

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA AT CHANDIGARH**

Election Petition No. 26 of 2002

Date of decision : 05.01.2021

**Harkirat Singh S/o Late Shri Budh Singh,
R/o 19/4, Ghass Mandi, Topkhanna Gate, Patiala**

.....Petitioner

Versus

**Amarinder Singh S/o Shri Yadvinder Singh,
New Moti Bagh Palace, Patiala**

As also

House No. 45, Sector – 2, Chandigarh.

.....Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Vishal Aggarwal, Advocate
for the petitioner.

Mr. M. L. Saggar, Senior Advocate with
Mr. Sunny Saggar, Advocate for the respondent.

* * *

DAYA CHAUDHARY, J.

The present election petition has been filed by petitioner Harkirat Singh under Section 81 of The Representation of the People Act, 1951 (hereinafter referred to as “The Act”) to challenge the election of respondent Amarinder Singh to the Punjab Legislative Assembly (Vidhan Sabha) *i.e.* 76 Patiala Town Assembly Constituency held on 13.02.2002 and

result thereof was declared on 24.02.2002, mainly on the ground of “corrupt practices” adopted by respondent in obtaining/procuring assistance of senior gazetted officers of the State for influencing the voters to cast their votes in his favour; incurring more expenses than the prescribed limit and some of the expenses have not been reflected in the accounts of election expenditure submitted by him. Respondent has also projected himself as “*Maharaja of Patiala*” in the posters issued/published by him just to influence the voters, which also amounts to “corrupt practices” as per provisions of Section 123(2) of the Act.

Notice of the election petition was issued to the respondent, who put in appearance through his counsel and filed written statement wherein several preliminary objection were raised including the maintainability of the election petition. Petitioner also filed replication to the written statement. On the basis of the pleadings of the parties, this Court framed the following issues vide order dated 23.09.2002 :-

1. Whether the respondent has committed the corrupt practice of procuring and obtaining the assistance of a gazetted officer as envisaged under Section 123(7) (a) of the Representation of the People Act, 1951, as alleged in paras No. 4 to 7 of the election petition ? OPP
2. Whether the respondent has committed the corrupt practice of procuring and obtaining the assistance of a police officer as envisaged under Section 123 (7) (d) of the Representation of the People Act as alleged in paras No. 8 to 9 of the election petition ? OPP

3. Whether the respondent has committed the corrupt practice of undue influence as envisaged under Section 123(2) of the Representation of the People Act as alleged in para No.10 of the election petition? OPP
4. Whether the respondent has committed the corrupt practice of excessive expenditure as envisaged under Section 123(6) of the Representation of the People Act as alleged in para No. 11 of the election petition? OPP
5. Whether the election petition is liable to be dismissed as the allegations of corrupt practice are not supported by a valid and legal affidavit as mentioned in preliminary objections No. 1 and 2 of the written statement? OPR
6. Whether the election petition lacks material facts and particulars and discloses no cause of action as mentioned in preliminary objection No.3 to 10 of the written statement? OPR
7. Whether the election petition is liable to be dismissed being incomplete as mentioned in para No.11 of the preliminary objections of the written statement? OPR
8. Whether the election petition is not verified as required under Order 6 Rule 15 of C.P.C., if so its effect? OPR
9. Relief.

However, issues No. 5 to 8 were treated as preliminary issues by this Court. After hearing the arguments on said preliminary issues, the election petition was dismissed by this Court vide judgment dated 03.11.2004 on the ground that the petitioner failed to disclose the material

facts regarding corrupt practices to constitute a complete cause of action. Said judgment dated 03.11.2004, dismissing the election petition by this Court, was challenged by the election petitioner before Hon'ble the Apex Court by way of filing an appeal, which was allowed vide order dated 16.12.2005 and judgment dated 03.11.2004 passed by this Court was set aside. The case was remitted to this Court for deciding the same on merits as the petition was dismissed only on preliminary ground being not maintainable, whereas it was required to be decided on merits.

In support of their case, both the parties led their respective oral as well as documentary evidence.

Mr. Vishal Aggarwal, learned counsel for the election petitioner submits that there are specific allegations of corrupt practices against the respondent in the election petition that he procured and obtained assistance of Shri Bharat Inder Singh Chahal, the then Joint Director, Information & Public Relations Department, Punjab, who helped the respondent in the election campaign by actively participating and being personally present in the press conference held on 29.01.2002, which was addressed by the respondent for furtherance of prospects of winning the election. Learned counsel further submits that an audio/video cassette was prepared and a complaint in this regard was made by one Shri Jagdip Singh Chowhan to the Election Commission of India, New Delhi and the Chief Electoral, Punjab at Chandigarh, showing the active participation of Shri Bharat Inder Singh Chahal. Some news items were also reported/published in various daily Hindi and English newspapers of that date. Petitioner also

examined Jagdip Singh Chowhan as PW-16, who made the complaint dated 01.02.2002 Ex.PW16/2 and PW12 Shri Gurjit Singh Cheema, the then Chief Election Officer, Punjab, who called a report from the Punjab Government to the complaint made by Jagdip Singh Chowhan. PW-14 Shri S.K. Ahluwalia, the then Director, Information and Public Relations and PW-13 Shri D. S. Guru, the then Secretary, Information and Broadcasting, Punjab Government were also examined in support of the allegations of corrupt practices. Learned counsel further submits that it has been proved on record from the evidence that the respondent procured and obtained help/assistance of said officer, which is a clear-cut case of corrupt practice as per provisions of Section 123(7) (a) of the Act. Learned counsel further submits that the respondent also procured the assistance of Shri Gurnam Singh Mehra, the then Superintendent of Police, Patiala, belonging to Kashyap Rajput Committee, who organized a function on 26.01.2002 in favour of the respondent. Said function was presided over by Smt. Parneet Kaur, Member Parliament, Patiala, the wife of the respondent. Pamphlets/posters were also distributed showing the respondent as “*Garibo Ka Masiha*”. Learned counsel further submits that the respondent incurred expenses of more than Rs. 6 lacs and did not maintain correct and proper accounts of election expenditure. The expenses of press conference held on 29.01.2002 as well as tea/snacks served during conference were not reflected in the accounts of expenditure furnished to the Election Commission. Learned counsel for the petitioner, in support of his arguments, has also relied upon judgment of Hon'ble the Apex Court in case titled ***Inamati Mallappa Basappa Vs. Desai***

Basavaraj Ayyappa and others 1958 AIR (SC) 698.

Mr. M. L. Saggar, learned Senior counsel for the respondent has opposed the submissions made by learned counsel for the petitioner. He submits that the allegations of corrupt practices in the election petition are in the nature of criminal charge and the same are required to be proved in the like manner. Learned Senior counsel also submits that the standard of proof is high and the burden is on the election petitioner to prove the allegations beyond the reasonable doubt. The allegations of participation of two officers in organizing, conducting and participating personally in the press conference addressed by the respondent for furtherance of his election prospects are not only vague but the same have not been supported by any evidence. Mr. Saggar further submits that the allegations of corrupt practices have not been proved from the statements of the witnesses. PW-16 Jagdip Singh Chowhan is the star witness of the petitioner, who made complaint dated 01.02.2002 to the Election Commission of India. However, the respondent examined RW-7 Shri M. P. Pandove, RW-8 Shri Jignesh Kumar and RW-9 Shri Anuj Trivedi, who stated that the press conference was organized by the office bearers of Patiala District Congress Committee. Respondent himself has also stated that the press conference held on 29.01.2002 was attended by him being the President of Punjab Pradesh Congress Committee for taking disciplinary action against the rebel candidates and they were also expelled for a period of six years from the Congress party. The names of those candidates, who were expelled from the party, were also published in various newspapers. In the audio/video

cassette, Shri Bharat Inder Singh Chahal has been shown to be entering the library and sitting on a chair in the second row, but there was no active participation on his part. Learned Senior counsel also submits that Mr. Chahal did not utter even a single word either to the respondent or to any press person. PW-16 Shri Jagdip Singh Chowhan has also admitted in his cross-examination that Mr. Chahal had only entered the conference room and gave directions to the staff of the respondent to look after the journalist. He was seen while taking tea and other eatables and that too for a short period. The active participation of Mr. Chahal has also not been proved from the statement of PW-14 Shri S.K. Ahluwalia.

Mr. Saggar further submits that as per provisions of Sections 83 and 86 of the Act, all the material facts and particulars are required to be mentioned in the election petition. However, some new facts and particulars were mentioned in the replication filed after the expiry of period of limitation. As per provisions of Section 86 (5) of the Act, the particulars of corrupt practices can be raised by amending the election petition only with the permission of the Court. The allegation of corrupt practices in the election petition are like a criminal charge and the same is required to be proved in the nature of criminal charge only. The burden to prove is on the election petitioner. The allegation of corrupt practices should be clear and precise and the same are required to be proved by leading credible evidence. Learned Senior counsel has also relied upon judgments in cases titled ***Jeet Mohinder Singh Vs. Harinder Singh Jassi AIR 2000 (SC) 256*** and ***Baldev Singh Mann Vs. Surjit Singh Dhiman E.P. No.16 of 2002 decided***

on 08.12.2006, in support of his arguments.

Heard arguments of learned counsel for the parties.

All the issues are interconnected, so the same are being taken up together for adjudication.

Facts relating to filing of nominations, date of the polling, date of counting and declaration of the result, filing of election petition and remand by Hon'ble the Apex Court, are not disputed.

The present election petition has been filed to challenge the election of the respondent mainly on the ground of alleged corrupt practices committed by him by obtaining/procuring assistance of two senior gazetted officers namely Shri Bharat Inder Singh Chahal and Shri Gurnam Singh Mehra for the furtherance of prospects of his election; by incurring more expenses than the prescribed limit and some of the expenses were not reflected in the accounts of election expenditure submitted by respondent and by projecting himself as “*Maharaja of Patiala*” in the posters issued/published by him just to influence the voters, which also amounts to “corrupt practices” as per the provisions of Section 123 of the Act.

Section 123 of the Act is relevant in the present context and the same is reproduced here as under :-

“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 object, 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.]

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the 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.]

[(3B) 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 4 [with the consent of a candidate or his election agent], 6 [or the use of such vehicle or vessel for the free conveyance] of 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 a 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 any 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 vehicle 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 1 [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 belonging 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 arrangements, 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-

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

(ii) 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 135A.]”

As per the allegations mentioned in paras No.4 to 7 of the election petition, the respondent has committed the corrupt practice as envisaged under Section 123 (7) (a) of the Act for procuring/obtaining the assistance of Shri Bharat Inder Singh Chahal, the then Joint Director,

Information & Public Relations Department, Punjab, which is a gazetted post in the Government of Punjab, for furtherance of his election prospects. Said officer actively participated in organizing/conducting the press conference addressed by the respondent. As per the allegations, PW-16 Jagdip Singh Chowhan made a complaint to the Election Commission of India regarding presence of Bharat Inder Singh Chahal in said press conference. However, as per the written statement filed by the respondent, the press conference was held and addressed by him being President of Punjab Pradesh Congress Committee and had no relevancy, whatsoever, with his election *i.e.* 76, Patiala Town Assembly Constituency. Respondent has also specifically/categorically stated in his statement that the press conference was to enforce discipline in the party as some rebel candidates were contesting the election and violating the party discipline. Those candidates were expelled from the party. The respondent has also specifically stated in his statement that the press conference was called by him for a specific purpose being the President of Punjab Pradesh Congress Committee. It was also reported in various leading newspapers of Hindi and English. There was no involvement of Shri Bharat Inder Singh Chahal in the press conference in any manner.

To prove the allegation of corrupt practice, the petitioner has also examined PW-2 Maya Ram, who produced the file Ex.PW2/1 of office of Chief Electoral Officer, Punjab relating to complaint dated 01.02.2002 of Shri Jagdip Singh Chowhan and audio/video cassette. PW-3 Ram Gopal Kaushik, Superintendent, Department of Information and Public Relations,

Punjab produced the file regarding action taken by the State Government on the complaint dated 01.02.2002. To rebut their testimonies, the respondent also examined RW-7 Shri M. P. Pandove, RW-8 Shri Jignesh Kumar, RW-9 Shri Anuj Trivedi, who had stated in their statements that the press conference was organized by office bearers of Patiala District Congress Committee. The allegations of corrupt practice with regard to conducting/convening press conference and incurring expenses have not been proved from the statements of witnesses. The petitioner himself admitted in his cross-examination that disciplinary action was taken against the rebel candidates who were opposing the official candidates. Petitioner has further admitted that in the press report, name of Bharat Inder Singh Chahal was not mentioned. Similarly, PW-16, Jagdip Singh Chowhan, who made the complaint dated 01.02.2002, has also admitted in his cross-examination that the respondent asked the rebel candidates to withdraw their candidatures. He has also admitted as correct that in the press conference, the respondent asked the Congress party supporters to support the official candidates, failing which they would be expelled from the party.

The audio/video cassette Ex.P16/6 was examined by the Committee as stated by PW-14 Shri S. K. Ahluwalia. In the audio/video cassette, Shri Bharat Inder Singh Chahal has been seen to be entering the library where the press conference was being addressed by the respondent. Mr. Chahal has been seen to be sitting in the second row. It has not been proved from the audio/video cassette that Mr. Chahal has stated anything by making appeal to the electorates of the constituency. Even PW-16 Jagdip

Singh Chowhan was asked by the Election Commission as to whether he had any other evidence regarding his allegations of presence of Mr. Chahal and his active participation in the press conference. Mr. Chowhan stated that he was not having any such evidence. The complaint made by Jagdip Singh Chowhan was ordered to be filed and intimation in this regard was sent to the Chief Electoral Officer, Punjab vide letter Ex.PW3/14. The relevant portion of cross-examination of Shri Jagdip Singh Chowhan PW-16 is reproduced as under:-

“It is correct that in this conference Captain Amarinder Singh asked those rebel candidates to withdraw their candidatures or they would be expelled from the party. It is also correct that in this conference Captain Amarinder Singh asked the Congress supporters to support the official candidates and it was made clear that in the event of their failure to do so, they will be expelled from the party. He had only issued the list of rebel candidates and not a formal press note. In the video cassette Shri Chahal entered the conference room, gave directions to the staff of Captain Amarinder Singh to look after the journalists and sits there. He was then seen taking tea and eating something for a short duration. It is correct that the paper distributed in the press conference was distributed by some persons of Captain Amarinder Singh and not by Mr. Chahal. The tea and eatables served in the press conference is as per normal courtesy.”

Similarly, PW-12 Mr. Gurjit Singh Cheema, Chief Election Officer, Punjab has also admitted in his cross-examination that Mr. Chahal was seen sitting in the conference, which is reproduced as under :-

“In the video cassette, Mr. BIS Chahal was seen moving around in the press conference and was also seen sitting in the conference. At the time of the said press conference, the respondent was President of the Punjab Pradesh Congress Committee.”

** * * * **

Mere presence of a Government employee or the official in the crowd in a rally to hear a speech of the politician is not a violation of Code of Conduct for the employees.”

Cross-examination of PW-14 Shri S. K. Ahluwalia, then Director, Information and Public Relations is also relevant, which is as under:-

“It is correct that in the video cassette Shri Bharat Inder Singh Chahal was only present and he did not speak or utter any word or did any other action. At the time of the press conference, the respondent was President of the Punjab Pradesh Congress Committee. I had recorded in my note PW3/11 that it will not be appropriate to take action against Shri Bharat Inder Singh Chahal. The note was sent to the Secretary, who had prepared a detailed note PW3/12 and recommended the matter to be filed. On 23.02.2002, the Minister approved the said recommendation.”

Petitioner while appearing as PW-8 has admitted that no such complaint was made by the candidate or his agent regarding organizing press conference on 29.01.2002 or function held on 26.01.2002. Even the petitioner himself did not move any complaint.

Simply by saying that Shri Bharat Inder Singh Chahal was present during the press conference held on 29.01.2002 and he organized the press conference, which was addressed by the respondent, is not sufficient without any such evidence on record, to show his active participation in conducting press conference or he helped the returned candidate in any manner. It has been proved on record that the press conference was organized by the office bearers of the District Congress Committee, Patiala and no active participation was there on the part of Mr. Bharat Inder Singh Chahal.

Similarly, to prove the allegations of corrupt practice for procuring assistance of Shri Gurnam Singh Mehra, the then Superintendent of Police, Patiala, the petitioner himself has appeared as PW-8 and also examined PW-11 Shri Raghbir Singh Anandpuri. The allegations of corrupt practice regarding organizing function dated 26.01.2002 by Shri Gurnam Singh Mehra, was published in newspaper "The Tribune" dated 05.02.2002. The press note was alleged to be issued by PW-11 Raghbir Singh Anandpuri, who happened to be the Vice President of Punjab Kashyap Rajput Sabha (Regd.) to malign Shri Gurnam Singh Mehra. The newspaper report dated 05.02.2002 has not been proved on record. Some posters were alleged to be distributed with his photographs in police uniform, wherein the respondent was stated to be "*Garibo Ka Masiha*".

It has specifically been denied by the respondent in his written statement that Gurnam Singh Mehra organized function on 26.01.2002 in his favour. The name and location of marriage palace, where the function

was alleged to be organized, has not been mentioned. The allegations regarding obtaining assistance of Gurnam Singh Mehra has not been proved. PW-11 has also admitted that on 26.01.2002, no proceedings were recorded by any of the office bearers. He further admitted that he did not make any complaint to any official about the alleged speeches made in the function. He further admitted that some organizations celebrated Republic Day function. He further admitted that Gurnam Singh Mehra knew office bearer of Kashyap Rajput Sabha. He further admitted that no function was organized on 26.01.2002 by Kashyap Rajput Sabha. Respondent also examined RW-3 Shri Amareshwar Singh, SDM-cum-Returning Officer, Samana Assembly Constituency and produced record of the Constituency Ex.RW3/1. He also examined RW-10 Ms. Rajni Sharma who has stated that the function held on 26.01.2002 was organized being Republic Day by the residents of the area and no political speech was made. It has not been proved on record that Gurnam Singh Mehra has, in any manner, assisted the respondent for furtherance of his election prospects.

The allegations of corrupt practices are required to be proved by leading evidence that the returned candidate had obtained assistance of gazetted officers for furtherance of prospects of his election. Petitioner is also required to prove from the evidence as to how and in what manner, said officers had assisted the returned candidate in the election campaign for furtherance of the prospects of his election. In the present case, nothing has been proved on record from the statements of the witnesses that the respondent had taken the assistance of the gazetted officers in his election

campaign for furtherance of the prospects of his election. In case the allegations of corrupt practices are not proved by way of evidence, then the benefit of doubt goes to the returned candidate.

It is also well settled law that the charge of corrupt practice is to be proved like a criminal charge and the standard of proof as required in a criminal case, is to be applied in testing of evidence of corrupt practice in the election petition. The allegations of corrupt practice are required to be established by clinching and unimpeachable evidence. Unless there is cogent evidence to take the case beyond reasonable doubt, the election of a returned candidate cannot be set aside. There are mere allegations of corrupt practice, which may only create a doubt, but the charge of corrupt practice cannot be proved on mere suspicion or doubt. Requirement of proof of corrupt practice is higher and is confined to strict legal evidence.

The commission of corrupt practice by the returned candidate or his agent can be a ground for setting aside the election under Section 100 of the Act. In case any corrupt practice is committed by the returned candidate or his election agent, the election is void without any further condition being fulfilled. In case the corrupt practice is committed by any other person other than the candidate or his election agent, it must be shown that it was committed by him with the consent of the candidate or his election agent. Under Section 100(1)(d)(ii), if the corrupt practice is committed in the interest of the returned candidate by an agent, other than his election agent, it is further to be proved that the result of the election in so far as the returned candidate is concerned, has been materially affected.

A combined reading of clauses (b) and (d)(ii) of sub-section (1) of Section 100 shows that there may be a corrupt practice committed by an agent with or without consent of the candidate or his election agent. If it is with the consent of the candidate or his election agent, it would fall within the purview of sub-section (1)(b) of Section 100 as the expression 'any other person' under Section 100(1)(b) includes an agent other than election agent otherwise it would be within the ambit of sub-section (1)(d) (ii) of Section 100 of the Act. To establish corrupt practice, by an agent other than election agent, the consent on the part of returned candidate to the commission of corrupt practice required to be proved. No doubt the consent need not to be directly proved. It may be inferred from the circumstantial evidence but the circumstances must point to the conclusion. In case the allegations of corrupt practice have not been properly pleaded or proved by leading cogent evidence, the allegations in the election petition have not been established at all.

It is evident from the facts and circumstances of this case and the evidence available on the record that the allegations of corrupt practice under Section 123(4) of the Act have neither been proved, nor it can be inferred from the circumstances of the case. Merely on the basis of presence of the officer at the time of press conference is not sufficient to prove that the respondent has actively participated in the press conference and supported the cause of the respondent. Even the news items, without any further proof as to what had actually happened through witnesses, are also of no value. It is at the best a second-hand secondary evidence. It is well

known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. Sometime in the process, the truth might get perverted or it is half truth but such news item cannot be said to be proved without taking into consideration the evidence.

It has also been held in a number of judgments that the charge of corrupt practice is quasi criminal in nature. The allegations relating to commission of corrupt practice should sufficiently be clear and to be stated precisely so as to afford the person charged a full opportunity of meeting out the same. The charges when put to issue should be proved by clear, cogent and credible evidence. There would a presumption of innocence be available to the person charged as the charge has to be proved to the hilt and the standard of proof being the same as in the criminal trial.

No doubt the allegations of corrupt practice in the election petition are serious and consequences flowing from the proof of corrupt practice at the election are serious as onus of establishing commission of corrupt practice lies upon the persons who alleges the same. The onus of proof is not discharged merely on preponderance of probabilities but the standard of proof is required to be proved like a criminal or quasi-criminal charge, for which the credible and reliable evidence is required to prove the charge beyond any reasonable doubt.

On perusal of the evidence available on the record, it has not been proved as to how the concerned officers assisted the respondent in his election campaign for furtherance of the prospects of his election. As per the allegations, Shri Bharat Inder Singh Chahal was present during press

conference held on 29.01.2002. He organized/managed the press conference, which was addressed by the respondent, but there is no evidence available on record that the press conference was organized by the said officer. Even it has not been proved on record that the press conference was for advancing the election campaign of the respondent. It is also not disputed that the respondent was the President of Punjab Pradesh Congress Committee and some of the rebel candidates filed nomination papers as independent candidates against the official candidates. The press conference was organized by the officials of Punjab Pradesh Congress Committee. In said press conference, the respondent warned the rebel candidates. Merely, attending the press conference does not amount to any corrupt practice. The complaint made by PW-16 Jagdip Singh Chowhan against Bharat Inder Singh Chahal was filed.

As regards the allegation of corrupt practice of excessive expenditure as per Section 123 (6) of the Act, the petitioner has alleged in the election petition that the respondent has incurred expenditure of more than the prescribed limits of Rs. 6 lacs. The expenses of tea/snacks spent for the press conference held on 29.01.2002 have not been reflected in the total expenses. As per the stand of the respondent, an amount of Rs.3,31,634.50 has been shown to have been spent in his election return.

Sections 81, 83, 86 and 100 of the Act are also relevant in the present context and the same are reproduced here as under :-

“81. Presentation of petitions.— (1) An election petition calling in question any election may be presented

on one or more of the grounds specified in [sub-section (1)] of section 100 and section 101 to the [High Court] by any candidate at such election or any elector [within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates].

Explanation.—In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

[* * * * *]

[(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition [***], and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.]”

“[83. Contents of petition.— (1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall

also be signed by the petitioner and verified in the same manner as the petition.]”

[86. Trial of election petitions.— (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of

any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.”

“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 (20 of 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, in so far as it concerns a returned candidate, has been materially

affected-

(i) by the improper acceptance or 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.”

It is also not disputed that the petitioner filed replication to the written statement subsequently. As per provisions of Section 83 and 86(5) of the Act, the particulars of alleged corrupt practices are to be mentioned in the election petition. The petitioner could have sought amendment of election petition as per provisions of Section 86(5) of the Act but no such permission was ever sought from the Court to amend the election petition.

It is a settled proposition of law that the particulars mentioned in the replication cannot be taken into consideration without amendment in the petition and that too with the permission of the Court. The power of amendment granted by Section 86(5) of the Act is relatable to clause (b) of Section 83(1) of the Act and is coupled with a prohibition that the amendment will not relate to a corrupt practice not already pleaded in the election petition. The plain language of Section 86(5) of the Act confines itself to the amendments of particulars of any corrupt practice alleged in the petition and does not extend to 'material facts'. There is clear distinction between 'material facts' as referred to in clause (a) of Section 83 and 'particulars' referred to in clause (b) of the said section. Sub-section (5) of Section 86 applies to the latter and not to the former.

To prove the allegations of corrupt practice, PW-1 has produced the election returns of the respondent exhibited as PW1/1. The petitioner appeared as PW-8 and has also filed his affidavit Ex.PW8/1. However, there is no other evidence led by the petitioner to prove the alleged corrupt practice under Section 123(6) of the Act. It is also settled proposition of law that any additional particulars mentioned in the

replication cannot be taken into consideration by the Court. Any material facts and particulars to show the commission of corrupt practice are required to be mentioned in the election petition and not in the replication, filed after the period of limitation for filing the election petition. The material facts and particulars mentioned for the first time in the replication cannot be made part of election petition and it cannot be the subject matter of issues framed by the Court. The issues can be framed by considering the averments made in the election petition. The respondent in fact in such cases does not get any opportunity of denying the averments of facts and particulars introduced for the first time in the replication. Moreover, the replication has not been supported by any affidavit in the prescribed form. The expenditure which is stated to be more than the prescribed limit of Rs.6 lacs has been elaborated in the replication only. It was for the election petitioner to prove that any expenditure on account of posters has been incurred between the period of filing of nomination and date of declaration of result of election.

The petitioner has also not mentioned the details of any expenses incurred in holding the press conference in the election petition and no such affidavit has also been filed. Petitioner himself has stated in his cross-examination that he had inspected the election return filed by the respondent in the office of the District Election Office. He has also stated that the respondent did not show the expenditure of press conference held on 29.01.2002 in his returns filed before the Returning Officer. He has not given the exact figures of expenditure incurred for the conference as alleged

in the affidavit. As per the returns of election expenses, the respondent filed his nomination papers on 22.01.2002 and result thereof was declared on 24.02.2002. In the election return, the expenses incurred on election amounting to Rs.3,31,634.50 have been mentioned in the written statement filed by the respondent and nothing has been mentioned as to how much amount has been spent upon press conference or for serving high tea during press conference dated 29.01.2002.

It has also not been proved on record that the alleged pamphlets were got published/distributed by the respondent or his election agent with his consent. The petitioner has not been able to prove on record that the respondent had incurred the expenditure more than the prescribed limit. Sub-section 1 of Section 77 requires every candidate at an election to keep a separate and correct account of all expenditure in connection with the election “incurred or authorized by him or by his election agent”. Explanation-1 is in nature of a proviso to sub-section (1) of Section 77, inasmuch as it provides that if the expenditure has been incurred by a political party or by any other association or body of persons or by any individual other than the candidate or his election agent, it shall not be deemed to be expenditure in connection with the election incurred or authorised by the candidate or his election agent, for the purpose of sub-section (1) of Section 77. Onus is on the election petitioner to satisfy the Court on basis of materials produced by him, that the candidate concerned has incurred expenditure in connection with the election in excess of the limit fixed by Rule 90 of the Rules, 1961. In case it appears that such an

expenditure has been incurred by the candidate or has been authorised by the candidate or his election agent, then explanation being in the nature of a proviso to sub-section (1) of Section 77, the onus will shift on the candidate to show to the Court that the excess expenditure beyond the limit fixed by Rule 90 has been incurred either by the political party or by any other association or on body of persons or by any individual other than the candidate or his election agent.

In the present case, the election petitioner has alleged that the respondent incurred expenses more than the prescribed limit. The petitioner is required to produce some material in support of averments made in the election petition. Simply oral statement made by election petitioner has been contradicted by the respondent, by stating on oath that expenditure for publication of pamphlets/posters has not been incurred by him or his agent. In case if it has been incurred by the political party, then it is covered by Explanation-1 to sub-section (1) of Section 77 of the Act.

Accordingly, it can safely be said that the allegations of alleged expenses are not only vague but only a guess work.

It has been held in various judgments of the Apex Court as well as this Court that non-compliance of mandatory provisions, the Court has no option but to dismiss the election petition under Section 86(1) of the Act. Same view has been held in judgment of Delhi High Court in case ***Gopal Prasad Shastri Vs. Mrs. Archana Kumar & Ors. AIR 1984, Delhi 280.***

PW-16 Jagdip Singh Chowhan has also admitted in his cross-examination that tea and eatables were served during press conference as

per formal courtesy. The averments made in the replication regarding alleged expenditure, without amendment of election petition in view of provisions of Section 86(5) of the Act, cannot be taken into consideration. Apart from mere statement of the election petitioner, there is no other evidence, oral or documentary, to prove the alleged items of expenditure as mentioned in the replication.

As per the record Ex. PW4/1, SPAN Air Pvt. Ltd. New Delhi permitted Punjab Congress Committee to charter its helicopter from 19.01.2002 to 13.02.2002 and received the amount from the account of Punjab Pradesh Congress Committee. Even as per logbook of aircraft from 10.01.2002 to 13.02.2002, the visits have been shown to different constituencies in the State of Punjab and public/election meeting were addressed by the respondent being the President of the Punjab Pradesh Congress Committee. It is also reflected in the logbook that the respondent was present in Delhi on the date of poll i.e. 13.02.2002. He came to Chandigarh on 11.02.2002 and thereafter, he left for Delhi on 13.02.2002. Ex.PW6/1 reflects the amount claimed by Indian Oil Corporation for use of fuel and Ex.PW6/2 is the details of bills of Indian Oil Corporation for the amount used on fuel by SPAN Air Pvt. Ltd. The same has also been admitted by the respondent in his cross-examination.

The petitioner himself has also admitted in his statement that the certified copy of the return was obtained. The details mentioned in the replication are stated to be on the basis of information provided by congress workers, whereas neither dates nor places of information have been

mentioned in the replication. The election petitioner is supposed to disclose the information but in absence of such information, the alleged expenditure figures are only an imaginary. The allegations made by the petitioner regarding expenditure more than the prescribed limit have not been proved on record. The election petitioner has also concealed the material fact that complaint dated 01.02.2002 (Ex.PW16/2) of Shri Jagdip Singh Chowhan had been examined by the State Government and was filed. This fact was in his knowledge but the same has not been mentioned in the election petition. Even the marriage palace which was situated in Samana Assembly Constituency has not been mentioned in the election petition.

From the statement of the election petitioner, it appears to be a proxy litigation. The cross-examination of the petitioner is relevant in this context, which is as under :-

“ I have said that, now I cannot do anything and only high command can do it, I have further said, only Badal Sahib can withdraw, if Badal Sahib can say I can withdraw. It is correct that during the 1997 Punjab Assembly elections, The Shiromani Akali Dal headed by Shri Parkash Singh Badal in coalition with Bharatiya Janta Party had won and Shri Parkash Singh Badal became Chief Minister, Punjab. It is also correct that the respondent became President of the Punjab Pradesh Congress Committee in the year 1998...”

On perusal of Section 83 of the Act, it appears that it consists of three important elements i.e. first an election petition, which contains a concise statement of material facts, which the election petitioner relies

upon. The emphasis is on the material facts which should be in a concise form. As per requirement of Section 83(1)(b) of the Act, the election petition should set forth full particulars of corrupt practice which is alleged to be committed by the petitioner. As per sub-section 83(1)(b) such particulars should be complete in every respect and when it relates to an allegations of corrupt practice, it should specifically mention the names of the parties, who alleged to have committed such corrupt practice and also the date and the place where such corrupt practice was committed. Meaning thereby, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should be in a position to gather every minute detail about the alleged corrupt practice such as names of the persons, the nature of the alleged practice indulged in by such person or persons, the place, the date, the time and every other detail relating to alleged corrupt practice. The election petitioner cannot simply raise an allegation of corrupt practice and to get away with it but an affidavit is required to be filed in respect of corrupt practice to specifically support the facts so pleaded, as well as, the material particulars so furnished. Rule 94A of the Conduct of Election Rules, 1961 (hereinafter referred to as “The Rules, 1961”) stipulates that affidavit should be in the prescribed form and should be sworn before a Magistrate of First Class or a Notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to comply with said requirements statutorily. The format of affidavit as prescribed in Form No.25 is a mandatory requirement where such material particulars relating to such corrupt practice are alleged.

The statement of facts and material particulars are based on personal knowledge of the election petitioner and such statement and particulars are made basis on the information gained by the election petitioner.

It is a mandatory requirement that the election petition is required to contain a concise statement of material facts relied upon by the petitioner by mentioning full particulars of any 'corrupt practice' alleged by the election petitioner including the names of the parties alleged to have committed such practice by mentioning date and place of commission of such practice. In case it does not contain the concise statement of material facts and particulars and does not set forth full particulars relating to the alleged corrupt practice in the election petition, the election petition is liable to be dismissed in case it does not furnish the cause of action. There should not be any vagueness in the allegations. In case the election petitioner does not comply with the provisions of Section 81, 82 or 117 of the Act, it can be dismissed under Section 86 of the Act. In case there is a lacking of material facts and particulars in terms of Section 83, it can be dismissed. The material facts should include the complete chain of material events and the basis in support of the allegations. The material facts mean a composite bundle of facts, which are sufficient for giving cause of action and must be specifically averred as to how the result of an election petitioner has been materially affected.

There are allegations against the respondent that he projected himself as "*Maharaja of Patiala*". The petitioner has referred three posters Mark-D to Mark-F as mentioned by PW-8 Harkirat Singh petitioner. Those

posters have not been proved. Though, at the time of arguments, learned counsel for the petitioner has not pressed these allegations, however, it is relevant to see the legal provision which defines the “election pamphlet”. Section 127 A (3) (b) of the Act defines the “election pamphlet” which is reproduced as under:-

“127-A. Restrictions on the printing of pamphlets, posters, etc.—

(1) ***

(2) ***

(3) (a) ***

(b) "election pamphlet or poster" means any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any hand-bill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.

(4) *** ”

On mere perusal of pamphlets Mark-D to Mark-F, it cannot be said that these are “election pamphlets” within the meaning of Section 127-A (3)(b). In case said pamphlets are taken at their face value, it cannot be said that even a prima-facie case is made out against the respondent. Said pamphlets do not contain the promotion of the election or any election agenda. Moreover, no such reference to the election has been given in the pamphlets. Once it is found that the offending material i.e. pamphlets Mark-D to Mark-F are not "election pamphlet", as per the definition, it cannot be

said that it is punishable under Section 127-A(4) of the Act. To make out a case under Section 127-A (3)(b), there must be some evidence to prove that the respondent printed/published and distributed the material i.e. “election pamphlets”. In the present case it has not been proved by any evidence that the respondent has got published/printed or even distributed the election pamphlets.

However, the respondent himself has stated in his statement that he never used prefix of “Maharaja” with his name but always uses prefix “Captain” with his name. He is popular by the name “Captain Amarinder Singh” among the people and also in political circle. As far as this allegation is concerned, no evidence has come on record as to how voters of constituency were influenced. This allegation has also not been proved.

It is also settled proposition of law that the election results should not lightly be set aside and the will of electorates should ordinarily be respected. Setting aside of an election result is a serious matter and it should not be done lightly. The purity of election is the essence of democracy. In case the election is set aside only on the basis of vague allegations of corrupt practices without proving on the basis of evidence, it would be a wrong precedent. The appreciation of evidence for determining the commission of corrupt practice is to be made liberally. It is the duty of the Courts to appreciate the evidence and construe the law in a manner to serve the higher purpose for survival of democracy. The rule of law must prevail and the best available persons should be chosen as people's

representatives for proper governance of the country as has been observed in judgment of Hon'ble the Apex Court in case titled ***Gadakhyaashwantrao Kankarrao Vs. Balasaheb Vikhe Patil, 1994 (1) SCC 682.***

By considering the submissions made by learned counsel for the parties and on perusal of oral as well as documentary evidence available on the record and after going through the judgments relied by learned counsel for both the parties, this Court is not in agreement with the submissions made by learned counsel for the petitioner as he has failed to convince the Court as to how the allegations of corrupt practice made in the election petition come under the definition of “corrupt practice” and how the averments made in the replication can be accepted as part of election petition without amending the election petition and that too without any permission of the Court. The petitioner has failed to prove the charge of corrupt practice beyond reasonable doubt as the charges in the election petition are to be proved like a criminal charge and the same are to be proved beyond reasonable doubt and not merely by preponderance of probabilities.

Accordingly, there is no merit in the submissions made by learned counsel for the petitioner. Hence, the present election petition, being devoid of any merit, is hereby dismissed.

Dated 05.01.2021

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No