

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 16TH DAY OF FEBRUARY 2021

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

ELP. No. 5 of 2009
and
OA.No.18 OF 2013

ELP NO.5 OF 2009

Thiru.R.S. Raja Kannappan,
S/o. Samia Pillai,
No.32/17, Pudhur Road Main,
Sivagangai District. ... Petitioner

-VS-

1. Thiru. P. Chidambaram,
S/o. Palaniappan,
No.87/1-54, Mothilal Street,
Kandanur, Karaikudi Taluk,
Sivagangai District.
2. Thiru. M.G. Devar,
S/o. Mahalinga Devar,
No.3/102, Karuppasamy Koil Street,
Villoor Post, Villoor.
3. Thiru. K.Sakthivel,
S/o. Karuppaiah,
No.82/1, 5th Street,
Padmanabha Nagar,
Adyar, Chennai.
4. Smt. Barwatha Regina Papa,
W/o. Sundar,
No.2/868, Vanavil,
Vaiduriyam Veedhi,

Navarathina Nagar,
Karaikudi.

5. Thiru. R.A. Ramasamy,
S/o. Andi,
No.75/54, Jawaharlal Puram,
Thirumalpuram Post, Madurai.
6. Thiru. J. Abupacker Sithik,
S/o. Mohamed Jalaluddin,
No.3, Meenakshi Amman Koil Street,
Karaikudi.
7. Thiru. Aru. Alagappan,
S/o. Arumugham,
No.3, Meenakshi Amman Koil Street,
Keezha Mel Street, Karaikudi.
8. Thiru. P.L. Alagappan,
S/o. Palaniappan,
No.102, Rajaji Street,
O. Siruvayal, Karaikudi Taluk.
9. Thiru.V.S.K.S. Anandhan,
S/o. Sonai Muthu,
No.43, Periya Unjinai,
Devakottai Taluk.
10. Thiru. K. Samudram Kalaimani,
S/o. Ganapathy Servai, Nadu Samudhiram,
Salaigramam, Illayankudi Taluk,
Sivagangai District.
11. Thiru. K. Karmegam,
S/o. Karuppaiah,
No.146, Peria Kannanoor,
Kannanoor Post, Sivagangai Taluk,
Sivagangai District.
12. Thiru. P. Gunasekaran,
S/o. Pappu,

No.8/1/133, Muzhuveeran Street,
Singampunari, Thirupathur Taluk,
Sivagangai District.

13. Thiru. S. Chidambaram,
No.4/148, N.A. Periakottai,
Sivagangai Taluk, Sivagangai District.
14. Thiru.M. Arimalam Thiyaagi Subramanian Mutharaiyar,
S/o. Muthukaruppan,
No.179/71, Meenakshipuram Road,
Arimalam Post, Thirumayam Taluk,
Pudukkottai District.
15. Thiru. M. Thoothai Selvam,
S/o. Marutha Muthu,
No.3, Bungalow Street,
Thirupuvanam, Manamadurai Taluk,
Sivagangai District.
16. Thiru. P. Malairaj,
S/o. Balusamy,
No.9/2, Captain Lakshmi Street,
Nattarasan Kottai, Sivagangai Tk.,
Sivagangai District.
17. Thiru. A. Radhakrishnan,
S/o. Adaikalam,
No.28/49/2, Gandhi Nagar First Street,
Pudukkottai, Pudukkottai District.
18. Thiru. S. Rajagopal,
S/o. Shanmuga Devar,
No.299, Agraharam, Karaiyoorgramam,
Thirupathur Taluk, Sivagangai District.
19. Thiru.R. Rajiv,
S/o. Radhakrishnan,
No.106, Mamarathu Street,
Therbhogi Village,
Ramanathapuram District.

20. The Returning Officer,
Sivagangai Parliamentary Constituency,
Sivaganga. ... Respondents / Respondents

* R20 struck off from Respondents on 08.12.2013 in OA.No.911 of 2012 in ELP No.5 of 2009.

This Election Petition praying that this Hon'ble Court be pleased to

(i) Declare the election of the Returned candidate, namely, Thiru P.Chidambaram, the 1st respondent herein from No.31 Sivaganga parliamentary Constituency, (Tamilnadu, India) in the election held on 13.5.2009 (in which results have been decalred on 16.5.2009) as void.

(ii) Order re-securing the voting results recorded in the Electronic Voting Machine used for the counting in No.31, Sivaganga Parliamentary Constituency, (Tamilnadu, India) in the election held on 13.5.2009.

(iii) Order recounting of the votes polled in the election to No.31, sivaganga parliamentary Constituency, (Tamilnadu, India) held on 13.5.2009 (in which results have been declared on 16.5.2009).

(iv) Order recounting of the votes polled in the Alangudi Assembly segment of No.31, Sivaganga parliamentary Constituency in the election held on 13.5.2009 (in which results have been declared on 16.5.2009).

(v) Declare the Petitioner as duly elected from No.31, Sivaganga Parliamentary Constituency, (Tamilnadu, India) in the election held on 13.5.2009 (in which results have been declared on 16.5.2009).

(vi) Direct the First Respondent to pay the costs of the petition.

OA.NO.18 OF 2013

P. Chidambaram,
S/o. Palaniappan,
No.87/1-54, Mothilal Street,
Kandanur, Karaikudi Taluk,
Sivagangai District.

....Applicant/1st Respondent

-Vs-

1. Thiru R.S. Raja Kannappan,
S/o. Samia Pillai,
No.32/17, Pudhur Road – Main,
Sivaganga District.Respondent/Petitioner
2. Thiru. M.G. Devar,
S/o. Mahalinga Devar,
No.3/102, Karuppasamy Koil Street,
Villoor Post, Villoor.
3. Thiru. K.Sakthivel,
S/o. Karuppaiah,
No.82/1,5th Street,
Padmanabha Nagar,
Adyar, Chennai.
4. Smt. Barwatha Regina Papa,
W/o. Sundar,
No.2/868, Vanavil,
Vaiduriyam Veedhi,
Navarathina Nagar,
Karaikudi.
5. Thiru. R.A. Ramasamy,
S/o. Andi,
No.75/54, Jawaharlal Puram,
Thirumalpuram Post, Madurai.
6. Thiru. J. Abupacker Sithik,
S/o. Mohamed Jalaluddin,

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S/o. Sonai Muthu,
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S/o. Ganapathy Servai, Nadu Samudhiram,
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11. Thiru. K. Karmegam,
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No.146, Peria Kannanoor,
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14. Thiru.M. Arimalam Thiyagi Subramanian Mutharaiyar,
S/o. Muthukaruppan,

No.179/71, Meenakshipuram Road,
Arimalam Post, Thirumayam Taluk,
Pudukkottai District.

15. Thiru. M. Thoothai Selvam,
S/o. Marutha Muthu,
No.3, Bungalow Street,
Thirupuvanam, Manamadurai Taluk,
Sivagangai District.

16. Thiru. P. Malairaj,
S/o. Balusamy,
No.9/2, Captain Lakshmi Street,
Nattarasan Kottai, Sivagangai Tk.,
Sivagangai District.

17. Thiru. A. Radhakrishnan,
S/o. Adaikalam,
No.28/49/2, Gandhi Nagar First Street,
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18. Thiru. S. Rajagopal,
S/o. Shanmuga Devar,
No.299, Agraharam, Karaiyoorgramam,
Thirupathur Taluk, Sivagangai District.

19. Thiru.R. Rajiv,
S/o. Radhakrishnan,
No.106, Mamarathu Street,
Therbhogi Village,
Ramanathapuram District.

20. The Returning Officer,
Sivagangai Parliamentary Constituency,
Sivaganga.

... Respondents / Respondents

This Original Application praying that this Hon'ble Court be pleased to

dismiss the Election Petition.

The above Election Petition having been heard on 12/10/2020 in the presence of Mr. Rajendra Kumar for Mr. G. Saravana Kumar, advocate for the Election Petitioner/1st Respondent, Mr. G. Masilamani and Mr. R. Thiagarajan learned Senior Counsels for Mr. T. Sathiyamoorthy advocate for the 1st respondent, Mr. D. Ashok Kumar advocate for the 2nd respondent and Mr. G. Murugendran advocate for the 19th respondent herein and the respondents 3 to 18 not appearing in person or by advocate and upon reading the Petition, Affidavit, Reply affidavit of the Election Petitioner, Counter affidavit, Reply Statement to the counter affidavit of the 19th respondent and Rejoinder of the P. Chidambaram to the reply of the Election petitioner and the counter affidavit of the 19th respondent filed herein and upon pursuing the Evidence adduced herein and the Exhibits marked thereon and this court having observed that the pleadings do not indicate the errors made either with reference to the number of ballot papers, table or round, in which, mistake occurred. Excepting the vague statements, the Election Petitioner has not given any testimony through witness and this court having stood over for consideration till this day and coming on this before this Madurai Bench of Madras High court through video conferencing for orders in the presence of the above said advocates and

it is ordered as follows:-

1. That the Election Petition No.5 of 2009 be and is hereby dismissed.
2. That the Original Application No.18 of 2013 be and is hereby closed.
3. That the parties shall bear their own costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
16TH DAY OF FEBRUARY 2021.

SD./-

ASSISTANT REGISTRAR

Original Side – II

//CERTIFIED TO BE TRUE COPY//

DATED THIS THE DAY OF 2021

COURT OFFICER(O.S)

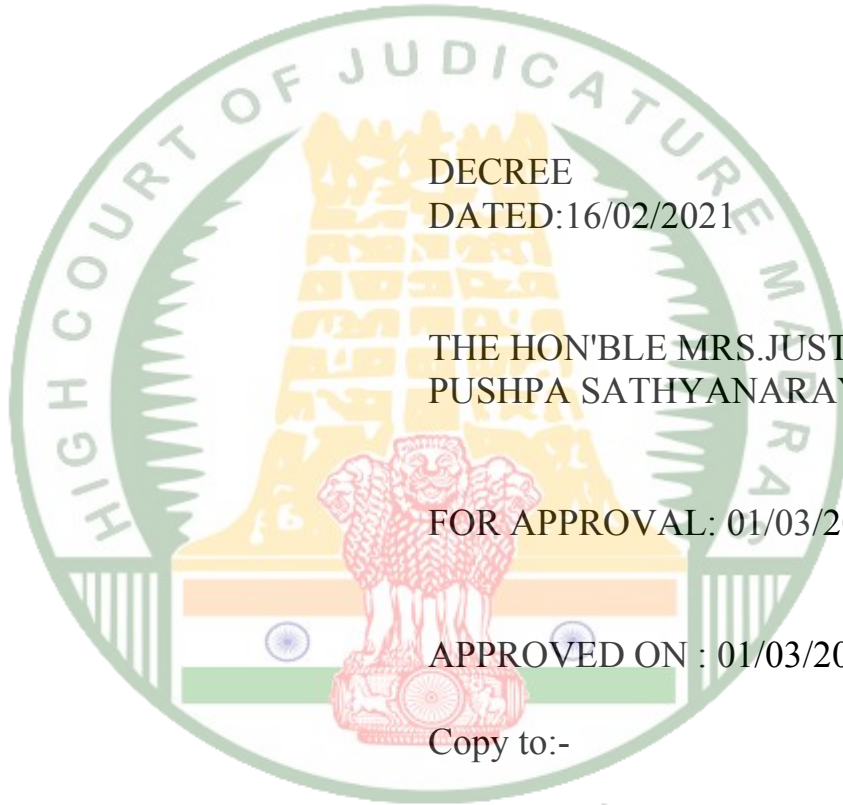
From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

सत्यमेव जयते

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ELP.NO.5 OF 2009
and
OA.NO.18 of 2013



1. The Election Commission of India,
Nirvachan sadan, Ashoka Road,
New Delhi – 110 001.

2. The Returning Officer ,
Sivagangai Parliamentary
Constituency,
Sivaganga.

3. The Assistant Registrar,
Original Side,
Madras High Court,
Chennai – 600 104.

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(v) Declare the Petitioner as duly elected from No.31, Sivaganga Parliamentary Constituency, (Tamilnadu, India) in the election held on

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 20. The Returning Officer,
Sivagangai Parliamentary Constituency,
Sivaganga.
- ... Respondents / Respondents

dismiss the Election Petition.

The above Election Petition having been heard on 12/10/2020 in the presence of Mr. Rajendra Kumar for Mr. G. Saravana Kumar, advocate for the Election Petitioner/1st Respondent, Mr. G. Masilamani and Mr.R.Thiagarajan learned Senior Counsels for Mr. T. Sathiyamoorthy advocate for the 1st respondent, Mr. D. Ashok Kumar advocate for the 2nd respondent and Mr. G. Murugendran advocate for the 19th respondent herein and the respondents 3 to 18 not appearing in person or by advocate and upon reading the Petition, Affidavit, Reply affidavit of the Election Petitioner, Counter affidavit, Reply Statement to the counter affidavit of the 19th respondent and Rejoinder of the P. Chidambaram to the reply of the Election petitioner and the counter affidavit of the 19th respondent filed herein and upon pursuing the Evidence adduced herein and the Exhibits marked thereon and this court having stood over for consideration till this day and coming on this before this Madurai Bench of Madras High court through video conferencing for orders in the presence of the above said advocates and

The Election to No.31, Sivaganga Parliamentary Constituency for the 15th Lok Sabha held on 13.05.2009 is the subject matter of this Election Petition.

2. The relief sought for by the Election Petitioner are to :

- (a) declare the election of the returned candidate, namely, Thiru.P.Chidambaram, the first respondent herein from No.31, Sivaganga Parliamentary Constituency, (Tamilnadu, India) in the election held on 13.05.2009 (in which results have been declared on 16.05.2009) as *void* ;
- (b) order re-securing the voting results recorded in the Electronic Voting Machine used for the counting in No.31, Sivaganga Parliamentary Constituency, (Tamilnadu, India) in the election held on 13.05.2009 ;
- (c) order recounting of the votes polled in the election to No.31, Sivaganga Parliamentary Constituency, (Tamilnadu, India) in the election held on 13.05.2009 (in which results have been declared on 16.05.2009) ;
- (d) order recounting of the votes polled in the Alangudi Assembly segment of No.31, Sivaganga Parliamentary Constituency, (Tamilnadu, India) in the election held on 13.05.2009 (in which results have been declared on 16.05.2009) ;
- (e) declare the petitioner as duly elected from No.31, Sivaganga Parliamentary Constituency, (Tamilnadu, India) in the

election held on 13.05.2009 (in which results have been declared on 16.05.2009) ;

(f) direct the first respondent to pay the costs of the petition ;
and

(g) grant such other reliefs as this Court may deem fit and proper.

3. The facts of the case, as has been culled out from the election petition, in a nutshell, run infra :

3.1. The Election Commission of India issued Notifications charting out the Election Schedule for the 15th Lok Sabha, as per which, for the State of Tamil Nadu, filing of nominations was allowed between 20.04.2009 and 24.04.2009, scrutiny of which was to be held on 27.04.2009 ; the date of election was scheduled on 13.05.2009, while counting was to be held on 16.09.2009. The District Collector of Sivaganga District, who was the Returning Officer for No.31 Sivaganga Parliamentary Constituency, after scrutiny accepted the nomination papers of the Election Petitioner and the respondents herein.

3.2. The petitioner was the candidate of the All India Anna Dravida Munnetra Kazhagam (AIADMK) party and thus, contested in Two Leaves Symbol, while the first respondent, being the official candidate of the Indian National Congress (INC) party, contested in Hand Symbol, having nominated by his party on 22.04.2009. One

Mr.S.Kumaravel was the Election Agent of the petitioner, while one Mr.Karuppiah was the Election Agent of the first respondent.

3.3. According to the petitioner, the first respondent was the sitting Member of the Parliament from the same constituency for the 14th Lok Sabha and was the Union Home Minister.

3.4. The Election Petitioner submitted that the Returning Officer declared that the first respondent secured 3,34,348 votes, while the petitioner said to have been secured 3,30,994 votes and thus, the first respondent said to have been elected by a margin of 3,354 votes.

3.5. At this juncture, it is to be stated that the Election Petitioner made some allegations against the first respondent and his son. However, those paragraphs were struck off by this Court on 07.06.2012 in A.No.3428 of 2011, which was taken out by the first respondent under Order 6 Rule 16 and Order 7 Rule 11.

3.6. The petitioner alleged in paragraph 6 of the Election Petition that the first respondent, who was also the Union Finance Minister, has thorough knowledge about the micro financing and thus, one of the Women Self-Help Groups (SHGs) in the said Constituency, namely, Annai Kasthuribai Thondu Niruvanam, which has about 4000 to 5000 women as its members, was roped in for illegally funding to its members into their bank accounts for casting votes for the first respondent. The first respondent participated in a meeting organized by the said SHG on 12.04.2009. Since complaints had been thronging from all quarters about this malpractice, including the one sent by the Election Petitioner on 23.04.2009 to the Chief Electoral Officer, Chennai, the strategy of the first respondent was changed to giving

away tokens to the ring leaders of these SHGs for distribution among the members, who can produce it to receive Rs.500/- per woman member. The leader of the SHG was given Rs.20 lakhs for this purpose on 03.05.2009 at Kandanur by the son of the first respondent, according to the petitioner. When one another leader of another SHG called Mrs.Andal was offered money, she turned down the same and she, in turn, informed the same to the Election Petitioner only after counting of votes.

3.7. In paragraph 7 of the Election Petition, the petitioner narrated about the alleged distribution of money to the voters on 23.04.2009 around 11 p.m., near Pechiamman Temple at Ilayangudi Taluk, Vadakkusalaigramam by one Mr.Malayasia Pandian and 23 others by arriving in four cars, on behalf of the first respondent. The Election Petitioner stated that the witnesses belonging to his party had given a complaint of even date to police and election officials, who seized the money. The Election Petitioner also said to have given a complaint to the Chief Electoral Officer, Chennai. It was widely reported in print and electronic media. But the complaints and the seizure were burked at the instance of the first respondent, according to the petitioner.

3.8. Similar narration was made in paragraph 9 about the distribution of money to the voters by around 40 women cadres of the INC party, who came by two vans at Amaravathipudhur village in Karaikudi Taluk and went to door to door and gave Rs.500/- kept

neatly in a fancy leather bag on 27.04.2009 at about 10.00 a.m., on behalf of the first respondent. It is stated that one Mr.O.L.Chelliah of AIADMK party, when campaigning on that day near Amaravathipudhur found that and based on the information given by him, the police Inspector Mr.Sivakumar came to the scene. It is presumably stated by Mr.O.L.Chelliah that the Inspector was influenced by the first respondent not to register the said complaint.

3.9. The Election Petitioner stated in paragraph 10 that on 02.05.2009 around 10.00 a.m., one Rajendran, who runs a Youth Social Service Organization in Kothari village, and others distributed money to women voters on the instructions of the first respondent and the complaint of even date to the Chief Electoral Officer, Chennai, also availed no action.

3.10. The petitioner submitted in paragraph 11 that on 06.05.2009 at about 8.00 a.m., when Mr.Chelliah was campaigning in Sakkavayal village, it was found that five persons arrived in a red colour car bearing registration No.TN 30 AD 1972 and distributed money in covers for casting vote to the first respondent, which were kept in the car. Mr.Chelliah gave a complaint to Sakkotai Police and the Sub Inspector attached to that station registered a case in Crime No.151/2009 for the offence under Section 171(B) IPC and seized the car with cash. It is also alleged that the first respondent having come to know about this engineered a false complaint from the owner of the car as if, when he parked the car in the village and away from the car,

the window was broken and some gold jewels were stolen. The said complaint which was taken on file in Crime No.152/2009 for the offences under Sections 147, 188, 427 and 379(NP) IPC only due to the misuse of the official position by the first respondent.

3.11. In paragraph 12 of the Election Petition, the Election Petitioner stated about incident that took place on 12.05.2009 around 7.30 p.m., in Rajagambeeram Village, Manamadurai Taluk in the subject Constituency. It is claimed by the petitioner that one Mr.Anbhazhagan, who was the former Member of Parliament and also the State Legislature and his prominent campaigner got an information that the son of the first respondent was distributing cash to voters and immediately, he along with other party cadres rushed to the spot around 8.00 p.m., where, it was found that the son of the first respondent and 24 other known and 10 unknown persons to the said Anbhazhagan were distributing cash to voters keeping them in two cars bearing registration Nos. TN 07 AU 9788 (Scorpio) and TN 45 AN 1000. On seeing Anbhazhagan, the son of the first respondent brutally attacked him with a stick and thereby caused grievous injuries on his forehead and nose. Some more people from the first respondent's group also attacked him. It is further alleged by the petitioner that Anbhazhagan was rescued by his party functionaries and they went to Manamadurai Police Station to lodge a complaint, but, the Inspector of Police one Ramesh refused to take their complaint and also to send the injured to the hospital with police memo, which was only at the

instance of the first respondent. The petitioner went on to state that the first respondent came to the said police station at about 8.30 p.m. with his supporters and exhorted the police to arrest Anbhazhagan. Hence, Anbhazhagan was taken to Meenakshi Mission Hospital in Madurai for specialized treatment, where, he was admitted as an in-patient in the Intensive Care Unit (ICU) and only after receipt of the information given by the said hospital, it was construed as a Medico-Legal case. It is also claimed by the petitioner that based on the undue influence of the first respondent by personally coming over the Manamadurai Police Station, a case in Crime No.317/2009 for the offences under Sections 147, 148, 323, 324 and 506(ii) IPC and under Section 3 of the Tamil Nadu Public Properties Damage and Loss Act was registered against the AIADMK partymen including Mr.Anbhazhagan on the false complaint given by the Driver of the son of the first respondent. According to the petitioner, since 13.05.2009 was the election day, there should be no campaign on 12.05.2009, but the first respondent sent his son and others with money, which was meant for distribution to voters, i.e., procuring votes. A private complaint was filed by Mr.Anbhazhagan on the file of the Judicial Magistrate, Manamadurai, in CrI.M.P.No.8960 of 2009.

3.12. Besides the above instances of corrupt practices, the election petitioner has also raised yet another issue of irregularities in counting of votes and declaration of results. It is stated that the

Sivaganga Parliamentary Constituency comprises of six Assembly

segments, namely, Alangudi, Thirumayam, Karaikudi, Tirupathur, Sivagangai and Manamadurai. The counting of votes was scheduled to be held on 16.05.2009. The postal ballots were first counted before the Returning Officer, wherein, the petitioner had secured 150 votes and the first respondent secured 653 votes. Later, around 12 p.m., the petitioner claims to have received information from the media that he was generally leading over all the candidates and he was also set to win in the elections as per the news reports. The reliance was placed on one of the online editions of a news daily that the petitioner was elected by a margin of 3,552 votes. According to the petitioner, in most of the counting halls, the counting was over even by 12:30 p.m. However, the Returning Officer had not issued the necessary certificate. Upon enquiry, the Returning Officer had stated that he was yet to receive formal signed official reports from the Assistant Returning Officers. In the meantime, the Indian National Congress led United Progressive Alliance had won the elections and that they were to form the next Government. Then the petitioner observed that there is a peculiar feature, namely, that the Returning Officer's board was blank and it did not display the round-wise results, as mandated by the rules. Even the pressmen were not allowed to come inside the hall to update the results round-wise. The normal procedure or practice of writing the round-wise declaration on the notice board and publicly announce the round-wise results through Public Address System was also not done. When the same was questioned, the Returning Officer

gave an evasive reply. The Election Tahsildar also gave a specious explanation that it was by mistake the declaration through Public Announcement System was not arranged for.

3.13. Around 4.30 p.m. on that day, i.e., on 16.05.2009, the election results all over the country were declared, but strangely, in the Sivaganga constituency, it was only stated that the first respondent was leading. According to the petitioner, during that time the manipulation in the counting of votes was going on. As there was a confusion, the petitioner directed his Election Agent to pursue the request for recount and accordingly, the Election Agent Mr.Kumaravel pressed for recount with substantial points. The Returning Officer acknowledged the complaint of Mr.Kumaravel and said the same would be placed before the Election Commission and that he will act as per the orders of the Election Commission. However, the Returning Officer without passing any order on the petition for recount, straight away declared the first respondent as elected and handed over the certificate to his agent Mr.Karuppiiah around 8:30 p.m. in the night as if, the first respondent had won the election by a margin of 3,354 votes. It is the allegation of the petitioner that till the date of filing of the election petition, no order was passed by the Returning Officer on the petition filed for recount on 16.05.2009.

3.14. The petitioner further alleged that the first respondent, who was the Union Home minister, in connivance with the Returning Officer and other election officials had manipulated the votes counted

in the 11th, 12th, 13th, 14th and 15th rounds in Alangudi assembly segment and added the votes secured by the petitioner to the count of the first respondent. But for the above said manipulation, the petitioner would have been declared as "elected" by a margin of 7,034 votes. The declaration of the results only at 8:30 p.m. was the reason to have enough time for manipulating the results. The prolonged counting process deliberately without any just and sufficient cause vitiates the election and hence, it has to be declared as void under Section 100(1)(d)(iii) and (iv) of the RP Act and Rule 60 of the Conduct of Election Rules, 1961.

3.15. Thus, the petitioner had filed the election petition on the grounds of corrupt practices committed by the first respondent and the infirmities in the counting process and seeks declaration of the election as *void* and other reliefs.

4. The election petition is resisted by the first respondent contending that the petition itself is not in accordance with the provisions of Part VI of the RP Act. The election petition did not satisfy the requirements of Sections 80, 83 and 100 of the RP Act. The allegation that the first respondent took part in the meeting organised by the SHG Annai Kasturibhai Thondu Niruvanam on 12.04.2009 is denied, as the first respondent did not have any knowledge about the above said establishment. Besides, on 12.04.2009, the Election Commission had not issued the notification of elections and the first respondent was not a candidate as on 12.04.2009. Hence, according

to the first respondent, the allegation relating to 12.04.2009 incident is totally irrelevant to this election petition.

4.1. The allegation of collecting the bank account details of women SHG in order to park illegal funds in their accounts for purchasing the votes of the members is also denied by the first respondent, as the said allegation is purely speculative and it does not constitute the allegation of corrupt practice. The first respondent also denied knowledge about the complaint dated 23.04.2009, which also does not contain any specific corrupt practice. The first respondent also denied the allegations of giving money to the leaders of SHGs, without any details such as date, time, place, etc., for procuring votes by his son and also categorically stated that his son was not his Election Agent and he never instructed anyone in particular, his agents to distribute money to anyone.

4.2. According to the first respondent, the allegations of bribe given at various places without naming who were bribed for voting is nothing, but a concocted story and there is no allegation that it was given with his consent. The first respondent categorically denied the allegation of distribution of money and the other connected incidents at Vadakkusalaigramam village, Ilayangudi Taluk, Amaravathipudur village, Karaikudi Taluk, Kothari village near Pallatthur and Sakkavayal village, Karaikudi Taluk.

4.3. The first respondent also stoutly denied the allegations made against his son that he attacked Anbhazhagan at

Rajakambeeram and alleged that the cars in which his son and other partymen were travelling were damaged by Mr.Anbzhazhagan and his mob. The first respondent also claimed that when he got information that his son and others were surrounded by AIADMK workers, he was near Ilayangudi and he immediately rushed to Rajagambeeram. When he reached the spot, he was told that his son and other workers were taken to Manamadurai Police Station, where the Driver lodged a complaint. The inspector assured the first respondent that action would be taken in accordance with the law and thereafter the first respondent left the police station leaving the damaged vehicles and he did not influence the Inspector. The first respondent also stated that the private complaint lodged by Mr.Anbzhazhagan was rejected by the learned Judicial Magistrate and that, it is claimed by the first respondent that no material was placed by the Election Petitioner to attract Section 123 of the RP Act.

4.4. The first respondent denied all the allegations made against him with respect to Counting process. The first respondent claimed that he visited the counting centre at 8.00 a.m. and left in about half-an-hour from there and thereafter he came back to the centre at about 4.00 or 4.30 p.m., wherein, he was informed by the Returning Officer that he was leading. He has also stated that by the time the counting was over and tallying, checking and other paperwork were going on and hence, he left the centre about 5:30 p.m.

4.5. The first respondent further claimed that the petition for

recount submitted by Mr.Kumaravel is not a valid application under Rule 63 of the 1961 Rules and denied the allegation that no order is passed on the said representation, as the Returning Officer rejected the request vide order dated 16.05.2009. It is also claimed by the first respondent that the allegations made in paragraph 16 of the Election Petition are bereft of any particulars and without any valid supporting document.

4.6. The first respondent also denied the allegation that the votes that were counted in 11th to 15th rounds in Alangudi assembly segment were manipulated stating that besides, the Returning Officer, there were Election Observers appointed by the Election Commission witnessing the entire episode of counting process and the same could not be done as alleged by the Election Petitioner.

4.7. It is claimed by the first respondent that there is no allegation that the result of the election has been materially affected in so far as the returned candidate is concerned, but on the other hand, the allegations made in the election petition do not constitute a ground under Sections 100(a)(d) and 101 of the RP Act.

4.8. Though the petitioner had referred to bribe money and corrupt practice of bribery being committed by the first respondent, the same are also not in accordance with Section 123 of the RP Act.

5. Supporting the cause of the Election Petitioner and reiterating the allegations made in the Election Petition, a reply statement was filed by the nineteenth respondent.

6. On the above pleadings, the following issues were framed on 19.10.2012 :

- (i) Whether the allegations of corrupt practice made against the first respondent/Returned candidate constitute corrupt practice and whether it would constitute a ground to declare the election of the first respondent as void.
- (ii) Whether the election petition is liable to be dismissed on the ground that it does not satisfy the requirements of section 80, 83 and 100 of the Representation of People Act, 1951.
- (iii) Whether counting of votes polled in Sivaganga Parliamentary Constituency was not done in accordance with the Act, the rules made thereunder and the instructions of the election commission as alleged in the election petition.
- (iv) whether the first respondent in connivance with the Returning Officer/ Election Officials manipulated the votes in 11th to 15th rounds in Alangudi Assembly segment in order to ensure the victory of the first respondent.
- (v) whether the 19th respondent has locus standi to file a counter and that whether he should be transposed as a petitioner and whether he is entitled to cross-examine the witnesses and examine himself.
- (vi) Whether the election of the first respondent/Returned candidate be declared void.
- (vii) Whether the election petitioner could be declared as a duly elected candidate from No.31, Sivaganga Parliamentary Constituency, Tamilnadu, India in the election held on 13.04.2009.

7. Prior to the framing of issues, A.No.3428 of 2011 was filed by the first respondent herein for rejection of the plaint under Order 7 Rule 11 and also for striking off the pleadings under Order 6 Rule 16 of the Code of Civil Procedure (in short, "the CPC"). While disposing of this application, this Court vide order dated 07.06.2012 had negated the relief sought for under Order 7 Rule 11, however, allowed the prayer made under Order 6 Rule 16, by striking off the paragraphs 4 and 5 in the election petition. The relevant portion of the said order is as follows:

"36. In fine, the application filed by the applicant is disposed of to the extent indicated above, namely,

(a) that the allegations made in Paragraph Nos.4 and 5 alone are liable to be struck out. However, the other averments made in the Election Petition regarding the corrupt practice pertaining to the dispatch of money etc., and also the allegations of irregularities or illegalities committed on the date of counting as alleged in the Election Petition which the applicant wants it to be struck off do not require to be struck off at this stage.

(b) As regard the prayer made under Order VII, Rule 11 CPC, it cannot be accepted and the contentions raised in that regard are liable to be rejected and accordingly rejected."

8. The learned counsel for the petitioner, at the time of arguments, had only pressed for the prayers in (i), (iii) and (iv) of the petition. Hence, the prayer (v) seeking to declare the petitioner as

duly elected from No.31 Sivaganga Parliamentary Constituency in the election held on 13.05.2009, in which, the results have been declared on 16.05.2019 has become infructuous due to passage of time.

9. As stated above, the 19th respondent, who was also one of the unsuccessful candidates, has been made as party to the proceedings. The 19th respondent has not filed any independent Election petition challenging the success of the first respondent. As the 19th respondent has not availed his right to file election petition, he cannot not be allowed to challenge the result of the election by filing a counter affidavit and supporting the case of the petitioner. Therefore, applications were filed by the first respondent herein in O.A.Nos.925 to 928 of 2012. The said applications were filed (i) not to permit the 19th respondent in the election petition to cross examine any of the witnesses of the election petitioner and of the first respondent during the trial of the election petition ; (ii) not to permit the 19th respondent in the election petition to examine any witness on his side to support the pleadings and prayer in the election petition ; (iii) to declare that the 19th respondent has no role to play in the trial of the election petition in so far as the relief of declaration that the election of the first respondent as void ; and (iv) to reject the counter statement filed by the 19th respondent in Election Petition No.5 of 2009 respectively. In the said applications, this Court vide order dated 07.01.2013 held that the 19th respondent has got no right to cross-examine the election petitioner or his witnesses on the allegation of corrupt practice,

however, the 19th respondent can participate in the trial in support of the additional relief of declaration that the election petitioner shall be declared as the successful candidate. Further, he was also declined the relief of cross-examining the returned candidate or his witnesses and he cannot support the case of the election petitioner on corrupt practices, however, he was given permission only to let in evidence with regard to the additional relief of declaration sought for by the election petitioner by declaring him as the successful candidate.

10. Though such permission was granted to the 19th respondent to that extent, since the petitioner himself had given up the relief (v), the said relief granted by this Court has become unavailable to the petitioner and hence, it is not possible for the 19th respondent to harp on the same.

11. During the course of the trial, the election petitioner examined himself as P.W.1, besides examining Mr.S.Kumaravel as P.W.2; Mr.Karuppiah as P.W.3 and Mr.Anbhazhagan as P.W.4. The Election Petitioner marked the following exhibits, namely :

Sl. No.	Ex.No./Date	Description of the document
1	P.1/03.03.2009	Copy of Letter issued by the Chief Electoral Officer
2	P2/23.04.2009	Copy of Authorisation letter issued by the petitioner appointing Mr.S.Kumaravel as the Election Agent in the Parliament Election 2009
3	P3/23.04.2009	Copy of the complaint of the petitioner to the RO, Sivagangai Parliamentary Constituency complaining the attempt to trace the bank account of the Women Self Help Groups by the Congressmen to park money
4	P4/--	Fax OK report of complaint given to Returning Officer
5	P5/--	Token that was issued to the voters for collecting money on its production

Sl. No.	Ex.No./Date	Description of the document
6	P6/24.04.2009	Copy of complaint given by the petitioner to the Chief Electoral Officer by fax about Vadakkusalaigramam Village incident
7	P7/--	Fax OK report of complaint given to Chief Electoral Officer
8	P8/25.04.2009	Dina Malar Tamil Daily Newspaper having the report of Vadakkusalaigramam Village incident
9	P9/27.04.2009	Copy of the complaint given by O.L.Chellaiah to the Inspector of Police, Karakudi Police Station
10	P10/16.5.2009	Original Acknowledgment by the Returning Officer for receipt of petition from the petitioner for recount
11	P11/16.5.2009	Hard copy of Online Hindu report and Yahoo India
12	P12/15.5.2009	I.D. Card of the counting agent Mr.Karuppiah
13	P13/23.4.2009	Copy of representation made to the Chief Electoral Officer complaining about the inaction of officials for the Vadakkusalaigramam village incident with fax OK report
14	P14/2.5.2009	Copy of complaint given by Mr.S.Kumaravel on behalf of the petitioner to the Chief Electoral Officer regarding the Kothari Village incident with fax OK report dated 3.5.2009
15	P15/13.5.2009	Copy of complaint of Mr.Anbhazhagan given to the Inspector of Police, Manamadurai Police Station
16	P16/12.5.2009	Copy of the FIR in Crime No.317/2009

11.1. The first respondent examined himself R.W.1.

11.2. The Returning Officer was examined as C.W.1 and the following documents were marked :

Sl. No.	Ex.No./Date	Description of the document
1	C1/16.05.2009	Copy of the Proceedings of the Returning Officer, 31, Sivagangai Parliamentary Constituency in Roc.No.E1/6364/2009, dated 16.05.2009
2	C2/16.05.2009	Copy of communication sent by the Principal Secretary, Election Commission of India in No.470/TN-HP/2009, dated 16.05.2009
3	C3/--	Copy of the Information Sheet on Counting Centres
4	C4/11.01.2007	Instructions for Facilities at Counting Centres and Management of the Counting Process issued by the Election Commission of India in No.470/2007/PLN-1
5	C5/21.05.2009	Communication of the Chief Electoral Officer & Addl. Chief Secretary to Government, Public (Elections) Department, Secretariat, Chennai-600 009, dated 21.05.2009 and the reply of the Returning Officer, 31, Sivagangai

Sl. No.	Ex.No./Date	Description of the document
		Parliamentary Constituency in Roc.No.E1/6364/2009
6	C6/18.09.2009	Communication of the Chief Electoral Officer & Addl. Chief Secretary to Government, Public (Elections) Department, Secretariat, Chennai-600 009, dated 18.09.2009 to the Collector, Sivaganga District, Sivanganga.

12. Heard the arguments advanced on behalf of the Election Petitioner and the nineteenth respondent at length and also the reply arguments advanced by the learned Senior Counsel appearing on behalf of the first respondent.

13. In the Election petition there were five instances of corrupt practices alleged against the first respondent. Before the said instances, the Election Petitioner stated about the illegal parking of money using the official position of the first respondent as the former Union Home Minister. According to the petitioner, the election agents of the first respondent were aware of the activities and the capacity of women SHGs to garner election support. Thus, the agents were collecting the bank accounts details of these SHGs in order to park illegal funds in their accounts for distributing to the voters later. The said fact was made known to the petitioner by one Andal, who run another SHG. As the petitioner got the information about the same only after the counting of votes was done, he could not lodge a complaint earlier.

14. Though there were five instances narrated hereinbelow, at the time of arguments, as stated above, learned counsel for the

petitioner had given up the first four instances, for want of evidence as those instances were only based on hearsay. Therefore, the only allegation of corrupt practice remains to be discussed is the incident that had taken place on 12.05.2009 at Rajagambeeram village in Sivaganga Parliamentary Constituency. The said other instances given in the Election Petition are:

(i) That one Malaysia Pandian and 23 others had come in particular vehicles on 23.04.2009 around 11.00 p.m. to Pechiamman Temple at Ilayangudi Taluk, Vadakkusalaigramam, and distributed the cash to the villagers for casting votes in favour of the first respondent.

(ii) That on 27.04.2009 at about 10.00 a.m., one O.L.Chelliah, AIADMK Party Union Secretary of Sakkottai Union of Sivaganga constituency went to a village by name Amaravathipudhur of Sivaganga Parliamentary Constituency for campaigning, where it was seen that about 40 women belonging to Indian National Congress arrived by two vans bearing specific numbers who went to every house and after campaigning for votes in favour of the first respondent gave Rs.500/- neatly kept inside a fancy leather bag. A written complaint was also given on 27.04.2009.

(iii) That on 02.05.2009 around 10.00 a.m. one Rajendran, who runs the Youth Social Service Organisation in Kothari Village near Pallathur convened a meeting and distributed Rs.500/- to each women voter, upon the instructions of the first respondent. Though it was stated by the petitioner that the entire event was videographed, the

same was not marked before the court.

(iv) That on 06.05.2009 at about 8.00 a.m., when Chelliah was campaigning in Sakkavayal Village, he found that five persons came in a particular car and distributed money in covers to the voters for casting vote to the first respondent.

(v) Finally, the incident that occurred on 12.05.2009 in Rajagambeeram village, Manamadurai Taluk in Sivaganga, wherein, the son of the first respondent was distributing cash to the voters on behalf of his father. When the petitioner's other party functionaries rushed to the spot, they found that the son of the first respondent along with 24 others were available there in two cars with specific numbers distributing cash to the voters. When it was objected to by Mr.Anb hazhagan, it is alleged that Mr.Karthik Chidambaram, son of Mr.P.Chidambaram / the first respondent had brutally attacked him with a stick resulting in grievous injuries on his forehead and nose. Mr.Anb hazhagan was rescued by the AIADMK functionaries.

Mr.Anb hazhagan went to the Manamadurai Police Station for lodging a complaint against the aggressors. However, the police refused to take the complaint and did not even care to send the injured to the hospital, as the police officials were receiving instructions from the first respondent. The first respondent himself had then come to the Manamadurai Police Station around 8:30 p.m. with his supporters and insisted that the police arrest Mr.Anb hazhagan, who was badly injured.

As the injured Anb hazhagan required immediate medical attention and

the police was also refusing to accept their complaint the injured was taken to Meenakshi Mission Hospital in Madurai for specialised treatment. It is further stated that he was admitted as an in-patient in Intensive Care Unit (ICU), where he was given treatment for injuries sustained on his forehead and nose. In the meanwhile, the first respondent insisted the Inspector of Police, Manamadurai Police Station to register a case against the said Anbalagan in Cr.No.317 of 2009 and other AIADMK functionaries for the alleged offences under Sections 147 148 323 324 and 506 IPC and also under Section 3 of the Tamil Nadu Public Property Damages and Loss Act on a false complaint preferred by one Saravanan, who is none but the Driver of the vehicle bearing No.TN 45 AN 1000 for Mr.Karthik Chidambaram, son of the first respondent.

15. It is specifically pointed out by the learned counsel that on the eve of election, that is, on the date, when the campaigning should have been stopped as per the election rules, the first respondent had arranged to distribute money to the voters through his son for the purpose of procuring votes for himself. When they were caught red-handed, the first respondent himself had come to the Manamadurai Police Station in person to rescue his son and partymen and falsely given a complaint against AIADMK partymen, who had come to the scene for preventing the distribution of bribe. In fact, the injured

Mr.Anbhazhagan had sent complaint to various authorities, including the police and the Election Commission and also a private complaint

before the Judicial Magistrate Manamadurai on 04.06.2009 in Crl.M.P.No.8960 of 2009 against Mr Karthik Chidambaram and others.

16. The petitioner had examined himself as P.W.1 and stated in his evidence that as per the Government Gazette Notification issued by the Election Commission of India, on 13.05.2009 election was scheduled and according to him, the incident happened on 12.05.2009, as P.W.4 Mr.Anbhazhagan had told the petitioner that there were 24 persons with Karthik Chidambaram whom he could identify and 10 persons whom he was unable to identify, distributed money and when he tried to stop, Karthik Chidambaram attacked on his forehead and nose and he was injured. The petitioner also stated by PW.4 that Karthik Chidambaram and his partymen came in cars bearing number TN 45 AM 1000 and TN 07 AU 9788. He has further stated that Mr.Anbhazhagan went to the Manamadurai Police Station and lodged a complaint. But the Inspector of Police did not take the complaint on file, whereas when first respondent along his partymen came in person to the said police station, he embraced his power and influenced the police not to register the complaint given on the side of the petitioner, instead complaint given by one Saravanan Driver of Mr.Karthik Chidambaram against Mr.Anbhazhagan for non-bailable offences was registered as Crime No.317 of 2009. Further, it is pointed out by the learned Senior Counsel for the first respondent that there are contradictions in the deposition of P.W.1 in his cross-examination regarding the incident that happened in Rajagambeeram. The

petitioner had specifically admitted in the cross examination that “.... I did not go to Rajagambiram on 12.05.2009. I do not remember where I was on 12.05.2009. On the same day, i.e. 12.05.2009 at about 9.00 P.M., I came to know of the incidents, narrated in para 12 of my election petition through Mr.Anbalagan.” He had further stated that “though I received information on 12.05.2009 at 9 P.M., regarding the incidents alleged to have taken place at Rajagambiram, on the same date, I have not filed any complaint to any other officer stating the incidents.” Further, he has stated that “Since the affected party Mr.Anbalagan gave a complaint in this regard to the officers, I did not give any complaint.”

17. Therefore, it is argued by the learned Senior Counsel for the first respondent that the allegations made in the election petition are only based on hearsay from Mr.Anbzhazhagan and the petitioner did not personally know of the same. In this regard, the evidence of P.W.4 also was referred to. P.W.4 had answered about the incident that had happened in cross examination as follows :

“.... I do not know as to which party functionaries stopped my car, but I was stopped by the persons gathered in that spot. I was stopped at the entrance of Rajagambiram. I do not know as to the persons who stopped my car are the voters of Rajagambiram or not. Presently, I do not know as to how many voters are therein Rajagambiram village. I do not know the number of the Car in which I travelled from Manamadurai to Madurai. Nobody travelled along with me. There was no light where my car was stopped. The respondent Mr.Chidambaram was not present in that spot. I was there at Rajagambiram for about

45 minutes. I got first aid treatment for my injuries at Tirupuvanam and then they sent me to Meenakshi Mission Hospital, Madurai."

The oral evidence of PW 4 is totally contradictory to the pleadings as well as his examination in chief and cross. The petitioner also deposed only from the statement of Anbhazhagan and he did not have any personal knowledge of the incident.

18. The learned Senior Counsel for the first respondent further pointed out that Ex.P.15, which is the copy of the complaint dated 13.05.2009 was produced to substantiate the incident that happened on 12.05.2009, but the complaint is dated 13.05.2009. Even according to the petitioner, on 13.05.2009, P.W.4 was in ICU in Meenakshi Mission Hospital Madurai. The private complaint alleged to have been given on 04.06.2009 and the election petition was filed on 05.06.2009. However, the complaint given by the Driver [Saravanan] of the son of the first respondent was taken on file, which is marked as Ex.P.16, which was dated 12.05.2009 in Cr.No.317 of 2009. Admittedly, P.W.4 was the only witness examined to prove the incident that had happened in Rajagambeeram village. Even the evidence of the said witness – P.W.4 is totally contradictory to the allegations in the election petition. Though it was stated that Mr.Anbhazhagan could identify 24 of the persons in the mob and 10 of them were not identifiable, in his examination, he has stated that he is unable to name any person in the group who attacked him and who were

present in the mob. It is relevant to state that at the time of the said alleged incident, which took place around 8.00 p.m. in the night on 12.05.2009, there were no lights at the scene in Rajagambeeram. It is pertinent to note that no person as eyewitness was examined to substantiate the said allegation of money distribution. In fact, it is pointed out that the admission of P.W.4 that he went to Thirubuvanam Hospital for treatment and thereafter, to Meenakshi Mission Hospital, Madurai, itself were doubted, because neither the admission card nor the discharge summary or sheet of any of the hospital has been produced or filed before this court. As none of the witnesses were named in the Rajagambeeram incident, be it the Police Inspector or any other eye witness was examined on the side of the election petitioner to prove the case of illegal distribution of money for votes by the first respondent through his son.

19. Section 83 of the RP Act mandates that the election petition shall set forth full particulars of any corrupt practice that the petitioner alleges, including the full statement as much as possible, the name of the parties who alleged to have committed the said corrupt practice, date and place of commission of each such practice. Admittedly, the petitioner has gained knowledge only through hearsay evidence from P.W.4 and P.W.4 also could not support the case of the petitioner by cogent evidence. The petitioner is not able to say how many voters are there in Rajagambeeram and how many people received the money, even presuming that the money was given, whether it would have

made a difference, as the winning margin was more. The allegation of corrupt practice being a serious one should be proved beyond doubt, as an election petition is a quasi-criminal proceedings.

20. It is a well-settled principle that the standard of proof required for proving corrupt practice for all intent and purpose is equated with the standard expected in a criminal trial. The burden of proof of the election petitioner can be said to have been discharged only when there is a cogent and reliable evidence to prove the charges levelled against the returned candidate. Therefore, the charges must be proved beyond reasonable doubt and not merely by preponderance of probabilities as in a civil action. It would be appropriate in this regard to advert to the decision of the Hon'ble Supreme Court in **Jagdev Singh V. Pratap Singh, AIR 1965 SC 183**, the relevant portion of which reads as follows:

"11. It may be remembered that in the trial of an election petition, the burden of proving that the election of a successful candidate is liable to be set aside on the plea that he was responsible directly or through his agents for corrupt practices at the election, lies heavily upon the applicant to establish his case, and unless it is established in both its branches i.e. the commission of acts which the law regards as corrupt, and the responsibility of the successful candidate directly or through his agents or with his consent for its practice not by mere preponderance of probability, but by cogent and reliable evidence beyond any reasonable doubt, the petition must fail. The evidence may be examined bearing this approach to the evidence in mind.

25. In considering whether appeals were made to the electorate to vote for Sidhanti on the ground of his language or to

refrain from voting for Daulta on the ground of Daulta's language it is necessary in the first instance to ascertain the true meaning of the expression "on the ground of his language". By Section 123(3) which was introduced for the first time in its present form by Act 40 of 1961, appeal by a candidate or his agent to vote or refrain from voting for a person on the ground of language is made a corrupt practice. This clause must be read in the light of the fundamental right which is guaranteed by Article 29(1) of the Constitution, for in ascertaining the true meaning of the corrupt practice, the area of the fundamental right of citizen must be steadily kept in view. The clause cannot be so read as trespassing upon that fundamental right. Article 29(1) provides:

"Any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."

The Constitution has thereby conferred the right, among others, to conserve their language upon the citizens of India. Right to conserve the language of the citizens includes the right to agitate for the protection of the language. Political agitation for conservation of the language of a section of the citizens cannot therefore be regarded as a corrupt practice within the meaning of Section 123(3) of the Representation of the People Act. That is clear from the phraseology used in Section 123(3) which appears to have been deliberately and carefully chosen. Unlike Article 19(1), Article 29(1) is not subject to any reasonable restrictions. The right conferred upon the Section of the citizens residing in the territory of India or any part thereof to conserve their language, script or culture is made by the Constitution absolute and therefore the decision of this Court in *Jumuna Prasad Mukhariya v. Lachhi Ram*, (1955) 1 SCR 608 on which reliance was placed by the High Court is not of much use. In that case Sections 123(3) and 124(5) of the Representation of the People Act as they then stood were challenged as infringing the fundamental freedom under Article 19(1)(a) of the Constitution, and the Court in negating the contention held that the provisions of the Representation of the People Act did not stop a man from speaking : they merely

prescribed conditions which must be observed if a candidate wanted to enter Parliament. The right to stand for an election is, it was observed, a special right created by statute and can only be exercised on the conditions laid down by the statute, and if a person wants to stand for an election he must observe the rules. These observations have no relevance to the protection of the fundamental right to conserve language. The corrupt practice defined by clause (3) of Section 123 is committed when an appeal is made either to vote or refrain from voting on the ground of the candidate's language. It is the appeal to the electorate on a ground personal to the candidate relating to his language which attracts the ban of Section 100 read with Section 123(3). Therefore it is only when the electors are asked to vote or not to vote because of the particular language of the candidate that a corrupt practice may be deemed to be committed. Where however for conservation of language of the electorate appeals are made to the electorate and promises are given that steps would be taken to conserve that language, it will not amount to a corrupt practice."

In the light of the above decision and the analysis of the materials on record, it is evident that the election petitioner has not proved the charges of corrupt practice against the first respondent herein by adducing clear-cut, cogent, credible and reliable evidence.

21. The learned counsel for the Election Petitioner relied on the following decisions in support of his case :

- (i).Joseph M.Puthussery V. T.S.John, (2011) 1 SCC 503 ;
- (ii).Virender Nath Gautam V. Satpal Singh (2007) 3 SCC 617 ;
- (iii).Borgaram Deuri V. Premodhar Bora, (2004) 2 SCC 227 ;

The above decisions have no application to the present facts supporting the case of the petitioner.

22. The Election Petitioner sought to declare the election to be void, for which, the Election Petitioner has to satisfy Section 100(1)(d)(ii) and (iii) of the RP Act. Unless the ingredients of Section 100 are proved, the Election Petitioner cannot succeed in the Election Petition.

23. Besides alleging corrupt practices, the petitioner has also pointed out certain **irregularities in counting of votes** and declaration of results. For establishing the above allegation, the election petitioner has to prove that the valid votes that were polled in favour of the election petitioner are more than the valid votes polled to the returned candidate for declaring the election results void or materially affected. As discussed above, four of the allegations of the corrupt practices, i.e., alleged incident in Ilayangudi of distributing cash to the villagers for casting votes in favour of the first respondent ; the incident took place in Amaravathipudur alleging that 40 women belonging to INC went to every house to give money to vote for the first respondent ; the alleged incident on 02.05.2009 in Kothari village to organise a meeting of the party workers for the purpose of distribution of money for casting votes ; and on 06.05.2009 at about 8.00 a.m., five persons came in a particular car to Sakkavayal Village, distributed money in covers to the voters for casting vote to the first respondent, were not seriously pressed by the Election Petitioner, as

all of them were based on hearsay.

24. Excepting the oral evidence of P.W.1, who is the Election petitioner himself and PW2, who is his Election Agent, no other oral or documentary evidence available in support of the allegations on the irregularities in counting of votes. P.W.4 Anbzhazhagan was examined only for the purpose of proving the alleged incident of corrupt practice and he has not spoken about the counting of votes. He has deposed only up to the date of election and not after that. In so far as P.W.3 – Pazha.Karupaiah is concerned, he was the Election Agent for the Sivaganga constituency for the petitioner. After the chief examination for only one occasion, the said witness has not submitted himself for cross examination and he did not appear. The learned counsel for the petitioner has submitted before this court that P.W.3 was not likely to come for cross examination. Hence, this Court had eschewed the evidence of P.W.3 by an order dated 24.10.2018. In view of the above, the evidence of PW 3 is also not available to be pressed into service for the proof of the petitioner's case.

25. Admittedly, the counting of votes commenced around 8:15 a.m. on 16.05.2009 and in most of the constituencies, the counting was over by 12:30 p.m., but only in Sivaganga, the results were declared at 8:30 p.m. Therefore, it is alleged by the election petitioner that it had such a long time only for transferring the votes polled in favour of the first respondent. In paragraph 15 of the election petition, the petitioner explained about foul play in the counting process. As per

the pleading, the following allegations were made : (a) round-wise declaration of votes were not written on the board, which is the usual practice ; (b) Pressmen were not allowed to come inside to note down the round-wise results ; (c) there was no Public Announcement System (PAS) which is mandatory. When it was questioned, the Returning Officer as well as the Election officials gave only specious explanation that it was a mistake that the said arrangement for PAS was not made. It is alleged that even by 4:30 p.m. the election results all over the country were announced, but only in the Sivaganga constituency the Returning Officer was saying that the first respondent was leading. The delay in announcement of the results is attributed to the manipulation for transferring the votes in favour of the first respondent.

26. P.W.2-Kumaravel, who is the Petitioner's Election Agent had raised substantial points for re-counting before the Returning Officer, which were not considered immediately and were placed before the Election Commission. When the petition for recount was pending or not considered, the Returning Officer had handed over the declaration certificate to the election agent of the first respondent declaring the first respondent as winner by a margin of 3,354 votes. The petitioner alleged that till the date of filing of the election petition, the Returning Officer had not passed any order on the petition filed by P.W.2 dated 16.05.2009 for a recount. Even in the Alangudi segment, the same was the case that the Assistant Returning Officer (ARO) did not write the round-wise votes secured by each of the candidates. In this

regard, it is argued by the learned Senior Counsel for the first respondent that the allegations made by the petitioner are all false and they do not constitute a ground for offence under Section 100(1)(d)(iii) of the RP Act. No material facts have been pleaded or placed before the court in this regard. P.W.2 admitted that the counting agents, who were nominated by the Election Petitioner, were well informed about the counting and filling up of forms and the counting agents could see the votes polled to each candidate from the table of the control unit. The petitioner, while examining the Returning Officer as C.W.1, had put the question that it is the supervisor, who should note down the total number of votes in Part 2 of Form 17(C) and ensure that it tallies with the total numbers of votes shown in Column 5 of Form 17(C). He replied that Form 17(C) consists of two parts and Part I is filled by the Presiding Officer at Polling Station and Part II is filled at the counting centre. It is specifically deposed by C.W.1 that in the event of any discrepancy in Column 5 of Part I and Part II of Form 17(C), it would be brought to the knowledge of the Returning Officer. However, in this case admittedly no such discrepancy was brought to the knowledge of C.W.1.

27. It is also relevant to advert to the evidence of P.W.2 where he had admitted that "..... While counting was going on, I was mostly present in the room of the Returning Officer, however, I went to all the counting halls. I maintained a note regarding votes displayed in the counting hall for each segment whenever I visited. In that note, I

have written the votes secured by each candidate. I do not know whether that note has been filed before this court by the Election Petitioner. The said note was given to the Election Petitioner". Though it was alleged that in all the other places, the counting was over by 12:15 p.m. ,P.W.2 has specifically stated "I cannot say the exact time, when the counting of each segment was over and when the Assistant Returning Officer handed over the records to the Returning Officer. There was no display in the room of Returning Officer regarding the votes polled by each candidate." P.W.2 has further deposed that "the Returning Officer, after receipt of forms from the Assistant Returning Officers, tallied finally the votes polled by 8:30 p.m. It is incorrect to state that I have submitted my objections only after the final tally that was done by the Returning Officer. I have my objections even before the final tally. By 4.30 pm, the Election Petitioner was present with me and I gave my objections at that time".

28. Though even in the pleading, it has been stated that the objection for recount of the votes given by P.W.2 on 16.05.2009 was not considered till the date of the filing of the election petition, an order dated 16.05.2009 in ROC No.E1/6364/2009, was passed on the same date, which is marked as Ex.C.1. In fact, a reading of the said order goes to show that the Returning Officer had specifically asked the Chief Agent of the Election Petitioner whether there was any prima facie evidence to substantiate the claim for recount. The answer, which has been recorded is "we have no part-wise details of votes

polled by each candidate, we have no prima facie evidence as of now. We have round-wise details of votes polled in respect of only one round of votes polled in Alangudi Assembly Segment. Further, in certain polling station in Manamadurai Assembly Segment, the control unit did not function". Based on the above answer, the petition was rejected by the Returning Officer for want of evidence to support the claim. It appears to have been communicated to the individual on the same date. Therefore, the allegation that the results were declared keeping the petition for recount pending is not correct.

29. Further, Ex.C.2, which was marked through C.W.1 Returning Officer dated 16.05.2009 issued in ROC E1/6823/2009 is the communication seeking permission of the Chief Electoral Officer, Election Commission of India, to declare the results of the Sivaganga Parliamentary Constituency in favour of the first respondent. Accordingly, on the same date, the Principal Secretary had granted permission to the Returning Officer to declare the results.

30. The petitioner had alleged that the votes of the election petitioner were transposed to the first respondent in Alangudi segment, but there was no evidence of such transposition. Besides, there are no pleadings or evidence as to the number of votes allegedly transposed. As held supra, excepting the evidence of P.W.3, which was eschewed, no other person was examined by the petitioner, though there were 14 counting agents for the petitioner. The forms filled at the end of each round, the working sheets given by P.W.2 to

the counting agents were not produced before this Court. The petitioner also had not chosen to examine any of the counting agents of any other independent candidate. It is also pertinent to point out that there is no pleading in the petition that Rule 63 of Conduct of Election Rules was violated. On the contrary, R.W.1, the Returning Officer, had adduced clear and cogent evidence though had been examined after 10 years.

31. A reading of the documents marked as Exs.C.1 to C.6 would go to show that every procedure was followed as per the Rules. The only allegation of the petitioner was that the results were not displayed in the notice board and that there was no Public Announcement System. Though it is stated in the Election Petition that the petitioner obtained a compact disc from the Election Officer, which contains the record of the votes polled in each round and in each segment for the candidates in the fray, the said CD was not produced before this Court.

32. The learned Senior Counsel for the first respondent would, therefore, contend that having mentioned about the CD being available, but non-production of the same would lead to the inference that the petitioner has not come to Court with clean hands. In this regard, it is relevant to refer to the judgment of the Hon'ble Supreme Court in **Vadivelu V. Sundaram, (2000) 8 SCC 355**, wherein, it has been held as follows :

"16. The result of the analysis of the above cases would show that this Court has consistently taken the view that re-count of votes could be ordered very rarely and on specific allegation in

the pleadings in the election petition that illegality or irregularity was committed while counting. The petitioner who seeks re-count should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes. If only the court is satisfied about the truthfulness of the above allegation, it can order re-count of votes. Secrecy of ballot has always been considered sacrosanct in a democratic process of election and it cannot be disturbed lightly by bare allegations of illegality or irregularity in counting. But if it is proved that purity of elections has been tarnished and it has materially affected the result of the election whereby the defeated candidate is seriously prejudiced, the court can resort to re-count of votes under such circumstances to do justice between the parties.

18. From the above pleadings, it is evident that the appellant has not set forth material facts or particulars required for re-count of votes. To justify his contention that there was irregularity or illegality in the counting, except making some general and bald allegations, no other details are given. Though an allegation is made that the electoral roll contained the names of dead persons, that the 1st respondent took advantage of the same, and that some persons had impersonated and cast votes in his favour, no details are given as to who committed such irregularity. The appellant has also not mentioned as to how many such votes had been cast in favour of the 1st respondent. So also, the appellant has not alleged the nature of the illegality or irregularity said to have been committed by the Counting Officers. How and in what manner there was improper acceptance of invalid votes and improper rejection of valid votes also is not explained by the appellant. In short, the election petition is bereft of all details and the appellant, while examined as PW 1, could not supplement anything by way of evidence."

33. The above dictum enunciated by the Hon'ble Supreme Court

is qua the recount of votes. The Election Petitioner has challenged the election of the first respondent in the 15th Lok Sabha during 2009-

2014. Whether any effective relief in practical terms can be granted to the petitioner on the ground of irregularities in the counting of votes and declaration of results. The answer lies with the following judgment in **S. Baldev Singh v. Teja Singh Swatantar, 1975 (4) SCC 406** in the following manner :

"17. The largest democracy in the world, India, naturally has the most numerous electorate for a territorial constituency. Several thousands to a few lakhs of ballots for a constituency are polled and have to be inspected and counted in a rapid process; computers and like electronic devices which achieve in a twinkling what manual eyes and hands take long hours to perform are denied to us due to under-development and indigence. But we have human resources in abundance, to sort out, bundle up, count, check, scrutinize and so on. Our poll finale relies on human power, and judging by the millions of votes which have passed through the assembly-line processes of mixing, bundling, scrutinizing, counting and rebundling — what with mammoth numbers and continuous work — the errors are microscopic. This tribute to Indian ability goes to the lesser level staff — the clerks and teachers, say — who bear the mechanical brunt of the Himalayan labours. When colossal heaps of votes are processed, the tellers may make chance mistakes. Even computers are not totally error-proof and, to err is human, physically fatigued and brain-fagged as they may be occasionally. Scrutiny by vigilant officials and test-checks may be good but jaded spirits cause slips. Complacent assumption of perfection, when the operation is gigantic, is a frailty of obdurate minds. That is why realism has induced Rule 63 and issuance of instructions to Returning Officers, rooted in practical wisdom. Given lively realism and imaginative understanding in the Returning Officers, many honestly sceptical and legitimately suspicious candidates who have lost the election may be stilled in their doubt by a re-count, and the winner, after all, has no vested interest in error and cannot reasonably object.

Such is the interpretative perspective of Rule 63 which has wrongly been lost sight of by PW 5, the Returning Officer, in the present case.

18. We frown upon frivolous and unreasonable refusals of re-count by Returning Officers who forget the mandate of Rule 63 that allowance of re-count is not the exception and refusal is restricted to cases where the demand itself is "frivolous" or "unreasonable". These are strong words. The circumstances of each case decide. Where the margin of difference is minimal, the claim for a fresh count cannot be summarily brushed aside as futile or trumped up. If, as in this case, for the Shergarh segment, a uniform view, founded in legal error, has led to wrong rejection of votes, rectification by a re-count on the spot, when a demand was made, would have been reasonable. If formal defects had been misconstrued at some table as substantial infirmities, or vice versa, resulting in wrongful rejection or rejection, the sooner it was set right the better, especially when a plea for a second inspection had been made on the spot. Many practical circumstances or legal misconceptions might honestly affect the legal or arithmetical accuracy of the result and prestige or fatigue should not inhibit a fresh, maybe partial, check. Of course, baseless or concocted claims for re-count or fabricated grounds for inspection or specious complaints of mistakes in counting when the gap is huge are obvious cases of frivolous and unreasonable demands for re-count. Mala fide aspersions on counting staff or false and untenable objections regarding validity of votes also fall under the same category. We mean to be illustrative, not exhaustive, but underline the need, in appropriate cases, to be reasonably liberal in re-check and re-count by Returning Officers. After all, fairness at the polls must not only be manifest but misgivings about the process must be erased at the earliest. Indeed, the Instructions to Officers are fairly clear and lay down sound guidelines.

19. Judicial power to direct inspection and re-count is undoubted but will be exercised sparingly. In a recent decision Chanda Singh v. Choudhary Shiv Ram Verma, (1975) 4 SCC 393,

this Court observed:

"A certain amount of stability in the electoral process is essential. If the counting of the ballots is interfered with by too frequent and flippant re-counts by courts a new threat to the certainty of the poll system is introduced through the judicial instrument. Moreover, the secrecy of the ballot which is sacrosanct becomes exposed to deleterious prying if re-count of votes is made easy. The general reaction, if there is judicial relaxation on this issue, may well be a fresh pressure on luckless candidates, particularly when the winning margin is only a few hundred votes as here, to ask for a re-count Micawberishly looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots. This may tend to a dangerous disorientation which invades the democratic order by injecting widespread scope for reopening of declared returns, unless the Court restricts recourse to re-count to cases of genuine apprehension of miscount or illegality or other compulsions of justice necessitating such a drastic step."

20. This implies no break from the liberal stance we have indicated for Returning Officers. Election petitions come to court after a month and a half and ripen for trial months later and then the appeal, statutorily vested, inevitably follows. In this Operation Litigation, which is necessarily protracted, liberal re-count or lay re-inspection of votes may create belated uncertainties, false hopes and a hovering sense of suspense, long after elections are over, governments formed and Legislatures begin to function. Moreover, while a re-count, within the counting station, with the entire machinery familiar with the process still available at hand and operational, is one thing, a re-inspection and re-count, which is an elaborate undertaking with mechanics and machinery of a specialised nature and which cannot be judicially brought into existence without an amount of time, toil and expense, is a different thing. This Court has laid down clear principles on the

subject, meeting the ends of justice, but, without opening the floodgates of re-counts on flimsy grounds. Less election litigation is a sign of the people's adult franchise maturity and adventurist election petitions are an infantile disease to be suppressed. Our view of Rule 63, the relevant wholesome instructions by the Commission and the rulings of this Court, harmonise with the overall considerations of law and democracy."

34. The above decision makes it amply clear that unless pleadings contain necessary foundation for raising an appropriate issue, no amount of evidence will be sufficient. In the instant case, there is neither pleading nor evidence to substantiate the allegation of irregularities in the counting of votes. The strenuous efforts of the learned counsel for the Election Petitioner are not helpful to sustain the allegations made in the petition. In the absence of both pleadings and proof, mere smallness of margin of votes by which election is decided is irrelevant. It is also not made clear as to how many votes are liable to be rejected as having been transferred when the pleadings are insufficient the alleged irregularities in counting cannot be gone into.

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35. As stated supra, the pleadings do not indicate the errors made either with reference to the number of ballot papers, table or round, in which, mistake occurred. Excepting the vague statements, the Election Petitioner has not given any testimony through witness.

36. Hence, the Election Petition is dismissed. In view of the judgment passed hereinabove, no separate order is necessary in the

connected miscellaneous application and accordingly, the same is closed. The parties shall bear their own costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
16TH DAY OF FEBRUARY 2021.

SD./-

ASSISTANT REGISTRAR

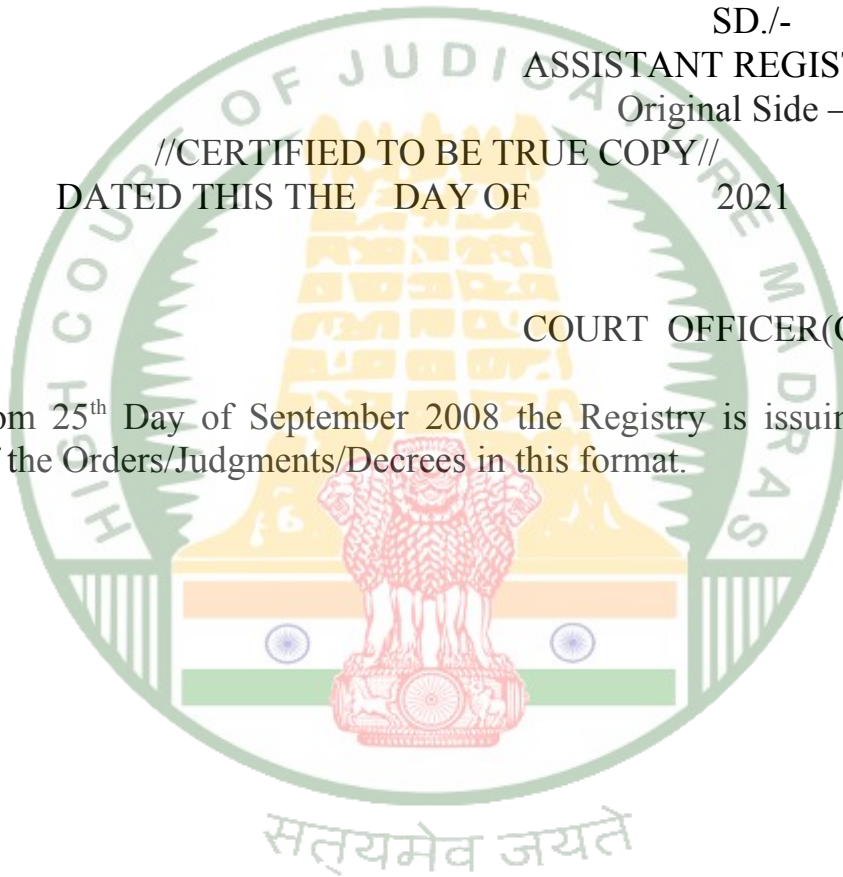
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DATED THIS THE DAY OF 2021

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pk-25/02/2021

ELP.NO.5 OF 2009
and
OA.NO.18 of 2013

ORDER
DATED:16/02/2021

THE HON'BLE MRS.JUSTICE
PUSHPA SATHYANARAYANA

FOR APPROVAL: 01/03/2021

APPROVED ON : 01/03/2021

1. The Election Commission of India,
Nirvachan sadan, Ashoka Road,
New Delhi – 110 001.

2. The Returning Officer ,
Sivagangai Parliamentary
Constituency,
Sivaganga.

3. The Assistant Registrar,
Original Side,
Madras High Court,
Chennai – 600 104.