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QUAMARUL ISLAM
v.
S.K. KANTA AND ORS.

JANUARY 21, 1994

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[S. RATNAVEL PANDIAN, R.M. SAHAI AND DR. A.S. ANAND, JJ.]

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Representation of People Act, 1951 : Sections 123(2), (3), (3A), (4) and 124(7)—Election Petition filed against returned candidate—Allegation of corrupt practices—Proof of—Failure to adduce admissible and reliable evidence—Election cannot be set aside on mere probabilities—Trial conducted in a very casual manner—Absence of Rules in this regard—High Court to frame rules for proper trial of election petitions—Suggestion given to Karnataka High Court.

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Practice & Procedure : Election Petition—Trial of—Affidavit in support of Petition—Permitted to be filed after the arguments—Such a practice unknown to civil or election law—Hence Deprecated.

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The appellant was the returned candidate from 10 Gulbarga Assembly constituency in 1989 and Respondent No.1 was his nearest rival. He filed an election petition challenging the election of the appellant on grounds of corrupt practices. It was alleged that the Indian Union Muslim League (IUML) and Muslim Youth League appealed for votes on the grounds of religion through advertisements in an Urdu newspaper seeking votes for the appellant; that the person appointed by the appellant as convenor of Muslim Youth League (MYL) later became his election agent; that speeches were delivered by the appellant seeking votes on grounds of religion; and that the said newspaper, apart from the messages, also contained a sacred religious symbol, written in Urdu, meaning 'voice of the prophet'.

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The appellant denied the allegations asserting that he was a candidate of Muslim League and that he had nothing to do with the IUML or MYL and that his election agent was not the person as alleged in the petition, but a different person. As regards the messages and advertisements inserted in the Urdu newspapers, appellant stated that they neither originated nor sponsored, or published at his instance. He also denied that he had delivered any speeches as alleged or that he had made any appeal

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on ground of religion at all.

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The matter was heard by a Single Judge of the High Court who held that the appellant was directly responsible for committing corrupt practices under Section 123 of the Representation of the People Act, 1951 and set aside the election of the appellant. Hence this appeal.

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On behalf of the appellant, it was contended that the pleadings in the election petition were so vague, lacking in material facts and particulars besides being frivolous and vexatious that the same did not give rise to any triable issue at all, and therefore the petition ought to have been dismissed. Besides, the evidence relied upon was inadmissible and unreliable.

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On behalf of the respondent, it was contended that having failed to raise any objection about the alleged defects at the initial stage and having faced the trial, it was not open to the appellant now to urge that the defects in the pleadings should have resulted in the dismissal of the election petition at this belated stage.

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Allowing the appeal, this Court

HELD : 1. The trial judge was not justified in setting aside the election of the appellant on the basis of inadmissibly and unreliable evidence. The election petitioner has failed to connect the returned candidate with the commission of the alleged corrupt practices either by himself or through his election agent or by any other agent or person with his consent or with the consent of his election agent through any *admissible* and reliable evidence. [257-D, E]

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2. A careful perusal of the allegations of corrupt practice under S.123(4) of the Representation of the People Act, 1951 shows that it is not even asserted by the election petitioner that the statement alleged to have been made by the returned candidate on 1.11.1989 about the non-signing of the passport forms of certain people in the constituency was false to the knowledge of the returned candidate or that he made it without believing that statement to be true. There was, thus, no allegation whatsoever which satisfied the basic requirements of Section 123(4) of the Act. It was not even alleged by the election petitioner that the returned candidate made a statement of fact which was false to his knowledge or which he did not

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A believe to be true and in the absence of any such averment in the election
petition and the affidavit filed in support thereof, the trial court should
not even have framed an issue relating to the said corrupt practice. Even
in the evidence, it was not deposed by the election petitioner that the
statement allegedly made by the returned candidate was false to the
B knowledge of the returned candidate or/and was made by him without
believing it to be true. [242-H, 243-A-B, C]

3.1. Admittedly, on his own showing, PW4 was not present at the time
when the speeches were delivered by the returned candidate at different
meetings and the publications in the newspaper were made on the basis of
C the reports sent by his reporter. It is in the evidence of PW4 that the
reports about the meetings were sent to him by his reporter, who had
covered those meetings. He, however, was not examined by the election
petitioner as a witness. PW4, also did not produce the original reports as
sent to him by the Reporter as according to the witness, those reports were
D not preserved. No manuscript of the reports was produced. The mere
production of the copy of the newspaper cannot be treated as proof of the
report of the speech (news item) contained therein. [244-C-E]

3.2. Newspaper reports by themselves are not evidence of the con-
tents thereof. Those reports are only hearsay evidence. These have to be
E proved and the manner of proving a newspaper report is well settled. Since,
in this case, neither the reporter who heard the speech and sent the report
was examined nor even his reports produced, the production of the
newspaper by the Editor and publisher viz. PW4 by itself cannot amount
to *proving* the contents of the newspaper reports. Newspaper, is at the best
F secondary evidence of its contents and is not admissible in evidence
without proper proof of the contents under the Indian Evidence Act. The
trial judge could not treat the newspaper reports as duly 'proved' only by
the production of the copies of the newspaper. The election petitioner also
examined PW5, who was the polling agent of the election petitioner and a
resident of the locality in support of the correctness of the reports includ-
G ing advertisements and messages as published in the said newspaper. His
evidence also falls short of proving the contents of the reports of the
alleged speeches or the messages and the advertisements, which appeared
in different issues of the newspaper. Since, the maker of the report which
formed basis of the publications, did not appear in the court to depose
H about the facts as perceived by him, the facts contained in the published

reports were clearly inadmissible. No evidence was led by the election petitioner to prove the contents of the messages and the advertisements as the original manuscript of the advertisements or the messages was not produced at the trial. No witness came forward to prove the receipt of the manuscript of any of the advertisements or the messages or the publication of the same in accordance with the manuscript. There is no satisfactory and reliable evidence on the record to even establish that the same were actually issued by IUML or MYL, ignoring for the time being, whether or not the appellant had any connection with IUML or MYL or that the same were published by him or with his consent by any other person or published by his election agent or by any other person with the consent of his election agent. The evidence of the election petitioner himself or of PW4 and PW5 to prove the contents of the messages and advertisements in the newspaper was wrongly admitted and relied upon as evidence of the contents of the statement contained therein. [244-F-H; 245-A-E]

3.3. The evidence of the Circle Inspector and the election petitioner regarding the recording of the speeches of the appellant is not at all satisfactory, convincing or trustworthy. The denial of the election petitioner that he even knew the Circle Inspector when according to the Inspector both of them hail from the same village and had known each other intimately for the last 10-12 years is an obvious effort on the part of the election petitioner to project total absence of any liaison between the two and to show that the Inspector was an independent witness. It detracts so materially from the testimony of the election petitioner regarding the story of the cassettee Ex.P7, that it would not be safe to accept the version of the petitioner or the Inspector about the tape-recording of the speeches allegedly made by the appellant. [254-B-D]

3.4. According to the election petitioner's own showing he allegedly prepared some notes containing "the exact words used by respondent no.1". Those notes, however, were not produced by the election petitioner either with the election petition or during the trial at any point of time. Even otherwise, it appears rather strange that a contesting candidate would, shortly before the date of poll be spending time to attend the election meeting of the rival candidate instead of working for his own election and not only that but even prepare notes of the speech of the rival candidate "in the exact words used by the candidate". It is difficult to accept this version or rely upon the same as it belies normal human conduct. [255-E, F]

A 3.5. No reliable evidence has at all been led by the election petitioner
to prove the holding of the meeting at Roza Market, as alleged in the
petition, by the returned candidate or about the contents of the alleged
speech made by him. No witness of the locality was examined to substan-
B tiate the charge levelled in the election petition. The evidence on the record
is not reliable or trustworthy to hold that the appellant delivered the
offending speech as alleged in Roza market which may come within the
mischiefs of Section 123(2), (3), (3A) of the Act or to hold the appellant
guilty of committing the alleged corrupt practices. [256-B-C]

C *Laxmi Narayan Nayak v. Ramratan Chaturvedi and Ors.*, [1990] 2
S.C.C. 173; *Samant N. Balkrishna and Anr. v. George Fernandez and Ors.*,
[1969] 3 S.C.C. 238; *Virendra Kumar Jaklecha v. Jagjiwan and Ors.*, [1972]
3 S.C.R. 955; *Balwan Singh v. Lakshmi Narain*, A.I.R. (1960) S.C. 770 and
Laxmi Raj Shetty v. State of Tamil Nadu, [1988] 3 S.C.C. 319, relied on.

D 4. In the pleadings specific reference to the speech by the appellant
was made only of Roza market and not either of Jalanabad or Muslim
Chowk. The trial judge should not have permitted any evidence to be led
in respect of the meetings allegedly held at Jalanabad or Muslim Chowk.
A novel procedure appears to have been adopted by the trial judge in
E over-ruling the objection raised on behalf of the returned candidate during
the cross-examination in this respect by holding that since the evidence
was in accordance with the issues, the objections had no merit. In the face
of vague pleadings and the absence of specific mention of Jalanabad as a
place where the appellant spoke at a meeting, the doubtful nature of
F cassette, Ex.P7, containing the tape-recorded speech allegedly delivered at
Jalanabad and the absence of any other evidence to support the plea, the
election petitioner has miserably failed to discharge the burden which lay
on him to prove that the returned candidate had committed the corrupt
practice as alleged in the petition of delivering the offending speech at
G Jallanabad or at Roza Market. The averments of the election petitioner
were so vague that it left a wide scope to the election petitioner to adduce
evidence in respect of a meeting at any place, on any date, that he found
convenient or for which he could procure evidence later on. In view of the
vague pleadings and defective affidavits, the court would require much
better type of evidence, absolutely reliable in character, in proof of the
alleged meeting where offending speeches were delivered by the appellant,
H than the evidence as has been produced by the election petitioner in this

case. There is, no reliable, trustworthy or satisfactory evidence on the record to hold that the appellants delivered the speeches as alleged by the election petitioner either at Roza Market or at Jalanabad.

[256-F-H; 257-A-C]

5. There is an increase of electoral malpractices of which making an appeal on the ground of religion or attempting to create or promote feelings of enmity or hatred between different classes of citizens of India on grounds of religion, caste, community etc. or of exercising undue influence, directly or indirectly with the free exercise of the electoral rights of the citizens, are examples and that the purity of election which is an essence of democracy is under a threat of erosion on account of such malpractices and while acting within the bounds of law, the courts owe a duty to the nation to see that such objectionable assaults wounding the purity of elections during the election propaganda are not allowed to go unpunished, but the courts can only act on the evidence led in the case and not on what ought to have been led.

Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra, [1975] Supp. S.C.R. 281, relied on.

6. The High Court before invalidating the election and upsetting the verdict of the electorate, in its zeal to maintain purity of elections, ignored not only the defects in the pleadings in the election petition but also failed to analyse the evidence in its proper perspective and even relied upon such evidence as is not admissible in law. The maintenance of purity of elections is indeed essential but the court must be clear in its approach and appreciate that the proof of commission of corrupt practices must be clear, cogent, specific and reliable as the charge of a corrupt practice is almost like a criminal charge and the one who brings forth that charge has the obligation to discharge the onus of proof by leading reliable, trustworthy and satisfactory evidence.

7. It is difficult to understand as to how the trial judge permitted the filing of an affidavit on 4.9.1992, in support of the election petition after the arguments were over. It was a novel procedure, unknown to civil law or the election law, and was in direct breach of the statutory provisions contained in the Representation of the People Act and the rules framed thereunder. Such an affidavit, could not have been permitted to be brought on record. The trial judge did not apply his mind to the case in a proper

A and judicial sense and took into consideration the second affidavit dated 4.9.1992 while deciding the election petition. [237-A, B]

Virendra Kumar Saklecha v. Jagjiwan and Ors., [1972] 3 S.C.R. 955, relied on.

B 8. The procedure followed by the trial judge during the trial of the election petition has left much to be desired. The provisions of the Act and the rules framed thereunder as also the provisions of the Code of Civil Procedure for production of documents and filing of the list of witnesses etc. were not kept in view and the trial was conducted in a very casual manner. It appears the High Court has not framed any Rules for trial of the election petitions. If that be so the Ch. of Justice of the High Court may look into it and frame Rules for proper trial of election petitions. [259-F-G]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4211 of 1992.

D From the Judgment and Order dated 25.9.1992 of the Karnataka High Court in Election Petition No.14 of 1990.

Kapil Sibal and P. Mahale for the Appellant.

E Ms. Kiran Suri and M. Veerappa for the Respondents.

The Judgment of the Court was delivered by

F 1. DR. ANAND, J. On 25th of September 1992, the election of the appellant, Mr. Quamarul Islam, from 10 Gulbarga Assembly Constituency was set aside by the High Court of Karnataka by allowing an Election Petition filed by the defeated candidate, respondent no.1, Shri S.K. Kanta. The aggrieved, unseated candidate, (appellant) has filed this appeal under Section 116A of the Representation of People Act, 1951 (hereinafter referred to as 'Act').

G 2. On 24.11.1989, elections were held to the Karnataka Legislative Assembly. The appellant contested the election as a candidate of Muslim League from 10 Gulbarga Assembly Constituency. The election petitioner respondent no.1 herein contested the election as a candidate of Janta Dal Party. While the appellant secured 55801 votes respondent no.1 secured H 51204 votes. There were other candidates also in the fray belonging to

different political parties besides six independent candidates. Respondent No.2 contesting on the ticket of Congress(I) secured 12,675 votes while all other candidates secured insignificant number of votes. Respondent No.1 questioned the election of the appellant through an Election Petition on various grounds, alleging the commission of corrupt practices by him within the meaning of Sections 123(2), 123(3), 123(3A), 123(4) and 124(7) of the Act. Allegations regarding receipt of improper votes, rejection of valid votes besides adoption of illegal procedure during the counting were also made. The learned single Judge trying the Election Petition after recording the evidence and taking into account documents etc., produced at the trial, found that the appellant had committed the corrupt practices defined in sub-sections (2), (3), (3A) and (4) of Section 123 of the Act and, therefore, declared the election of the appellant void. The other allegations were held not established. The Election Petition was allowed with costs. The returned candidate, was, unseated.

3. According to the averments in the Election Petition, the appellant was described as the General Secretary of the Karnataka Branch of the Indian Union Muslim League (hereinafter referred to as 'IUML') who taking advantage of his position appointed persons to various organisations in the IUML. It is averred that Mohd. Moiuddin Pasha was appointed as a Convener of the Muslim Youth League (hereinafter referred to as 'MYL') and that the said Mohd. Moiuddin Pasha acted as election agent of the appellant. Reliance was placed on certain advertisements and messages issued by IUML seeking votes for the appellant. Reference was also made to the Bahmani News, an Urdu Newspaper, published from Gulbarga and it was alleged that the messages printed therein and the advertisements issued and published therein by IUML and MYL were aimed at furthering the election prospects of the appellant. Reliance was also placed on the alleged speeches delivered by the appellant and his election agent and other agents with his consent, seeking votes on grounds of religion, etc., as published in the said newspaper. The following "messages" published in various issues of Bahmani News were extracted in the petition, on the basis of which it was maintained that the said publications amounted to commission of corrupt practices as defined in Section 123(2) of the Act.

"Re-collect your memory before voting.

that you might have come across to hear this sentence :-

A "I will not sign on your passport forms because, I have been elected only on Hindu Votes, you go to him to whom you have voted.

Now your Election decision is definitely in favour of Muslim unity".

B Issued by Indian Union Muslim League, Gulbarga.

The said newspaper again contained another message to the following effect, in the publication of 2.11.1989;

C "Can you Vote such party, its Chief Minister wanted to impose restrictions on the Azan (call for the prayer) and he is also intending to do so. Certainly your election decision will be in favour of Muslim Unity.

D Issued by Indian Union Muslim League".

Reference was also made to the publication in the said newspaper dated 3.11.1989 containing the message to the following effect :

E "Who is the person not willing to regularise his house..... who will vote that party person, who had created obstacles to regularise the houses by exhibiting communal feelings. Certainly this time your election decision is in favour of Muslim Unity.

Issued by Indian Union Muslim League".

F The newspaper of 5th November, 1989 contained a message to the following effect :-

G "Person must have links with the religion without that he is nothing as the Waves in the river and out of river nothing. Your utmost power should be used to strengthen the Muslim Unity".

The paper of 8th November, 1989 contained the message to the following effect :-

H "Do you like to partition the city in two parts for repre-

senting only one community which is being represented since last six years by a particular person; should he be elected again?

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Certainly this time you will elect your own representative in Assembly.

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Issued by Indian Union Muslim League".

The message to the following effect was, allegedly published on 14.11.1989 in the same newspaper :

"It is the voice of every Musلمان, No Babari Masjid No Vote".

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Issued by Muslim Youth League, Gulbarga.

The newspaper of the 15th November, 1989 contained the message to the following effect :-

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"Muslim League's Victory is your victory. For Gulbarga Assembly Constituency, vote and elect Indian Union Muslim League's strong, young candidate-Tigar of Karnataka - (Sher-e- Karnataka) - Sri Quamarul Islam. You Create a History of muslim Unity with full support of your own and establish your particular representative in Assembly.

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Issued by Indian Union Muslim League".

The said paper also contained an advertisement issued by the Muslim Youth League, Gulbarga, with the following message, dated 15.11.1989 :

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Thus, said Paigamber-e-Islam.

Musلمان is just like a wall, His every part of Body is supporting with each other. 24th November, 1989, it is the day for creating a History of your Unity.

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Issued by Muslim Youth League, Gulbarga".

It is then stated in the election petition that :

"Respondent has directly interfered with the electorate

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A of Gulbarga Assembly Constituency by publishing these
 publications in the Urdu Daily, through his own organisa-
 tion viz. the Indian Union Muslim League, of which he is
 the General Secretary of the Karnataka State and through
 the convenor of the Muslim Youth League, Gulbarga. Sri
 B Mohammed Moiuddin Pasha, who has been appointed by
 respondent-I in his capacity as the General Secretary of
 the Indian Union Muslim League. These publications have
 been published in the Bahmani News, a Urdu Newspaper,
 which has got wide circulation in the Gulbarga Assembly
 C Constituency and the same has been distributed in the
 localities wherein Muslim community people are thickly
 populated, which are stated at the beginning of this para-
 graph".

It is further asserted in the election petition :

D ".....These publications have been made by respondent-I
 and with his consent is the daily Urdu Newspaper referred
 to above. Many such publications have been made
 throughout the period of election i.e. between 1.11.1989 to
 24.11.1989 including the date of election. The appeals
 E made by the publications have been made by respondent-I
 and with his consent by the Muslim Youth League and
 these appeals have been made to further the prospects of
 the election of respondent-I prejudicially affecting the
 election of this petitioner. The said appeals are made on
 the ground of religion and caste viz. the Muslim Com-
 F munity. Respondent-I belongs to the Mohammedan com-
 munity. Respondent-I belongs to the Mohammedan
 electorate in particular and the said appeals amount to
 religious appeal as referred to in Section 123(3) of the
 Representation of the People Act, 1951".

G 4. An allegation was also made in the Election Petition to the effect
 that the publication dated 15.1.1989 in the Bahmani News not only con-
 veyed a message but also contained a sacred religious symbol written in
 urdu which when translated means "Ershad-e- Nabhi" (voice of prophet),
 and on that basis, it was asserted that the appellant had made use of
 H religious symbol and thereby committed the corrupt practice covered by

Section 123(3).

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5. Respondent no.1 also alleged that the appellant had by the said publications attempted to promote feelings of enmity and hatred between different classes of citizens of India on grounds of religion, race, caste and community. These publications were alleged to have been made with the consent of the appellant by the convenor of MYL for the furtherance of the prospects of election of the appellant and which action amounted to commission of corrupt practices within the meaning of Section 123(3A) of the Act.

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6. The appellant is also alleged to have committed the corrupt practices within the meaning of Section 123(4) of the Act. The grounds contained in the Election Petition in respect of the said allegation read as follows :

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"That apart from the publication of these messages in these papers, a statement of fact, which is a false statement has been made by the respondent-I and with his consent in the paper dated 1.11.1989 which is to the following effect :-

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"Re-collect your memory before voting.

that you might have come across to hear this sentence :-

E

"I will not sign on your passport forms because, I have been elected only on Hindu Votes, you go to him to whom you have voted.

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The said publication made on 1.11.1989 in the Urdu daily Newspaper is a statement of fact, which is false and it relates to the personal character and conduct of this petitioner. And this statement is made by respondent-I reasonably calculated to prejudice the election prospects of this petitioner. This amounts to corrupt practice within the meaning of section 123(4) of the said Act".

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According to respondent no.1, the appellant not only got the messages published in the newspapers as noticed above but also in his *speeches* to

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A the electorate of the constituency made such offensive appeals which strictly fall within the mischief of Sections 123(3) and 123(3A) of the Act. The precise allegations in that behalf are contained in sub-para (11) of election petition which reads as follows :

B "That apart, apart from publishing the message in the newspapers, respondent no.1 has spoken to the electorate of the 10 Gulbarga Assembly Constituency in various places offending the religious feelings of the communities and thereby bringing a rift between the other communities and Muslims, amounting a corrupt practice as stated in C Section 123(3) and (3A) of the Act. In fact at Roza Market area, about 8 days prior to the date of poll at about 9.30 p.m. respondent at an election meeting, among other things, uttered the following speech in Urdu, which clearly D indicates that there has been interference in the free exercise of the electoral right by the Electorate on the basis of the religion and community feelings. The extract of the speech reads thus :-

E "Muslim Youth League ke convenor Mister Mohiuddin Pasha. Gujeesta Numaindane Main Passport form per dasthakat nahin karoonga, Kahakar Firkha prasthi Ka Ainae Lagaya. Sabekha MIA Nay Muslim Illakhaun main Borewell Key liye sifarish tak nahee ki. Prakash Akash Kore nay chay saath muslim Makan today hain. Musalmanaun Kaa Imaani Josh Tha jo unhonney Muslim league F to har bear jecyade vote diye. Aap ko sabz parcham ki Izzad Rakhana hai. Apnay Ittehad ko Mazhooth Karna hooga. Hindustan Mein Jab Tah Ek bhi Musalman Kalmaa Haquee bolnay walaa hai Muslim league ki Naheen Meetta sakta. Jab toom Apnay mohalley main javogey the athraaf dekho kaheen umnaafikhary Islam (Islaam kay Gaddar) Meer Jafar, Mir Sadiq, jaisay cominay Millath G Kay khilaaf Muslim League Kay kheelaaf kaheen sazeesh tho nahee kar rehey hain".

H The utterances of the respondent-I excerpted above amounts to corrupt practice or undue influence and

religious appeal on the ground of caste and religion".

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The appellant is also alleged to have procured the assistance of the returning officer, a gazetted officer of the rank of special Deputy Commissioner for the furtherance of the prospects of his election thereby committing a corrupt practice under Section 123(7) of the Act.

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7. According to respondent no.1, the appellant committed the "corrupt practices referred to above by himself and with his consent by the said Mohd. Moiuddin Pasha, who has acted as his election agent".

8. Though in the election petition, allegations were also made by respondent no.1 against the appellant, alleging irregularities during counting, incorrect publication of the electoral rolls, and improper de-limitation of constituencies and malpractices committed at various polling-booths and polling-stations, but since neither before the learned Trial Judge nor before this Court, any arguments were addressed in respect of those allegations, we do not feel called upon to deal with those allegations much less extract the same in this judgment.

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9. In the affidavit filed in support of the allegations of corrupt practice in the Election Petition, the petitioner deposed as follows :-

"3. The averment pertaining to the corrupt practices under Section 123(2) of the Representation of People Act, made by 1st Respondent and his election Agent Mohammed Mohiuddin Pasha referred to in paragraphs IV(4), 5(1) to (viii) are based on personal knowledge and information which I believe to be true.

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4. The averment pertaining to the corrupt practices under Section 123(3) of the Representation of People Act, made by 1st Respondent and his election Agent Mohammed Mohiuddin Pasha referred to in paragraphs IV(5)(i) to (ix) and (x) are based on personal knowledge and information which I believe to be true.

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5. The averment pertaining to the corrupt practices under Section 123(3A) of the Representation of People Act, made by 1st Respondent and his election Agent Mohammed Mohiuddin Pasha referred to in paragraphs

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- A IV(5)(ix) to (xi) and (x) are based on personal knowledge and information which I believe to be true.
- B 6. The averment pertaining to the corrupt practices under Section 123(4) of the Representation of People Act, made by 1st Respondent and his election Agent Mohammed Mohiuddin Pasha referred to in paragraphs IV(5)(x) are based on personal knowledge and information which I believe to be true.
- C 7. The averment pertaining to the corrupt practices under Section 123(7) of the Representation of People Act, made by 1st Respondent and the Returning Officer respondent no.13 referred to in paragraph IV 95(xiii) are based on personal knowledge and information which I believe to be true.
- D 10. In the written-statement filed by the respondent-appellant, all the allegations levelled against him about the commission of the corrupt practices were denied. It was asserted that the appellant had filed his nomination paper on 31.10.1989 as a candidate of *Muslim League* and that the allegation to the effect that the appellant was the General Secretary of the Karnataka branch of IUML and in that capacity he had enlisted the support of the MYL was false. It was categorically asserted that "this respondent has not appointed Mohd. Moiuddin Pasha as the election agent at any time. One Kesar Mohd. was the election agent of the respondent". The appellant-respondent stated that the publications (messages and advertisements) extracted in the election petition allegedly issued by the
- E IUML or by MYL had nothing to do with him as he was not a member of the IUML much less, its General Secretary. That the appellant-respondent was also not a member of MYL either and had nothing to do with the messages and advertisements allegedly published in "Bahmani News" and that the same were not originated or sponsored by the respondent nor were
- F the same published either at the instance of this respondent or his election agent. The appellant-respondent also denied that he had delivered speeches as alleged in the election petition or that he had made any appeal on the ground of religion etc. The respondent also stated that :
- G
- H "It is not possible to understand the grievance of the petitioner set out in para 6 of the petition. It is not his

case the voters included in the Assembly Constituency had not been permitted to cast their votes at the election. Once again, the allegation set out in para 7 of the petition suffers from vagueness and uncertainty".

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11. On the basis of the pleadings of the parties, the following issues were framed by the learned trial Judge :

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(1) "Whether the petitioner proves that Respondent No.1 has committed acts as alleged in the petition of undue influence on voters interfering with free exercise of votes attracting Section 123(2) of the Representation of the People Act, 1951?"

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(2) Whether the petitioner proves that Respondent No.1 has committed acts as alleged in the petition that he appealed to the religion, caste, community or used religious symbols to further his prospects of election and/or for prejudicially affecting the election of the petitioner attracting Section 123(3) of the Representation of the People Act, 1951?"

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(3) Whether the petitioner proves that Respondent No.1 has committed acts as alleged in the petition to promote or attempt to promote feelings of enmity or hatred between different classes of voters on grounds of religion, caste, community for furtherance of the prospects of election of Respondent No.1 or for prejudicially affecting the election of the petitioner attracting Section 123(3A) of the Representation of the People Act, 1951?"

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(4) Whether the petitioner proves that Respondent No.1 has committed acts alleged in the petition of publishing any pamphlet or statement which is false or believed to be false in relation to the personal character, conduct of the petitioner calculated to prejudice the prospects of the petitioner attracting Section 123(4) of the Representation of the People Act, 1951?"

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- A (5) Whether the petitioner proves that Respondent No.1 has committed acts alleged in the petition to procure or obtain the assistance of persons in service of the Government as enumerated therein to further the prospects of Respondent No. 1's election attracting Section 123(7) of the Representation of the People Act, 1951?
- B
- C (6) Whether the petitioner proves that Mohd. Moiuddin Pasha acted as the election agent of Respondent no.1 or with his consent committed the aforesaid corrupt practices in issue Nos.1 to 5?
- (7) Whether the petitioner proves that the election of Respondent No.1 is vitiated on account of illegal or improper.
- D (i) exclusion of voters from exercising their votes and/or
- (ii) Acceptance of votes which are invalid and/or
- (iii) rejection or refusal of votes which are valid
- E (8) Whether the petitioner proves that the election of Respondent No.1 is vitiated on account of improper or illegal procedure adopted or irregularities in the conduct of election?
- F (9) Whether the recrimination petition is bad for want of compliance of any of the provisions of the Representation of the People Act, 1951?
- G (10) Whether Respondent No.1 proves that the petitioner or any person acting as his agent or any other person with his knowledge and consent committed acts attracting Section 123(3) and 123(3A) of the Representation of the People Act, 1951 as alleged in the recrimination petition?
- H (11) Whether Respondent No.1 proves that petitioner or

any person acting as his agent or any other person with his knowledge and consent restrained voters from exercising their franchise as alleged in para-9 of the recrimination petition?

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(12) To what reliefs, if any, the parties are entitled?

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12. The High Court dealt with issues 1-4 attracting Section 123(2), 123(3), 123(3A) and 123(4) of the Act together. After considering the direct, circumstantial and documentary evidence, all the above four issues were decided in the affirmative and it was held that the appellant-respondent had committed the corrupt practices attracting Section 123(2), 123(3), 123(3A) and 123(4) of the Act. Issue No.5 was decided in the negative with the result that the appellant was not found to have committed the corrupt practice attracting Section 123(7) of the Act. Issue Nos.7 and 8 were dealt with together and were answered in the negative and against the election petitioner. Issues Nos.9-11 had been framed due to the filing of the recrimination petition by the appellant-respondent and since the appellant-respondent did not press the recrimination petition, therefore, these three issues were not considered by the learned trial Judge.

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13. The learned Judge also considered the question of issuing a notice to Sh. Mohd. Moiduddin Pasha under Section 99 of the Act on the basis of the allegations made against him in the election petition while dealing with issue No.6, but after the appellant filed his written statement and the recrimination petition and denied Mr. Pasha's participation in the election campaign in any capacity whatsoever to further the prospects of his elections, the Court came to the conclusion that the evidence and material on the record was totally inadequate to warrant the issuance of a notice under Section 99 of the Act and the issue was decided accordingly. Finally, the appellant-respondent was held directly responsible for committing the corrupt practices under Section 123(2), (3), (3A), (4) of the Act and consequently, the learned trial judge held the election of the appellant to the Karnataka Legislative Assembly from 10 Gulbarga Assembly constituency as *null and void*.

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14. Since, the learned trial judge has reproduced the evidence both oral and documentary in *extenso*, we do not find it necessary to reproduce the same and shall content ourselves by referring only to the relevant evidence during the course of discussion. It is only the findings on issues

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A 1-4 and 12 which have been decided against the appellant-herein on which arguments have been addressed before us by learned counsel for the parties. We, therefore, refrain from dealing with the remaining issues, including issues 9-11, which arose out of the recrimination petition which was not pressed before the trial court.

B 15. Mr. Kapil Sibal, the learned senior advocate appearing for the appellant, the returned candidate whose election was set aside by the High Court, in the first place submitted that the pleadings of the election petitioner in his petition were so vague, general in nature, lacking in material facts and particulars, besides being frivolous and vexatious, that
C the learned trial court should have stuck down and deleted all the pleadings and dismissed the election petition as the averments in the election petition did not give rise to any triable issue at the threshold. Learned counsel argued that the pleadings in an election petition are required to be absolutely precise and clear, containing all necessary facts and particulars, as
D required by law which discloses a complete cause of action and in the absence of the same, the returned candidate cannot be called upon to meet the charge set out in a defective election petition. Learned counsel for the respondent did not dispute the proposition of law as canvassed by Mr. Sibal but submitted that having failed to raise any objection about the alleged defects at the initial stage and having faced the trial and led evidence, it
E was not open to the appellant now to argue that the defect in the pleadings alone should result in the dismissal of the election petition at this belated stage.

F 16. In *Laxmi Narayan Nayak v. Ramratan Chaturvedi and Ors.*, [1990] 2 S.C.C. 173, after dealing with a catena of authorities, regarding the nature of pleadings and evidence to be led in support thereof in an election petition, a Division Bench of this Court to which one of us, namely Pandian J., was a party, formulated some essential tests with regard to the nature of pleadings and evidence in an election petition. It is useful to extract the principles laid down therein. They are as follows :

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(1) " The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide *Dhartipakar Madan lal Agarwal v. Rajiv Gandhi*, and *Kona Prabhakara Rao v. M. Seshagiri Rao*.

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- (2) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide *Manphul Singh v. Surinder Singh*, and *Kona Prabhakara Rao v. M. Seshagiri Rao and Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi*. A B
- (3) The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide *Jumuna Prasad Mukhariya v. Lachhi Ram*, and *Rahim Khan v. Khurshid Ahmed*. C
- (4) The evidence produced before the court in support of the pleadings must be clear, cogent satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh*. D
- (5) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents vide *Rahim Khan v. Khurshid Ahmed*, *M.Narayana Rao v. Venkata Raddy*, *Lakshmi Raman Acharya v. Chandan Singh*, and *Ramji Prasad Singh v. Ram Bilas Jha*. E F
- (6) The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded vide *Rahim Khan v. Khurshid Ahmed*, *Mohan Singh v. Bhanwarlal*, and *Ramji Prasad Singh v. Ram Bilas Jha*. G

17. We are in respectful agreement with the above principles and that saves us the botheration of referring to the various judgments, which were considered and noticed by the Division Bench while dealing with the subject. We shall, therefore, only consider such of the judgments, as in our H

A opinion, have a direct bearing on the controversy before us.

18. In *Sāmant N. Balkrishna and anr. v. George Fernandez and Ors.*, [1969] 3 S.C.C. 238, after dealing with the substantive law on the subject of election petition, this Court dealt with the procedural provisions contained in Sections 81, 83 and 84 of the Act. It was noticed that Section 81 provides that the election petition *must* contain a concise statement of the material facts on which the petitioner relies and further that he must also set forth full particulars of any corrupt practice that he alleges including as full a statement as possible of all the names of parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Section 83 which requires the fullest possible particulars to be provided in an election petition was held to be mandatory. This Court then went on to point out the difference between material facts and particulars and observed :

D ".....What is the difference between material facts and
particulars? The word 'material' shows that the facts
necessary to formulate a complete cause of action must
be stated. Omission of a single material fact leads to an
incomplete cause of action and the statement of claim
becomes bad. The function of particulars is to present as
E full a picture of the cause of action with such further
information in detail as to make the opposite party under-
stand the case he will have to meet. There may be some
overlapping between material facts and particulars but the
two are quite distinct. Thus material facts will mention
F that a statement of fact (which must be set out) was made
and it must be alleged that it refers to the character and
conduct of the candidate that it is false or which the
returned candidate believes to be false or does not believe
to be true and that it is calculated to prejudice the chances
G of the petitioner. In the particulars the name of the person
making the statement, with the date, time and place will
be mentioned. The material facts thus will show the
grounds of corrupt practice and the complete cause of
action and the particulars will give the necessary informa-
tion to present a full picture of the cause of action. In
H stating the material facts it will not do merely to quote the

words of the section because then the efficiency of the words 'material facts' will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be co-related to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information. Formerly the petition used to be in two parts. The material facts had to be included in the petition and the particulars in a schedule. It is inconceivable that a petition could be filed without the material facts and the schedule by merely citing the corrupt practice from the statute. Indeed the penalty of dismissal summarily was enjoined for petitions which did not comply with the requirement. Today the particulars need not be separately included in a schedule but the distinction remains. The entire and complete cause of action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture....."

19. The Court then went on to consider the power of the trial court to allow amendment of an election petition found deficient in its pleadings and laid down that the said power can be exercised only to allow particulars to be amplified but that there is a complete prohibition against an amendment "which will have the effect of introducing particulars of corrupt practice not previously alleged in the petition". The allegation of corrupt practice in the election petition must show a complete cause of action by disclosing all material facts and if the election petitioner has omitted to allege a corrupt practice. He cannot be permitted to give even the particulars of that corrupt practice, by way of an amendment.

20. In *Virendra Kumar Saklecha v. Jagiwan and Ors.*, [1972] 3 S.C.R. 955, this Court emphasized the importance of an affidavit filed in support

A of an election petition, whereby the election of the returned candidate has been questioned on allegations of corrupt practice. It was held that the allegations of corrupt practice are by law required to be supported by an affidavit and the deponent of the affidavit must set out in the affidavit clearly as to which statements relating to the corrupt practice are true to the knowledge of the deponent and which of the statements are true to his information, in which event the deponent is required to furnish the source of information also. The court dealing with the importance of furnishing the source of information at the earliest opportunity observed :

C "The non-disclosure of grounds or sources of information in an election petition which is to be filed within 45 days from the date of election of the returned candidate, will have to be scrutinised from two points of view. The non-disclosure of the grounds will indicate that the election petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the sources of information. The other point of view is that the election petitioner will not be able to make any departure from the sources or grounds. If there is any embellishment of the case it will be discovered".

F 21. It is in the light of the above settled principles, that we shall first examine the pleadings, including the affidavit filed by the election petitioner in support of the allegations of corrupt practice to find out whether they satisfy the tests laid down by this Court in various judgments.

G 22. According to the election petitioner, the appellant was the general secretary for Karnataka State of the Indian Union Muslim League and had appointed Mohd. Moiuddin Pasha as convener of the Muslim Youth League, who also acted as the agent of the appellant in the entire election. We have already extracted the offending messages which were published in "The Bahmani News" allegedly by IUML and MYL in the earlier part of this judgment. The petitioner went on to say :

".....These publications have been made by respondent- I and with his consent in the daily Urdu News paper referred to above. Many such publications have been made throughout the period of election i.e. between 1.11.1989 to 24.11.1989 including the date of election. The appeals made by the publications have been made by respondent-I and with his consent by the Muslim Youth League and these appeals have been made to further the prospects of the election of respondent-I prejudicially affecting the election of this petitioners. The said appeals are made on the ground of religion and caste viz. the Muslim Community. Respondent-I belongs to the Mohammedan community. Respondent-I belongs to the Mohammedan electorate in particular and the said appeals amount to religious appeal as referred to in Section 123(3) of the Representation of the People Act, 1951".

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23. The election petitioner, thereafter, referred to the message and advertisement in "The Bahmani News" dated 15.11.1989 in the following terms :

"In fact the appeal in the publication dated 15.11.1989 in the above mentioned Urdu Newspaper, has not only got a message, but also contains a sacred religious symbol written in Urdu, which reads Ershade Nabhavi when translated would convey the following meaning. Voice of paigamber-e-Islam i.e. Voice of Prophet of Islam. Seeking votes under a religious symbol amounts to corrupt practice under Section 123(3). Besides the use of the said symbol and the publication also amounts to promotion of feelings of enmity and hatred between different class of citizen of Indian on the ground of religion, race, caste and community. This also amounts to an attempt by the respondent-I and with his consent, by the Convenor of Muslim Youth League for the furtherance of the prospects of the election of respondent-I and have prejudicially affected the election of this petitioner, and amounts to corrupt practice

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A under section 123(3A) of the aforesaid Act."

The election petitioner then stated that apart from the messages published in the newspaper which come within the mischief of Sections 123(2), (3) and 3A of the Act, a statement of fact, which is a false statement, was also made by the appellant and with his consent by others, as published in the newspaper dated 1.11.1989, to the following effect :

B "Recollect your memory before voting, that you might have come across to hear this sentences :-

C "I Will not sign on your passport forms because I have been elected only on Hindu Votes you go to him to whom you have voted.

D The said publication made on 1.11.1989 in the Urdu daily newspaper is a statement of fact, which is false and it relates to the personal character and conduct of this petitioner. And this statement is made by respondent-I reasonably calculated to prejudice the election prospects of this petitioner. This amounts to corrupt practice within the meaning of section 123(4) of the said Act".

E The election petitioner has been alleged that the returned candiate also delivered speeches which amount to the commission of various corrupt practices. In paragrah 11 of the election petition, the election petitioner asserted :

F "That apart, apart from publishing the message in the newspaper, respondent no.1 has spoken to the electorate of the 10 Gulbarga Assembly Constituency in various places offending the religious feelings of the communities and thereby bringing a rift between the other communities and Muslims, amounting a corrupt practice as stated in Section 123(3) and (3A) of the Act. In fact at Roza Market area, about 8 days prior to the date of poll at about 9.30 p.m. respondent-11 at an election meeting, among other things uttered the following speech in Urdu, which clearly indicates that there has been interference in the free exercise of the electoral right by the Electorate on the

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basis of the religion and community feelings. The extract of the speech reads thus :-

"Muslim Youth League ke convenor Mister Mohiuddin Pasha. Gujeesta Numaindane Main passport form per dasthakat nahin karoonga, Kahakar Firkha prasthi Ka Ainae Lagaya. Sabekha MIA Nay Muslim Ilakhaun main Borewell kay liye sifarish tak nahee ki. Prakash Akash Kore nay chay saath muslim Makan today hain. Musalmanaun kaa Imaani Josh Tha jo unhonney Muslim league to har bear jeeyade vote diye. Aap ko sabz parcham ki Izzad Rakhana hai. Apnay Ittehad ko Mazhooth Karna hooga. Hindustan Mein Jab Tah Ek hi Musalman Kalmaa Haquee bolnay walaa hai Muslim league ko Naheen Meetta sakta. Jab toom Apnay mohalley main javogey the athraaf dekho kaheen umnaafikhay Islam (Islaam kay Gaddar) Meer Jafar, Mir Sadiq, jaisay cominay Millath Kay khilaaf Muslim League kay kheelaff kaheen sazeesh tho nahee kar rahey hain".

The utterances of the respondent-I excerpted above amounts to corrupt practice or undue influence and religious appeal on the ground of caste and religion".

24. In para (xiv), the election petition stated thus :

"The respondent-I committed the corrupt practices narrated above in the No.10 Gulbarga Assembly Constituency, by the various publications, utterances and by procuring the assistance of the Returning Officer, throughout the period of election i.e. from 1.11.1989 to 24.11.1989".

In the affidavit filed in support of the allegations of the corrupt practice in the petition (as already extracted) the election petitioner did not disclose the source of information, which the election petitioner, believed to be true in support of the allegations of corrupt practice as detailed in the election petition. Besides, Shri Moiuddin Pasha was specifically described as the election agent of the appellant-respondent who had also committed the corrupt practices alleged in the petition.

A 25. In the written statement (styled as objection statement) the appellant herein categorically asserted that he had not appointed Mohd. Moiuddin Pasha as an election agent at any time and that Kaiser Mohammed was his election agent. In para 5, the appellant stated as follows :

B "The allegations that this respondent had committed corrupt practices within the meaning of Section 123(2), (3), (3A) and (4) of the Peoples Representation Act, are all false. The publications if any, issued by the Indian Union Muslim League or by Muslim Youth League have anything to do with this respondent, as he was not a Member of the Indian-Union Muslim League, much less its Secretary. This respondent was not a member of Muslim Youth League either. This respondent had nothing to do with the publications alleged to have been published in Bahamani News. It is submitted that the publications in Bahamani News were not originated nor sponsored by this respondent. Hence, the publications in Bahamani News regarding Ershed-na-bhavi have anything to do with this respondent nor they were published either at the instance of this respondent or that of his election agent".

E The respondent denied making speeches as alleged in para 5 of the petition and stated that the allegations were false and a figment of the imagination of the petitioner. The appellant supported his assertion that he was a candidate of the Muslim League Party and not of the IUML by annexing with his written statement, Form A and Form B, as prescribed by para F 13(b) of the Election Symbols (Reservation and Allotment Order 1968).

G 26. It transpires from the record that after evidence was led by the parties, the election petitioner filed yet another affidavit on 4.9.1992. In the said affidavit, which was filed after the arguments were over, Mr. Moiuddin Pasha, who had been described as an *election agent* in the first affidavit filed in support of the allegations of corrupt practices along with the election petition, was now described "only as an agent". The averments made in the second affidavit dated 4.9.1992 were stated to be based on "personal knowledge" and not on the basis of 'belief' or "information" unlike H in the first affidavit. We are at a loss to understand as to how the learned

trial judge permitted the filing of an affidavit on 4.9.1992, in support of the election petition after the arguments were over. It was a novel procedure, unknown to civil law or the election law, and was in direct breach of the statutory provisions contained in the R.P. Act and the rules framed thereunder. (See [1972] 3 S.C.R. 955 supra). Such an affidavit, could not have been permitted to be brought on record and we are constrained to say that the learned trial judge did not apply his mind to the case in a proper and judicial sense and took into consideration the second affidavit dated 4.9.1992 while deciding the election petition.

27. It also appears from the record that the returned candidate (appellant herein) filed an application, being IA III on 3.4.1992, stating therein that the election petition was liable to be dismissed for lack of furnishing material facts and material particulars in the election petition. In the application, specific objection was raised with regard to the lack of material facts and material particulars in the election petition and it was asserted that the election petition did not disclose a full cause of action. That application, however, was decided alongwith the main election petition and rejected on the ground that it was "too late in the day to set the clock back". We also find that when the returned candidate raised objections during the course of recording of evidence to certain "material" being brought on record on the ground that it had not been pleaded in the election petition or that it was not supported by the affidavit filed in support the allegations of corrupt practice filed alongwith the election petition, the learned trial judge over-ruled the objections. It is interesting to note the court-ruling in this behalf :

Courts Ruling : This tribunal has proceeded to record the evidence of this witness so far given on the basis of issues 2, 3 and 4 which are the corrupt practices covered under 123(2), (3), (3A) and 123(4). These issues though a burden on the petitioner to prove that the respondent No.1 has committed that he appealed to the religion, caste community or religious symbols to further his prospects and it promote or attempt feelings religion caste, community etc.

Since the evidence of this witness is in accordance with the issues framed in this Election Petition the objections

A of the learned counsel for the respondent is over-ruled".

B 28. The newspapers referred to and relied upon in the election petition had not been filed along with the election petition. The copies of newspapers and some other documents were filed subsequently and in the accompanying application it was stated by the election petitioner that the same were not available with him earlier. Those documents were filed after the evidence had commenced. The returned candidate (appellant) raised objections to the production of those documents at that late stage. In the affidavit filed in support of the objections, the appellant stated :

C "3. In the entire Election Petition there is no reference to any of these documents now sought to be produced.

D 4. On the pleadings, this Hon'ble Court has framed issues which are mainly referable to Section 123 of the Representation of Peoples' Act. Section 123 of the Act refers to corrupt practice. The statement that the petitioner could not produce the copies of the newspaper as they were not available, is false. In an Election Petition wherein the allegations relate to corrupt practice the law is clear, in that, Section 83 of the Act provides that the Election Petition should contain a concise statement of facts on which the petitioner relies, and, further that he must also set-forth full particulars of 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 each such corrupt practice. The Section is mandatory.

E • The application cannot be entertained at all at this late stage. Even now, no facts or circumstances have been mentioned to give even the haziest picture for the basis that the publications were effected for and on behalf of this respondent and with the connivance of this respondent. It is submitted that nothing can be rather than truth the copies of the newspapers were not available for a period of nearly two years. That apart, that is not a ground for accepting documents without pleadings in the Election Petition at this late stage.

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For the reasons stated above, this respondent prays that this Hon'ble Court may be pleased to reject the application, in the interest of justice".

Amongst the documents which the election petitioner sought to produce at that late stage were some advertisements allegedly issued by the IUML and MYL in the newspapers between 1.11.1989 and 24.11.1989 as also reports of speeches allegedly made by the appellant during the election campaign. The Court dealt with the application and the objections vide its order dated 11th of October 1991. The learned trial judge allowing the application of the election petitioner, observed :

23. "The petitioner has made a reference to these newspapers and this Court also issued summons to the Editor to bring the newspapers maintained in his office in accordance with the Indian Press Act and to give evidence about those newspapers. Due to non-availability of those newspapers, the petitioner has shown the excerpts of those newspapers which were in his possession at the time of filing of this petition and those excerpts were brought to the notice of the witness P.W.4, the Editor of those newspaper and those portions were marked as petitioner's exhibits. The contention of the petitioner or that these newspapers are produced at this stage due to non-production by the editor of the said newspaper allowing of these newspapers as documents relied by the petitioner at this stage is justified. The question of proof contained in the newspaper is the subject matter evidence and at this stage, such contingency does not require a debate. Since PW4 has failed to produce these documents, the petitioner can lead a secondary evidence under Section of the Indian Evidence Act, if law provides such contingency.

24. What we are concerned at this stage is condoning the late production of documents by the petitioner and appreciating the reason assigned for such late production as contemplate under Order 13 Rule 2 of the Code of Civil Procedure. The Judgments of the Supreme Court averted by Sri Mohandas Hegde are not relevant at this stage of

A the case. Since the petitioner has shown sufficient cause for non-production of these documents, I.A. I is liable to be allowed....."

B 29. In our opinion, the approach of the trial judge was not correct and it seems that he was treating the trial of the election petition in a rather casual manner, unmindful of the provisions of the Act and the Rules framed thereunder as also the law laid down by this Court from time to time on the relevant aspect.

C 30. The election petitioner filed the first list of witnesses on 21.9.1990. At serial No.3, the election petitioner summoned "Circle Inspector of Police Gulbarga" :

D 1."to produce all the original documents pertaining to Muslim League candidate permission granted to Sri Mahamad Ahmed, IUML, Gulbarga bearing permission No.35-89, 54-89 and 70-89 and to give evidence in the matter.

2. to produce the oral complaint registered by the on 24.11.1989 at Roza Police Station".

E Again, at serial No.(i) in the further prayer in the same application, the petitioner summoned *Shri Prakash Kore Ex. C.I.T.B. Gulbarga H.No.5-589, Chote Roza, near Police Station, Gulbarga*, "to produce the original tape recorded speech of *Sh. Qamarul Islam*". It was in an additional list of witnesses filed on 22.10.1990, that the election petitioner summoned, at serial No.1, Mr. Azizullah, Editor, Publisher & Printer of 'Bahamani News' with the documents mentioned against his name. At serial No.6 of the additional list dated 22.10.1990, the petitioner also summoned "*Basavaraj Ingini C.P.I. Harnabad, Distt. Bidar to produce all the original documents pertaining to Muslim League candidate - permission granted to public meetings and loud-speaker permission throughout the election period and produce the recorded speech of Sri Quamarul Islam in public meeting held at various places and give the evidence*". The learned trial judge allowed the summoning of witnesses as contained in the lists dated 21.9.1990 and 22.10.1990 in a totally mechanical manner. The election petitioner was not called upon to explain as to why the name of the editor Shri Azizullah did not figure in the first list of witnesses or why a departure was made in the

second list by summoning Shri Basavaraj Ingini *with the tape recorded speech* of the appellant, when he was not asked to produce any such tape recorded speech in the first list where he had been summoned at serial no.3 and instead it was Mr. Kore, summoned at s.no. (i) in the further prayer in the first list of witnesses who had been directed to *produce the tape recorded speech* of the appellant. In an election petition the filing of the list of witnesses, with a brief of the relevance of their evidence is not only intended to put the opposite party on notice about the evidence sought to be summoned but also to bind the party to the production of the relevant evidence as detailed in the list. The list of witnesses has a lot of sanctity and importance but in this case, no consideration appears to have been given by the learned trial judge to this aspect and without examining the two lists, orders came to be made to summon the witnesses in a mechanical manner. The procedure adopted by the learned trial judge was not the proper procedure to be followed while trying an election petition. The list of witnesses are required to be carefully scrutinised before issuance of summons. That apparently was not done in the present case.

31. The allegations of corrupt practice in the election petition, in our opinion, are rather vague. The allegations as noticed in the earlier part of this judgment, are not specific, precise and clear. Both material facts and particulars have not been supplied with sufficient clarity. The original affidavit filed in support of the election petition and the affidavit filed at the stage of arguments, with an attempt to bring it in tune with the evidence led in the case, are also not clear and expose the shifting stand of the election petitioner. We have already commented upon the manner in which the list of witnesses were filed and two different witnesses in the different lists were asked to produce the same material object i.e. *the tape recorded speech of the appellant*. It is, after keeping, in view all these factors that we have to analyse the evidence led in the case and appreciate the arguments raised at the bar. Indeed, the returned candidate, appellant herein, also did not in the written statement point out the defects in the pleadings or the lack of material facts and material particulars at the earliest stage and both the parties went on to trial despite these defective pleadings.

32. A Constitution Bench of this Court in *Balwan Singh v. Lakshmi Narain*, A.I.R. (1960) S.C. 770, observed :

".....Insistence upon full particulars of corrupt practices is

A undoubtedly of paramount importance in the trial of an
election petition, but if the parties go to trial despite the
absence of full particulars of the corrupt practice alleged,
and evidence of the contesting parties is led on the plea
B raised by the petition, the petition cannot thereafter be
dismissed for want of particulars, because the defect is
one of procedure and not one of jurisdiction of the
Tribunal to adjudicate upon the plea in the absence of
particulars. The appellate court may be justified in setting
aside the judgment of the Tribunal if it is satisfied that by
reason of the absence of full particulars, material prejudice
C has resulted....."

33. Even if the application of the appellant, IA III, seeking dismissal
of the election petition may be held to have been rightly rejected on the
ground that after the parties had gone to trial, despite the absence of full
D facts and particulars of the alleged corrupt practice and had led evidence,
an election petition is not liable to be thereafter dismissed for those defects
only but in such cases, the evidence that is required to prove the allegations
of corrupt practices in an election petition has to be more strictly
scrutinised, lest the evidence, which in a way travels beyond the pleadings,
is accepted without proper analysis.

E 34. Before we proceed to consider, whether any connection has been
established between the Muslim League and IUML or whether the
returned candidate can be fastened with the liability for the publication of
the advertisements and messages in the newspapers, allegedly got publish-
F ed by the IUML or MYL, we consider it appropriate to deal with the proof
of allegations relating to the commission to various corrupt practice, as
alleged in the petition.

G 35. We shall first deal with the allegations with regard to the com-
mission of corrupt practice under Section 123(4) of the Act which are
contained in ground no.10 of the petition and extracted in an earlier part
of this judgment. A careful perusal of the allegation shows that it is not
even asserted by the election petitioner, that the statement alleged to have
been made by the returned candidate on 1.11.1989 about the non-signing
of the passport forms was false to the knowledge of the returned candidate
H or that he made it without believing that statement to be true. There was,

thus, no allegation whatsoever which satisfied the basic requirements of Section 123(4) of the Act. It was not even alleged by the election petitioner that the returned candidate made a statement of fact which was false to his knowledge or which he did not believe to be true and in the absence of any such averment in the election petition and the affidavit filed in support thereof, the trial court should not even have framed an issue relating to the said corrupt practice. Even in the evidence, it was not deposited by the election petitioner that the statement allegedly made by the returned candidate as contained in the said paragraph was false to the knowledge of the returned candidate or/and was made by him without believing it to be true. The learned trial judge, therefore, fell in error in holding that the returned candidate was guilty of committing the corrupt practice as envisaged by Section 123(4) of the Act and in fairness to learned counsel for the election petitioner (Respondent-I) we must record that he also did not support the finding of the High Court as regards the commission of corrupt practice under Section 123(4) of the Act and we accordingly set aside that finding. The evidence of Shri Subhash Chandra Khutiya, PW2, who was the Deputy Commissioner of Gulbarga District on 27.10.1989 or of Shri Ramarao Patil, PW3, who took charge of the Corporation Commissioner of Gulbarga on 6th of June 1988 and handed over the said charge on 15.6.1990 and was the returning officer in the election held during 1989 relates to other issues which have been found against the election petitioner and with which we are strictly speaking not concerned, as their correctness has not been assailed before us.

36. Coming now to the allegations regarding commission of corrupt practices under Section 123(2)(3) and (3A) of the Act. Though reading of the full text of the reports and messages/advertisements as published in Bahmani Newspapers of different dates, which were produced at a rather late stage during the trial, do give rise to an inference that they contain an appeal on the ground of religion and have the tendency to promote or attempt to promote feelings of enmity and hatred between different classes of citizens of India on grounds of religion, community etc. for the furtherance of prospects of the election of the returned candidate or prejudicially affecting the election of any other candidate and amount to a virulent type of objectionable communal propaganda, not permitted by law and amounts to the commission of corrupt practices as envisaged by Sections 123(2)(3) and (3A) of the Act, but the basic question to which we have to first address ourselves is whether the said publications have been proved

A by any admissible evidence and if so whether they can be connected with the returned candidate or can be said to have been issued by the returned candidate or his election agent or by any other person with the consent of the election agent or the returned candidate himself.

B 37. The allegations regarding the commission of these corrupt practices are sought to be proved firstly by the production of copies of "Bahamani News", to prove which the election petitioner examined Shri Azizullah Sharmast PW4, the editor and publisher of the Bahmani Newspaper.

C 38. We shall first advert to and deal with the reports relating to the speeches allegedly made by the appellant and his election agent, at Roza Market, Jalanabad and Muslim Chowk on different dates as alleged in the petition. Admittedly, on his own showing, the said witness Shri Azizullah, PW4 was not present at the time when the speeches were delivered by the returned candidate at different meetings and the publications in the newspaper were made on the basis of the reports sent by reporter. It is in the evidence of PW4, Azizulla Sharmast, that the reports about the meetings were sent to him by the reporter, Mr. Mohd. Feroz who had covered those meetings. Mr. Feroz, however, was not examined by the election petitioner as a witness. Mr. Azizullah, PW4, also did not produce the original reports as sent to him by Mr. Feroz as according to the witness, those reports were not preserved. No manuscript of the reports was produced. Can the mere production of the copy of the newspaper be treated as proof of the report of the speech (news item) contained therein? In our opinion the answer has to be in the negative.

F 39. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and publisher, PW4 by itself cannot amount to *proving* the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act. The learned trial judge could not treat the newspaper reports as duly 'proved' only by the production of the copies of the newspaper. The election petitioner also

examined Abrar Razi, PW5, who was the polling agent of the election petitioner and resident of the locality in support of the correctness of the reports including advertisements and messages as published in the said newspaper. We have carefully perused his testimony and find that his evidence also falls short of proving the contents of the reports of the alleged speeches or the messages and the advertisements, which appeared in different issues of the newspaper. Since, the maker of the report which formed basis of the publications, did not appear in the court to depose about the facts as perceived by him, the facts contained in the published reports were clearly inadmissible. No evidence was led by the election petitioner to prove the contents of the messages and the advertisements as the original manuscript of the advertisements or the messages was not produced at the trial. No witness came forward to prove the receipt of the manuscript of any of the advertisements or the messages or the publication of the same in accordance with the manuscript. There is no satisfactory and reliable evidence on the record to even establish that the same were actually issued by IUML or MYL, ignoring for the time being, whether or not the appellant had any connection with IUML or MYL or that the same were published by him or with his consent by any other person or published by his election agent or by any other person with the consent of his election agent. The evidence of the election petitioner himself or of PW4 and PW5 to prove the contents of the messages and advertisements in the newspaper in our opinion was wrongly admitted and relied upon as evidence of the contents of the statement contained therein.

40. This Court in *Laxmi Raj Shetty v. State of Tamil Nadu*, [1988] 3 S.C.C. 319 at 346, considered the question of admissibility of the news items appearing in a press report in the Newspaper and opined :

"We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein.

- A It is now well settled that a statement of fact contained in a newspaper is merely hearsay and, therefore, inadmissible in evidence in the absence of the maker of the statement appearing in court and deposing to have perceived the fact reported."
- B In the present case, we find that no legally admissible evidence has been led by the respondent-election petitioner, in proof of the facts contained in the newspaper reports (news items), messages and advertisements. The appellant, returned candidate, denied the making of the offending statements. The various newspaper reports, advertisements and messages, as published in Bahmani Newspaper cannot be treated as proof of the facts stated therein and cannot be used against the appellant in the absence of any evidence aliunde.

C 41. The election petitioner also sought to prove the allegations regarding the making of speeches as alleged in the petition and reported in the newspaper, at Roza Market and Jalanabad, by the appellant, by production of a cassette, Ex.P7, allegedly recorded by PW1 Basavaraj Ingini, Circle Inspector of Police, containing the tape recording of the speeches of the appellant, as detailed in para (xi) of the election petition (supra).

D 42. In the said paragraph, reference is made to the speech at Roza market allegedly made by the appellant 8 days prior to the date of poll at about 9.30 p.m. The returned candidate denied to have made any such speech. PW1, Basavaraj Ingini, was working as the Circle Inspector of Police at Gulbarga-City Police Station Gulbarga from 8.8.1988 to 28.5.1990. The cassette was produced by him in the High Court on 12.11.1990 and kept in safe custody by the court. In his deposition at the trial given on 13.11.1990 apart from stating that he had given licence for use of loud-speakers etc. to various candidates including the appellant, he deposed :

E ".....In some places I have recorded the speech made by R-1 in a cassette. The places where the speech made by R- 1 was recorded in Roza market and Jalanabad. I have recorded the speeches as routine of police work. I have produced the cassette, where I recorded the speech in obedience to the summons issued from this court

F I had the custody of this Tape after recording the same. Nobody has any access to the

G

H

Tape"

A

43 The witness thereafter, went on to say that the voice in the tape was that of the appelland and added :

"I was keeping Ex P-7 in my personal safe custody. Ex P-7 was not used by anybody as it was in my custody. (Witness volunteers that he has also not made attempt to listen to the cassette) I do not have the transcript of the speech recorded in Ex P-7.)

B

During the cross examination, the witness admitted :

C

"I did not inform anybody about the recording of speeches in this Election Campaign. I have not informed the petitioner about informed the petitioner about recording the speech made by R-1. I do not know how the petitioner came to know about my possessing the cassette at Ex. P-7. I have recorded the speeches of various persons in this Election in 5 to 6 cassettes. After recording I did not play these cassettes in my house. I have kept these cassettes in a cupboard (Almirah owned by me).

D

I carried the cassettes along with me when I was transferred from Humnabad. The Almirah I referred above had only one key. My wife had no access to the said Almirah.

E

In Ex P-7 two pieces of speeches are recorded at Rozar and Jilanabad. It was not contained full speech but a part of the speech of each place and the Tape was completely used.

F

I recorded the speech from a distance of 100 yards from the place where the Dias kept. I did not find any objectionable statments in the speech of R-1 according to me....."

G

44. Since, neither the general diary of the police station nor any other material had been produced by the witness we found it necessary, after perusing his evidence, to summon Shri Ingini, as a court witness alongwith

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A some record which we considered necessary to do justice between the parties.

45. Appearing as a court witness in this court, Shri Basavaraj Ingini, PW1, stated that he was maintaining the general diary of the circle (police) station and that he also attended meetings conducted during the last elections of various candidates since maintenance of law and order was a part of his duty. He went on to add that on 15.11.1989, he attended the meeting at about 8 a.m. at Jalanabad, addressed by the appellant while on 16.11.1989, he attended the meeting of the returned candidate held at Roza market, where the appellant and some others addressed the meetings and that he tape recorded the speeches of the appellant and other speakers. The witness was then confronted with the general diary (which had been summoned by us) dated 16.11.1989 and 17.11.1989 pertaining to the meetings held on 15.11.1989 and 16.11.1989 at Roza Market and Jalanabad and he admitted that he did not make any entry in the general diary regarding the tape recording of the speeches of the appellant and others on either of these dates. He deposed that he had made the tape recordings under oral instructions given to him by the Superintendent of Police, Gulbarga, but conceded that there was no entry in the daily diary with regard to any such oral instructions having been given to him. He went on to add that he had, after tape recording the speeches, informed the Superintendent of Police orally that he had tape recorded the speeches. When asked as to why he had kept the tape recorded cassettes with him and not deposited the same in the police station, since in his earlier deposition at the trial, he had deposed that he had tape recorded the speeches as "routine police work", the witness answered that since "they were not required for official purpose" he kept the same with himself. He was then asked that if they were not required for official purpose "why did you keep the recorded speech with you"? The witness answered that "*it was done casually*". The following questions and answers of the witness, as recorded in this Court, are of significance, to appreciate the credibility of the ace evidence led by the election petitioner regarding the cassette, Ex.P7.

G "Question: Did you meet Mr. S.K. Kanta at any point of time after the election?

Answer: Yes.

H Question: When and in what connection?

Answer: Once or twice in law and order problem.

A

Question: After you were transferred from Gulbarga Police Station.....

Answer: I did not meet Mr. Kanta after I was transferred from Gulbarga constituency.

B

Question: Have you made any entry in your General Diary that you tape recorded the speeches of condidates on the instructions of Superintendent of Police and that you are having the tape recorded speeches in your possession?

C

Answer: No.

Question: Did you inform Mr. Kanta that you had tape recorded the speech of Mr. Quamarul Islam and you are in possessison of the recorded speech?

D

Answer: At no point of time I informed Mr. Kanta that I am in possession of the recorded speech.

Question: Did he ask you at any point of time that you are in possession of his tape recorded speech?

E

Answer: No.

Question: When did you hand over the recorded speech to the Court and on which date?

Answer: I do not remember; it may be 12th or 13th.

F

Question: Did you inform Mr. Kanta that you were in possession of the tape recorded speech?

Answer: No."

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46. The witness, when further questioned, stated that he was appointed as a direct recruit sub-inspector and was promoted to the rank of Inspector of Police in 1981 and that he had known Mr. Kanta intimately for about 10-12 years prior to the said election as they hail from the same village. He asserted that he had not informed Mr. Kanta at any point of

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A time that he had even attended the meeting of the appellant. The witness added that both the tape recorded and the tapes (cassettes) were his personal property and that "I have not informed anyone that I have recorded (the tape recorded) speech of Quamarul Islam or that I was keeping the same with me". To a specific questions by the Court:

B "Therefore we take it that you have not informed anyone that you recorded the tape recorded speech under the instructions of S.P.

Answer : Yes."

C The witness was then asked by the Court:

D "Question: Did you inform the Court when you were examined as a witness in the election petition that you have not made any entry in your general diary about the recording of the speech or that was on the oral instructions of the S.P."

E "Answer: No. For the first time before the Supreme Court I am coming with an explanation that the speech was recorded under the oral instructions of Superintendent of Police because I was not asked earlier any such question as to under whose instructions I tape recorded the speech".

The Court then asked him whether he had at the trial stated before the trial court that he had recorded the speeches as a "routine police work?" and he replied in the affirmative. He was then questioned :

F "Question: Therefore this question was asked to why the (speeches) was recorded?

Answer: Yes, I was asked.

G Question: Even then you did not come forward with an explanation that you tape recorded the speech under the oral instructions of Superintendent of Police.

Answer: No."

H During his cross examination on behalf of the appellant by Mr. Sibal, the

witness admitted that when the Superintendent of Police gave him oral instructions to record the speeches of candidate whether the S.P. had enquired if the appellant was in need of a tape recorded for the purpose and the witness replied in the affirmative. He was then asked :

"Question: Therefore you believed that the instructions were official instructions?"

Answer: Yes".

The witness was then asked whether he had made any entry about attending the meeting of the appellant at Roza Market in the daily diary and after referring to the daily diary relating to 16.11.1989, written on 17.11.1989, the witness admitted that "I have not mentioned Roza Market speech of Quamarul Islam" in the daily diary report for the relevant date.

The witness when further questioned deposed that after his transfer from Gulbarga police station, he had carried the tape recorded cassettes along with the tape recorder with him and had kept the cassettes in the almirah at his residence alongwith his other cassettes and contrary to what he had stated before the trial judge, admitted that "my wife and children had access to the almirah only in which the cassettes were kept but they were to use only music cassettes".

47. We have carefully perused the relevant pleadings, the deposition of Shri Ingini at the trial, the testimony of the election petitioner and the deposition of Shri Ingini as a court witness. It appears rather strange to us that on oral orders of the Superintendent of Police, Shri Basavaraj Ingini, PW1, Circle Inspector should have used his own tape recorder and tape recorded the speeches at various meetings of different candidates on his personal cassettes and thereafter on his transfer from Gulbarga police station taken all those cassettes with him and kept then in his own safe custody in an almirah, though the same were not required for any "official purpose". Sh. Ingini has been unable to explain either before the trial judge or before us as to why he was 'preserving' all those cassettes and for whose benefit. There are not only many loose ends in his evidence but certain glaring features which cast serious doubts on the credibility of this witness and the election petitioner regarding the recording of the speeches of the appellant in cassette, Ex.P7. In his statement made at the trial, Sh. Ingini categorically stated that the recorded tape were kept by him in his "per-

A sonal custody" and that nobody else including his wife had any access to the same, but appearing as a court witness, he conceded that his wife and children also had access to those cassettes but went on to add that they were to listen only to the music cassettes. According to Shri Ingini, he knew Shri Kanta, the election petitioner intimately for the past more than 10/12 years, as they belong to the same village and that they had been visiting each other. The election petitioner, appearing as PW6 at the trial, however, categorically stated "*I do not know PW1 Basavaraj Ingini at all*". According to Shri Ingini, he did not inform Shri Kanta or anyone else, except the S.P. orally that he had tape-recorded the speeches and that he did not inform anyone that he was having the recorded cassettes in his possession and that after recording the cassette, he had not replayed it even to hear it. The election petitioner - respondent No.1, at the trial when questioned as to how he came to know about the tape recorded cassette which had been summoned by him from the witness, answered:

D ".....I do not know PW1 Basavaraj Ingini. As per the information that police will generally make Tape recording of the speeches, I came to know the recording.

Question: Who gave the information regarding the Tape recording?

E Answer: I came to know by general information.

F I cannot say which person on which date and at what time informed me about this tape recording. I was aware about the general information of recording the speeches of Tape recording at the time of my filing of Election Petition. I did not take any efforts to get at that cassette. I did not make any mention in my Election Petition in respect of this tape recording. It is not correct to suggest that even though I was aware of the existence of a tape, I did not mention in my Petition" deliberately.

G The election petitioner - respondent no.1 then stated that "I did not hear the said cassette completely before filing the petition" implying thereby that he had 'partially' heard the cassette before the same was played in the High Court. From the evidence of Basavaraj Ingini, PW1, and the election petitioner, we find that the story regarding the recording of the cassette

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Ex.P7 by Shri Ingini is shrouded in mystery and the cassette. Ex.P7 appears to be a piece of evidence on which reliance cannot be placed since the very basis as to how it came to be recorded and why it was preserved or how the election petitioner came to know about it, has not been explained by the election petitioner and has been further confused by Basavaraj Ingini, appearing as a court witness. The appellant has denied his voice in the recorded cassette. In this connection, it is also pertinent to remember that whereas in the list of witnesses initially filed by the election petitioner, he had cited Mr. Kore as the witness from whom the cassette containing the speech of the appellant was sought to be produced even though in the same list the Circle Inspector of Gulbarga police station (Sh. Ingini) had also been summoned alongwith the record *but not the tape recorded cassette*. It was only in the second list of witnesses, that the election petitioner sought the production of the cassette from Shri Basavaraj Ingini, who he again cited as a witness notwithstanding the fact that he had already summoned the said witness in the first list of witnesses. Is it that Mr. Kore had refused to oblige the election petitioner and therefore Mr. Ingini, who knew the election petitioner intimately for 10-12 years and hailed from his village, was thought of as a convenient witness to produce the recorded cassette? We are only left to guess, because the election petitioner has not advanced any explanation for the meaningful departure between the two lists of witnesses. Since, cassette Ex.P7 was only a piece of evidence, the non mention of the same in the pleadings may not be of much consequence in so far as the petition is concerned because evidence is not required to be pleaded, but then it was an obligation on the part of the election petitioner to explain as to how in the first list of witnesses, the cassette which was summoned from Mr. Kore was later on summoned from Shri Ingini and what made the election petitioner to think that the cassette had been preserved and even taken away by Shri Ingini from Gulbarga, after his transfer and retained in his safe custody at his new place of posting. No explanation has been offered at all by the witnesses or their learned counsel. According to Basavaraj Ingini, PW1, after he had recorded the cassette, he did not play it at all till he appeared in the court as a witness during the trial. He categorically asserted that nobody had heard the cassette before the filing of the petition nor had he disclosed about recording of the same to anyone, except orally to the Superintendent of Police, yet, the election petitioner admitted during his cross examination that he had heard the cassette before the filing of the petition but when

A confronted as to why he had not mentioned about it in the election petition he stated that "he did not have any knowledge about the cassette' and later on added that he had not completely heard it. When, where and from whom did the election petitioner obtain the recorded cassette to hear it partially? There is no explanation on the record about it. The manner in which cassette Ex.P7, came into existence and was produced at the trial and relied upon by the election petitioner has created an impression on our minds that the election petitioner has not come out with the true story. The evidence of the Circle Inspector Basavraj Ingini and the election petitioner regarding the recording of the speeches of the appellant at Roza Market and Jalanabad is not at all satisfactory convincing or trustworthy.

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C The denial of the election petitioner that he even knew Shri Ingini, when according to Shri Ingini both of them hail from the same village and had known each other intimately for the last 10-12 years is an obvious effort on the part of the election petitioner to project total absence of any liaison between the two and to show that Shri Ingini is an independent witness. It detracts so materially from the testimony of the election petitioner regarding the story of the cassette Ex.P7, that it would not be safe to accept the version of the petitioner or Sh. Ingini about the tape recording of the speeches allegedly made by the appellant.

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E 48. The learned trial judge fell in error, even without going into the question of the admissibility of cassette Ex.P7, which, has been seriously disputed by Mr. Sibal in view of the denial by the returned candidate that the voice in the cassette was his, to rely upon this piece of evidence and to hold on the basis thereof, that the appellant was guilty of committing the corrupt practices covered by Sections 123(2), (3), (3A) of the Act. We find ourselves unable to rely on cassette Ex.P7 or to hold that it was recorded in the manner and at the time and place as deposed to by the election petitioner and Shri Ingini. The cassette Ex.P7 is not a reliable piece of evidence and we rule it out of consideration for determining whether the appellant delivered the speeches at Jalanabad and in Roza Market as alleged by the election petitioner.

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H 49. So far as the speech of the returned candidate at Roza market is concerned, the election petitioner also made an effort to prove the same by stating that he was himself present when the said speech was made and that he had heard the appellant say all that which has been published in the "Bahmani Newspaper" and extracted in the election petition. PW5 has

supported the election petitioner in that behalf. We have perused the testimony of the election petitioner and find that his claim that he had attended the meeting at Roza Market rather difficult to accept because at that point of time the election fever must have been at its highest pitch and the election petitioner busy with his own election propaganda. The deposition of the election petitioner, during cross examination with regard to his attending the Roza Market speech is interesting. He stated :

"I have attended the Meeting at the Roza Market area at about 8 or 8-15 p.m. I have made notes of some matters in that Meeting. I have also noted the exact words used by Respondent No.1 in that Meeting. I have not produced the said notes in the Court.

The extract of the speech shown at para 11 of my Petition is on the basis of my memory and the notes. I have not stated in my Petition about notes made by me of that Meeting. I cannot say in the Report extracted at para 11 which part of the Report is made out of my memory and how much by my notes....."

Thus, according to the election petitioner's own showing he allegedly prepared some notes containing "the exact words used by respondent no.1". Those notes, however, were not produced by the election petitioner either with the election petition or during the trial at any point of time. Even otherwise, it appears rather strange that a contesting candidate would, shortly before the date of poll be spending time to attend the election meeting of the rival candidate instead of working for his own election and not only that but even prepare notes of the speech of the rival candidate' in the exact words used "by the candidate". We find it difficult to accept this version or rely upon the same as it belies normal human conduct. The non-production of the notes by the election petitioner and the doubtful nature of cassette Ex.P7, impels us not to accept the version of the election petitioner on this aspect of the case. It is also noteworthy that even the application for holding the meeting at Roza Market, Ex.P1, dated 16.11.1992, had been made on behalf of IUML and signed by Mahmood Ahmed, Secretary IUML and not by the returned candidate or by his election agent and no connection has been alleged, much less established between the said Mahmood Ahmed and the appellant. In the general diary

A of the police, there is no mention of the appellant having delivered any speech at Roza Market on the relevant date and it was admitted by Sh. Ingini that the diary contained no entry of the relevant date evidencing the holding of any meeting by the appellant at Roza Market. Thus, we find that no reliable evidence has at all been led by the election petitioner to prove the holding of the meeting at Roza Market, as alleged in the petition, by B the returned candidate or about the contents of the alleged speech made by him. No witness of the locality was examined to substantiate the charge levelled in the election petition. The evidence on the record is not reliable or trustworthy to hold that the appellant delivered the offending speech as C alleged in Roza Market which may come within the mischief of Sections 123(2), (3), (3A) of the Act or to hold the appellant guilty of committing the alleged corrupt practices.

50. According to the election petitioner, the returned candidate also delivered an offensive speech at Jalanabad, the substratum whereof has D already been extracted by us from the petition. In the election petition, apart from specifically mentioning that a speech was made by the appellant at Roza Market, there is no specific mention of any speech having been delivered by the appellant at Jalanabad. The use of the expression at E "several places" besides Roza Market, in the petition where the meetings were allegedly held appears to have been designedly made by the election petitioner to lead evidence in respect of such other places for which evidence could be subsequently procured. In the pleadings specific refer- F ence to the speech by the appellant was made only of Roza Market and not either of Jalanabad or Muslim Chowk. The learned trial judge should not have permitted any evidence to be led in respect of the meetings F allegedly held at Jalanabad or Muslim Chowk. A novel procedure appears to have been adopted by the learned trial judge in over-ruling the objection raised on behalf of the returned candidate during the cross examination in this respect by holding that since the evidence was in accordance with the G issues", the objections had no merit. In the face of vague pleadings and the absence of specific mention of Jalanabad as a place where the appellant spoke at a meeting, the doubtful nature of cassette, Ex.P7, containing the tape recorded speech allegedly delivered at Jalanabad and the absence of any other evidence to support the plea, we hold that the election petitioner has miserably failed to discharge the burden which lay on him to prove that H the returned candidate had committed the corrupt practice as alleged in

the petition of delivering the offending speech at Jallanabad or at Roza Market. The averments of the election petitioner were so vague that it left a wide scope to the election petitioner to adduce evidence in respect of a meeting at any place, on any date, that he found convenient or for which he could procure evidence later on. In view of the vague pleadings and defective affidavits, the court would require much better type of evidence, absolutely reliable in character, in proof of the alleged meeting where offending speeches were delivered by the appellant, than the evidence as has been produced by the election petitioner in this case. There is, no reliable, trustworthy or satisfactory evidence on the record to hold that the appellant delivered the speeches as alleged by the election petitioner either at Roza Market or at Jallanabad.

51. As already noticed, even if, it be assumed for the sake of argument that some of the advertisements and messages published in the newspapers, the contents whereof have not been proved for the reasons already given, do bring home the charge of committing the corrupt practices as envisaged by Sections 123(2), (3), (3A) of the Act, the election petitioner has failed on facts, to connect the returned candidate with the commission of the alleged corrupt practices either by himself or through his election agent or by any other agent or person with his consent or with the consent of his election agent through any *admissible* and reliable evidence. The learned trial judge was, therefore, not justified to set aside the election of the appellant on the basis of inadmissible and unreliable evidence. We are unable to accept the reasoning or the conclusions reached by the High Court.

52. We are conscious of the fact that there is an increase of electoral malpractices of which making an appeal on the ground of religion or attempting to create or promote feelings of enmity or hatred between different classes of citizens of India on grounds of religion, caste, community etc. or of exercising undue influence, directly or indirectly with the free exercise of the electoral rights of the citizens, are examples and that the purity of election which is an essence of democracy is under a threat of erosion on account of such malpractices and while acting within the bounds of law, the courts owe a duty to the nation to see that such objectionable assaults wounding the purity of elections during the election propoganda are not allowed to go unpunished, but the courts can only act

A on the evidence led in the case and not on what ought to have been led.

53. A Constitution Bench of this Court in *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*, [1975] Supp. S.C.R. 281, cautioned:

B ".....Our political history made it particularly necessary
C that the basis of religion, race, caste, community, culture,
D creed and language which could generate powerful emotions depriving people of their powers of rational action should not be permitted to be exploited lest the imperative conditions for preservation of democratic freedoms were disturbed. Section 123(2), and (3) and (3A) was enacted to eliminate from the electoral process appeals to those divisive factors which arouse irrational passions that run counter to the basic tenets of our Constitution. Due respect for the religious beliefs and practices, race, creed culture and language of other citizens is one of the basic postulates of our democratic system....."

and we respectfully reiterate the caution.

E 54. The reading of the newspaper 'Bahamani News' as produced in
F this case alongwith the advertisements and messages published therein on
G behalf of IUML and MYL if established, by trustworthy and reliable evidence to have been made by the returned candidate or by his election agent or by his agent or any other person with the consent of the returned candidate or his election agent, would have in all probabilities brought his case within the net of the commission of the corrupt practices, as alleged in the petition, but in this case the pleadings are so vague and the evidence so scanty, unsatisfactory and unreliable, besides being partly inadmissible, that it is not possible to connect the appellant, the returned candidate or his election agent with any of the corrupt practices alleged in the petition. We are constrained to observe that the High Court before invalidating the election and upsetting the verdict of the electorate, in its zeal to maintain purity of elections, ignored not only the defects in the pleadings in the election petition but also failed to analyse the evidence in its proper perspective and even relied upon such evidence as is not admissible in law.

H 55. The maintenance of purity of elections is indeed essential but the

court must be clear in its approach and appreciate that the proof of commission of corrupt practices must be clear, cogent, specific and reliable as the charge of a corrupt practice is almost like a criminal charge and the one who brings forth that charge has the obligation to discharge the onus of proof by leading reliable, trustworthy and satisfactory evidence. The learned trial judge appears to have lost sight of the above salutary principles of election law.

56. Though a number of judgments were cited at the bar, both on the question of defective pleadings and the requirements of proving allegations of making an appeal on the grounds of religion or exercising or attempting to exercise undue influence on the free exercise of the electoral right by the voters, we do not think it necessary to deal with any of those judgments as we have, found on facts, that the election petitioner has failed to prove the allegations made by him against the returned candidate. Maybe, the appellant in this case did make appeals as alleged in the petition, but his election cannot be set aside on mere probabilities but only if the allegations of the corrupt practice, as alleged in the petition, are satisfactorily proved by trustworthy, reliable and admissible evidence, which in the instant case is found hopelessly wanting. Since, we have decided this appeal on analysis of the evidence on facts, we have not thought it necessary to deal with the submissions as regards the connection of the appellant, if any, with IUML or MYL or whether cassette Ex.P7 could be admitted in evidence.

57. Before parting with the judgment, we would also like to observe that the procedure followed by the trial judge during the trial of the election petition has left much to be desired. The provisions of the Act and the rules framed thereunder as also the provisions of the Code of Civil Procedure for production of documents and filing of the list of witnesses etc. were not kept in view and the trial was conducted in a very casual manner. We were informed during the course of the arguments, by learned counsel for both sides that the High Court has not framed any Rule for trial of the election petitions. We are surprised. If that be so, we request the Chief Justice of the High Court to look into it and frame Rules for proper trial of election petitions.

58. The result of our above discussion is that the judgment of the

- A** High Court declaring the election of the appellant from Gulbarga Assembly Constituency to be void cannot be sustained. This appeal, therefore, succeeds and is allowed and as a consequence the election petition filed by Respondent No.1 in the High Court is dismissed. The appellant shall be entitled to costs which are assessed at Rs.10,000 payable by the election petitioner-Respondent No.1.
- B**

G.N.

Appeal allowed.