters". And therein lies the problem. Even assuming that Mr Parikh is right in all of this, the most favourable thing that he can say about his own client's case is that the amount "was meant to be utilized". That, as Gupte J has held, is not enough.

34. The *Patil v Thakur* syllogism could be summarised like this: (1) A vehicle linked to the respondent (the successful and returned electoral candidate) was apprehended; (2) a large amount of cash was found in that vehicle (in excess of prescribed limits); (3) voters' lists were also found in the vehicle along with the cash; (4) the cash was distributed in envelopes with names on them. This, Gupte J held, did not furnish 'evidence of bribery'. In our case, we have only elements (1) and (2). We do not have any evidence akin to (3) and (4). What we do have, instead, is countervailing evidence from the Respondent, Ms Chaudhary, that (a) the cash was *not* hers; (b) the cash—all of it—was drawn by the BJP from its own account at Sion; (c) this cash was to be used for rallies across multiple constituencies, and not restricted to the Respondent's; and (d) the cash was returned to the BJP by a court, on the BJP's office bearer claiming it. This evidence is undisturbed in cross-examination, and there is nothing to link Ms Chaudhary personally to the BJP bank account. Elements (a) to (d) constitute Ms Chaudhary's powerful rebuttal of

the scanty evidence led by the Petitioner. What Mr Parikh would have me do is, therefore, necessarily to discard elements (a) to (d) above; ignore totally the absence of evidence akin to (3) and (4); and proceed to a conclusion of the commission of the offence of bribery only on (1) and (2). That puts us firmly in the realm of the purest conjecture. If more was not enough for Gupte J, then I do not see why I should have to make do with considerably less.

35. The RP Act is rooted in a Constitutional mandate regarding our electoral processes. It provides for a method *inter alia* of ensuring that the elections take place in a Constitutionally permissible manner, i.e. that they conform to Constitutional *principles*. Principles represent ideals—what should, or might, or ought to be attained—while rules are practical: they tell us whether a certain thing happened, or is legal, or not. An application of a rule usually yields a binary yes/no response. I say this because the question before me is not what the law *should* provide or what is the ideal standard of conduct, but whether a statutory rule embodied in Section 123 of the RP Act read with Section 100 is or is not violated. While it is true that we cannot apply too rigid or exacting a standard of proof, I do not believe that there is in a trial under the RP Act scope for the kind of liberalism in substitution for evidence that Mr Parikh advocates when he says that I should look to the broad intent of the RP Act to hold, on the most wispy material, that an offence of bribery is made out. That simply cannot be. In petitions of this stripe under the RP Act, a losing political actor invokes normative statutory provisions—rules, not ideals, albeit rules based on ideals—to upend the result of a Constitutionally-mandated political process. A petitioner seeks a judicial mandate upsetting a popularly

returned result. In other words, he seeks from an unelected authority—a court—a result meant to reverse the collective decision of an electorate. This is not unusual. It has been known to happen both in this country and elsewhere. Yet, given this underpinning of what it is that every election petition seeks, I believe it behoves Courts to be extremely circumspect and cautious when examining the evidence on which an election result is sought to be reversed.⁸ This, in itself, furnishes a complete answer to Mr Parikh's submission that I should, only on the basis of the cash being found in Ms Chaudhary's car, surmise that (a) the cash was hers because the container (the car) was hers; (b) the cash was *meant* or *intended* as a bribe; and (c) therefore bribery is sufficiently proved to warrant unseating her.

36. The pleadings in this case, as Mr Vashi points out, on the aspect of Section 123 of the RP Act are, after a narrative of the foregoing facts, contained in paragraph 15. The relevant portions are at pages 18 and 19. Here, the Petitioner states that this amount seized in Smt Chaudhary's vehicle

'was to be distributed by the Respondent and agents of the Respondent to the electorals of the said area to vote for the Respondent during the assembly elections as a reward to vote for the Respondent and refrain from voting to the Petitioner at the assembly elections and therefore the Respondent and her agents have committed a corrupt practice of bribery as per section 123(1) of the RP Act 1951.'

⁸ I believe I can find support for this view in the words of Krishna Iyer J in *Abdul Hussain Mir, supra*, paras 4 and 5: "The verdict at the polls wears a protective mantle in a democratic polity ... strong testimony is needed to subvert a Returning Officer's declaration."

(Emphasis added)

The question is, does this assertion satisfy the tests enunciated by Gupte J in his decision in *Patil v Thakur*? Indeed, as I have noted, the facts of that case were perhaps even more extreme on account of the seizure of a voters list and the separation of the cash into envelops. There is no such evidence in this particular case.

37. What, therefore, remains is merely a conjecture or a surmise and this is founded entirely on the admitted fact that the seized cash was found in Smt Chaudhary's official vehicle. From this, the Petitioner extrapolates that the cash was indeed hers or was obtained at her instructions and was to be used by her to bribe the voters in the constituency. But this remains at the level of the purest conjecture or surmise and entirely without proof.

38. Referencing relevant Supreme Court authorities, Gupte J accepted the proposition that it is not enough for a respondent in an Election Petition to merely deny but he must rebut the material produced against him. Smt Chaudhary has done this. It is not only a question of word against word. She has led the evidence of an office-bearer of the BJP who specifically said in cross-examination that the amount was withdrawn by the BJP Mumbai and not at the instance of Smt Chaudhary and was to be used to meet the expenses of several rallies in the six assembly constituencies in the area. There is no nexus or linkage demonstrated between Smt Chaudhary and the use of this cash and that there is, other than the vehicle, nothing to tie the cash to her.

39. Indeed, I think it would be fair to say that the entire argument by the Petitioner suffers from that well known fallacy in logic, *post hoc, ergo propter hoc*: after this, therefore, necessarily because of this. The entire argument is premised on one solitary fact, i.e. the seizure of the cash in Smt Chaudhary's car.

40. There is one other aspect to be noticed. The petition only alleges one type of electoral corrupt practice, bribery. More accurately, it alleges *possible* bribery, or *intention* to bribe, or of something *meant as a bribe*. But 'bribery' is only one of several distinct offences described in Section 123 of the RP Act. The one immediately following is 'undue influence', and its definition is instructive:

(2) "Undue influence", that is to say, 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 election agent, with the free exercise of any electoral right;

(Emphasis added)

The emphasised words 'attempt to interfere' have no corresponding equivalent in the preceding definition of bribery. There is no mention in Section 123(1) of *attempted* bribery or an *attempt at bribery* constituting the electoral offence of a corrupt electoral practice. When a legislature has used certain words in one clause or subsection, and these words are not be found in another, it must be presumed that the legislature was conscious of the omission and the difference; and that the omission is not accidental. Therefore, such a phrase—found in one subsection and absent in another—cannot

be read into the subsection from which it has been left out. This, indeed, is the result of Mr Parikh's submission, whether or not he says it in so many words; and this is precisely what the petition says, and it is all that it says: that this is *probably* a case of *attempted* bribery. Clearly, the pleadings and the evidence do not bring the case within the ambit of Section 123(1) at all. Moreover, this reading of the definitions of 'bribery' and 'undue influence', and the marked difference between them, reinforces the correctness of Gupte J's view in *Patil v Thakur*.

41. Indeed this is the principal submission by Mr Vashi. In oral arguments as also in his notes of written arguments, he has quite clearly stated that I cannot distinguish the present case on law, or, in his submission, sufficiently on facts from the case before Gupte J. I believe he is correct. As to the question of electoral practice, Mr Vashi also points out that a suggestion was made in Question 38 to Smt Chaudhary in cross-examination that she had obtained the amount for distribution to voters. She denied this. There is, other than this suggestion, no pleading, let alone proof, of distribution of money or offer of money to voters to vote for the Respondent. The pleading, as we have, is that this money having been found in her car it was meant for use by her for distribution to her voters. That is a conclusion that I must draw. All evidence to the contrary adduced by the Respondent is merely to be discarded as being "false". In an Election Petition that is never enough.

42. There is another argument on interpretation canvassed by Mr Parikh. He argues that the RP Act must be strictly construed and a liberal interpretation is to be avoided if that liberal interpretation

renders the statutory purpose a nullity. Indeed, the correct interpretation is exactly the other way around. Strictly construed, as Gupte J has done, no offence is made out and it is the Petitioner, Mr Parikh's client, who would have me take a more liberal approach to what constitutes a specific electoral offence of a corrupt practice. It is he who would have me hold that an amount "*meant* to be utilized" is sufficient proof of bribery under Section 123 of the RP Act. The argument, therefore, more or less defeats itself on the principle that Mr Parikh himself propounds.

43. I am unable to accept his argument that the explanation Smt Chaudhary provides has been proved to be false. Again, the argument proceeds on the footing that the cash "*must have been*" drawn from various undisclosed sources. This returns us to the quite impermissible domain of conjecture and surmise substituting for proof.

44. There is nothing to distance this case from the one before Gupte J.

45. This takes us to the remaining issue under Section 100 of the RP Act. It is true that I have framed such an issue, and that both sides have in fact addressed me on it. The Petition does not take this as a substantive separate ground for setting aside Ms Chaudhary's election.

46. The argument from Mr Parikh appears to be that the quite voluminous set of instructions and directives issued by the Election

Commission prohibited Smt Chaudhary from using her official vehicle for other purpose *except* campaigning during the elections. Specifically, Mr Parikh emphasized portions from the Compendium of Instructions on Election Expenditure Monitoring issued by the Election Commission of India. The first is an order of 21st March 2013, Annexure 73 of Part II of this Compendium. This is the *Standard Operating Procedure for Flying Squads and Static Surveillance Teams*, and the referenced letter or order of 21st March 2013 is No.76/Instructions/2013/EEPS/Vol.I. Item 7 under the 'Static Surveillance Teams' sections says:

7. During checking, if any cash exceeding Rs.50,000/- is found in a vehicle carrying a candidate, his agent, or party workers or carrying posters or election materials or any drugs, liquor, arms or gift items which are valued at more than Rs.10,000/-, likely to be used for inducement of electors or any other illicit articles are found in a vehicle, shall be subject to seizure. The whole event of checking and seizure is to be videographed by a video team, which will submit the copy of the Video CD to the Returning Officer.

Then Mr Parikh cites the Commission letter No.76/Instructions/2013/EEPS/Vol. IV dated 15th October 2013 regarding opening of a separate bank account for election expenditure by the candidates. He invokes clauses (v) and (vii) of this letter:

- (v) The candidate(s) shall incur his/her election expenses by crossed account payee cheque, or draft, or by RTGS/NEFT from the bank account opened for election

purpose. However, if the amount payable by the candidate(s) to any person/entity, for any item of expenditure, does not exceed Rs. 20,000/- during the entire process of election, then such expenditure can be incurred in cash, by withdrawing it from the said bank account.

(vii) The candidate(s) is also required to ensure that neither their agents and their followers nor they themselves carry cash exceeding Rs.50,000/- in the constituency during the election process, as per direction of the Hon'ble Supreme Court in case of *Election Commission v Bhagyoday Jan Parishad & Ors* (SLP No. CC 20906/2012).

47. The argument is misconceived. The first, regarding cash in a vehicle, is not a prohibition of the kind the Petitioner advocates. It only sets out the procedure to be followed by the SST should any such cash be found. The restriction Mr Parikh cites is, in any case, from a candidate using a vehicle *other* than the official vehicle for campaigning (and a rationale, if one was needed, may be found even in Section 123(5) of the RP Act). The restriction is not that the official vehicle cannot be used for non-election-related activities at all. That would be too extreme a reading of this requirement. This seizure, as a process, does not itself constitute the offence to be proved under Section 123(1). This is only the gathering of some evidence; but whether that evidence satisfies the legal requirements is another matter. If the Petitioner hopes to succeed on the ground under Section 100(1)(d)(iv), the Petitioner must show that the rule in question about use of the vehicle is completely unambiguous. It must, therefore, be a rule that says that once a candidate has registered a vehicle: (i) only the candidate can use it; (ii) it can only

be used for electioneering and nothing else; and (iii) that the candidate cannot allow it to be used for any non-electioneering purpose. But that is not what the rule says at all. The rule only says, and for good reason, that no candidate is allowed to use a vehicle other than the official one for electioneering. The intention is obviously to prevent the candidates from deriving some sort of indirect benefit by being allowed to use supporters' vehicles to conduct electioneering.

48. As to the instructions regarding bank accounts, clause (v) has no application at all, for the cash in question was not drawn from Ms Chaudhary's account. During the cross-examination, a fair amount of time was spent on asking RW2 whether there were receipts for the expenses made on the rallies and so on. That is entirely irrelevant. There are indeed restrictions on the amount of cash (Rs. 50,000/-) that a candidate can use and a requirement that all payments must be by an officially recorded bank transfer or cheque, but this line of cross-examination confuses distinct issues. The Petition is not directed against the BJP generally or even against the BJP Mumbai for failing to obtain receipts and so on. The restriction applies to candidates. The BJP's actions in obtaining or not obtaining receipts have nothing at all to do with Smt Chaudhary's expenses from her officially designated account. These are two entirely distinct things. It is never enough, for the reasons I have already indicated, to merely throw up some clouds of dust and on that basis to hope to reverse a Constitutionally-mandated political electoral process, or to seek a judicial reversal of a returned mandate. That is not the scope or ambit of the RP Act at all.

49. Mr Parikh places particular emphasis on the panchanama of the seized notes and argued that the cover slips were discrepant. But what of that? Does it satisfy the test of Section 123? There is also the argument that the money withdrawn from the Jan Kalyan Bank at Sion was a false ploy to mislead the investigation authorities. This is not a plea in the Petition. I am unable to understand what this is supposed to mean. In fact, the argument necessarily increases the burden on the Petitioner because the Petitioner must then show that the money seized in the car was indeed the Respondent's, and that she can be identified as the source of it. Mr Parikh's argument that she has merely denied all knowledge of it and that this is insufficient is not one that commends itself. He argues that it is for Smt Chaudhary to provide a credible explanation about the supply of money. If, therefore, Smt Chaudhary is found to have provided an adequate explanation about the use of her official car, as she has done, then that obviously answers both questions. Mr Parikh would have it that this explanation is false. I do not see why. Her testimony, and that of her witnesses, was not shaken in cross-examination. Confronted with this, Mr Parikh is forced to fall back on the argument that Smt Chaudhary could not have allowed her car to be so used. But that again conflicts two distinct arguments, i.e. what she actually did and what she could have done. The fact that she allowed her car to be used when she had no need for it for electioneering is established and is not shaken in cross. That there was a prohibition on such use is not shown.

50. The only question is whether Kadam's presence in the car at the time when Rs. 50 lakhs was caught constitutes such an electoral offence in and of itself. Clearly it does not. Clause (vii) is a

procedural requirement, and the words used are ‘shall ensure’. This is, therefore, a standard to be followed during the election. The question is whether this satisfies the requirements of Section 100(1)(d)(iv) of the RP Act, and, at the cost of repetition, I will reproduce Sections 100(1) and (2) here, this time with the necessary emphasis:

“100. Grounds for declaring election to be void.—

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

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963; or

(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) that any nomination has been improperly rejected; or

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(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.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void.

(Emphasis added)

51. Now this tells us that Section 100(1)(d)(iv) does not operate as an automatic disqualification. There is the subjective satisfaction of a Court that there is indeed a non-compliance with any Rule and, moreover, that this violation *materially affected the result of the election*. It is, therefore, not enough to only show an infraction; there must be evidence to show that this infraction materially affected the election result. In the facts of this case, this returns us immediately to the Section 123 argument. The presence of the cash and Kadam both in the car, even if held to be an infraction of a Commission directive or rule, must be shown to have materially affected the election result; i.e. it must be shown that this cash, through Kadam's hands, altered the final result. The only manner in which that can be shown is, of course, to prove the offence of bribery under Section 123(1).

52. The evidence led in the matter indicates quite emphatically that at the relevant time, on 9th October 2014, Ms Chaudhary was not in need of the vehicle for electioneering purposes at all. She says that her PA asked if he might use the vehicle. Not being in any immediate need of it, she said yes. Whether she knew or did not know the purpose is entirely irrelevant, because the argument is simply that her vehicle 'could not have been used by anybody else for any other purpose'. As we have seen that is not even a reasonable or a fair reading of the relevant instruction or guideline.

53. Mr Vashi is correct in saying that the Petition is constantly shape-shifting. It begins by saying that the nomination was wrongly accepted. That case is abandoned when the Petitioner himself agrees that there was nothing ambiguous about the Respondent's

affidavit and the disclosures in it. Then the argument pressed under Section 123 is of a corrupt practice, i.e. attempted, or possible, or likely, or probable, bribery. I am asked to depart from Gupte J's view on a question of law wholly unmindful of every principle of binding precedent. Unable to satisfy the Section 123 requirements, and confronted with the inviolability of the *stare decisis* principle, the petitioner then falls back on arguments under Section 100 of the RP Act and a violation of the Election Commission rules.

54. In this view of the matter, Issues Nos. 5 and 6 must be answered in the negative and against the Petitioner. The result of this, inevitably, is that the Petition, being without merit, must fail.

H. FINAL ORDER

55. The Election Petition is dismissed under Section 98(a) of the RP Act. There will be no order as to costs.

56. An authenticated copy of this order and judgment will be forwarded immediately by the Prothonotary & Senior Master to the Election Commission of India and to the Speaker of the Maharashtra Legislative Assembly, as required by Rule 19 of Appendix II to the Bombay High Court (Original Side) Rules, and Section 103 of the RP Act.

(G.S. PATEL, J.)

SECTIONS 100 AND 123 OF THE RP ACT**"100. Grounds for declaring election to be void.—**

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

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963; or

(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) that any nomination has been improperly rejected; or

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(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.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void.

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

(1) “Bribery”, that is to say,—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the objects, directly or indirectly, of inducing—

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election; or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from

voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.—For the purposes of this clause the term “gratification” is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

(2) “Undue influence”, that is to say, 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 election agent, with the free exercise of any electoral right;

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

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

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

(3-A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(3-B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the

election of that candidate or for prejudicially affecting the election of any candidate.

Explanation.— For the purposes of this clause, “Sati” and “glorification” in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987.

(4) The publication by a candidate or his agent or by any other person, with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate’s election.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance or any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under Section 25 or place fixed under sub-section (1) of Section 29 for the poll:

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

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

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

(6) The incurring or authorizing of expenditure in contravention of Section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent, or by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate’s election, from any person whether or not in the service of the Government and belongings to any of the following classes, namely:—

- (a) Gazetted Officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed forces of the Union;
- (d) members of the police forces;
- (e) excise officers;
- (f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to

collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and

(g) such other class of persons in the service of the Government as may be prescribed;

(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections:

Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangement, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.

(8) Booth capturing by a candidate or his agent or other person.

Explanation.—(1) In this section the expression “agent” includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.

(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof—

of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service, such person ceased to be in such service with effect from the said date.

(4) For the purposes of clause (8), "booth capturing" shall have the same meaning as in section 135-A."