

C. P. JOHN

v.

BABU M. PALISSERY & ORS.

(Civil Appeal Nos. 5987-5988 of 2012)

SEPTEMBER 11, 2014

**[FAKKIR MOHAMED IBRAHIM KALIFULLA
AND SHIVA KIRTI SINGH, JJ]**

Representation of the People Act, 1951 – ss. 83, 86, 123(10(A), 123(4), 33A(1)(ii) and s. 8(i), (ii), (iii) – Election Petition – Appellant challenging the successful election of returned candidate on the ground of corrupt practices and that the returned candidate suppressed his conviction in two criminal cases in nomination papers – Written statement by returned candidate that the election petition not disclosed complete cause of action and the affidavit filed was not a proper affidavit, thus, non-compliance of s.83 rw r. 94A and Form 25 – Application also filed by returned candidate seeking rejection of election petition for the want of cause of action – Appellant filing counter affidavit but did not take steps to correct the errors – Dismissal of election petition by the High Court – Interference with – Held: Not called for – When the appellant was not inclined to rectify the relief and was fully prepared to accept the decision of the High Court in the application as well as in the Election Petition, the appellant should not be given any further opportunity to cure the defects which were very substantial in nature – Further, there was no compulsion for the first respondent to disclose the conviction in his nomination since it was for less than a year – Conduct of Election Rules, 1961 – r. 94A.

Dismissing the appeals, the Court

HELD: 1.1 The situation relating to want of particulars and the failure to support the allegations

A made in the Election Petition by necessary affidavit as required to be filed under the proviso to Section 83(1) of the Representation of the People Act, 1951 was brought to the notice of the Appellant at the instance of the First Respondent in his written statement. In the counter affidavit of the Appellant to the application, the Appellant did not seek for any prayer to amend or add any plea to the Election Petition or the affidavit filed in support of the Election Petition. On the other hand, in the counter affidavit, the Appellant continued to maintain his stand that whatever particulars required, have been sufficiently set out in the petition and affidavit and it was not lacking in any statutory requirement. Thus, the Appellant allowed the High Court to examine the contention raised at the preliminary stage as to the maintainability of the Election Petition for want of compliance of statutory requirement as prescribed u/s. 83(1) r/w Rule 94A of the Conduct of Election Rules, 1961 and as prescribed in Form 25 of the relevant Election Rules. Therefore, when the Appellant was not inclined to seek for any amendment to the Election Petition or to the affidavit filed in support of the Election Petition, it cannot be understood as to how the Appellant can now raise any grievance to the effect that the High Court ought to have granted an opportunity to the Appellant to amend the pleadings.

F [Para 30][1165-E-H; 1166-A-D]

1.2 In the instant case, since the allegation of bribery falling under Section 123(1)(A) was a serious allegation, if according to the Appellant, for levelling the said allegation there were no details furnished as to on which date and by whom the bribe amount was promised to be paid to the Second Respondent then, when such averments were not duly supported in the affidavit and when such serious defects were pointed out in the written statement as well as in the affidavit filed in support of the application, the Appellant having taken a

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rigid stand that he wanted to go by whatever averments contained in the Election Petition and affidavit filed in support of the Election Petition, he cannot subsequently turn around and state that inspite of such a categoric stand taken by him, the High Court should have gone out of the way and called upon him to rectify the defects, which were very serious defects concerning material particulars relating to corrupt practice, for which there was no necessity for the High Court to show any such extraordinary indulgence to the Appellant. If the defect was one of format and not of substance, such defect should also be allowed to be cured. In the instant case, the defects pointed out in the Election Petition, as well as, in the affidavit were not of mere format but of substance.[Para 35, 33][1168-G-H; 1169-A-C]

1.3 In the instant case, when the mandatory requirement of the pleadings as stipulated under Section 83(1) and its proviso was brought to the notice of the Appellant, as well as, to the Court, and when a specific application was filed for rejecting the Election Petition for want of particulars and consequent lack of cause of action for maintaining the Election Petition and the election petitioner, namely, the Appellant chose not to cure the defects but insisted that his Election Petition can be proceeded with keeping the material defects on record, he cannot later on be heard to state that at any later point of time he must be given an opportunity to set right the defects. The appellant ought to have realized his serious mistake in not filing the petition as well as the affidavit in the proper manner and should have taken adequate recourse in filing the amended petition and affidavit. The appellant having failed to take recourse to such a corrective step cannot now be heard to state that the High Court went wrong in dismissing the election petition. [Para 39, 41][1172-E-H; 1173-F-G]

A **1.4 The contention that the First Respondent was responsible for issuing the said pamphlet in the name of the Second Respondent with a view to divert the votes and thereby, the candidature of the Appellant was put to serious prejudice, there is no scope to interfere with the conclusion of the High Court. [Para 45, 46][1176-E-G; 1178-E-F]**

C **1.5 The conviction and the sentence imposed on the First Respondent was less than a year, there was no compulsion for the First Respondent to disclose the said conviction in his nomination. Therefore, on this ground the High Court rightly declined to interfere with the election of the First Respondent. [Para 47][1179-A-B; 1179-C-D]**

D *Balwan Singh v. Lakshmi Narain and others* 1960
SCR 91 : AIR 1960 SC 770 ; *Umesh Challiyill v. K.P. Rajendran* 2008 (3) SCR 457 : (2008) 11
SCC 740 ; *G.M. Siddeshwar v. Prasanna Kumar*
2013 (4) SCR 1107 : (2013) 4 SCC 776 ; *Raj Narain v. Smt. Indira Nehru Gandhi and another*
E 1972 (3) SCR 841 : (1972) 3 SCC 850 ; *G. Mallikarjunappa and Anr. v. Shamanur Shivashankarappa and others* (2001) 4 SCC 428 ;
Sardar Harcharan Singh Brar v. Sukh Darshan Singh and others 2004 (5) Suppl. SCR 682 :
F (2004) 11 SCC 196, *Harkirat Singh v. Amrinder Singh* 2005 (5) Suppl. SCR 817 : (2005) 13 SCC
511 ; *Shaligram Shrivastava v. Naresh Singh Patel* 2002 (5) Suppl. SCR 585 : (2003) 2 SCC
G 176, *Resurgence India v. Election Commission of India and another* 2013 SCR 360 : AIR 2014
SC 344 ; *People's Union for Civil Liberties (PUCL) and another v. Union of India and another* 2003
(2) SCR 1136 : (2003) 4 SCC 399 – referred to.

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CASE LAW REFERENCE

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1960 SCR 91	referred to.	Para 14
2008 (3) SCR 457	referred to.	Para 14
2013 (4) SCR 1107	referred to.	Para 14
1972 (3) SCR 841	referred to.	Para 14
(2001) 4 SCC 428	referred to.	Para 14
2004 (5) Suppl. SCR 682	referred to.	Para 14
2005 (5) Suppl. SCR 817	referred to.	Para 14
2002 (5) Suppl. SCR 585	referred to.	Para 14
2013 SCR 360	referred to.	Para 14
2003 (2) SCR 1136	referred to.	Para 14

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CIVILAPPELLATE JURISDICTION : Civil Appeal No(s).
5987-5988 of 2012.

From the Judgment and Order dated 02-12-2011 of the High Court of Kerala in Election Petition No. 1 of 2011 and I.A. No. 3 of 2011.

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Romy Chacko, Robin V.S., Advs. for the Appellant.

Pallav Shishodia, Sr. Adv., G. Prakash, Mrs. B Prakash, Advs. for the Respondents.

The Judgment of the Court was delivered by

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FAKKIR MOHAMED IBRAHIM KALIFULLA, J.

1. These two appeals are directed against a common judgment of the High Court of Kerala at Ernakulum dated 02.12.2011 passed in Election Petition No.1 of 2011 and I.A. No. 3 of 2011. By the impugned judgment, the High Court, while allowing I.A. No. 3 of 2011 simultaneously dismissed Election Petition No.1 of 2011 filed by the Appellant challenging the successful election of the First Respondent to 062 Kunnamkulam Constituency in the general election held on

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- A 13.04.2011, as a candidate of Communist Party of India (Marxist) (hereinafter called "CPI (M)"), which is a constituent of the Left Democratic Front (hereinafter called "LDF"). Such a decision of the Election Petition was at the threshold under Sections 83(1) and 86 of the Representation of the People Act, 1951 (hereinafter called "the Act") read with Rule 11 of Order 7 of Code of Civil Procedure, 1908.

2. The brief facts which are required to be stated are that the Appellant was a candidate of the Communist Marxist Party (hereinafter called "CMP"), which was a constituent of United Democratic Front (hereinafter called "UDF"). The Second Respondent was also a candidate in the said election along with Respondent Nos.3 to 5. The First Respondent secured 58,244 votes whereas the Appellant secured 57,763 votes. The Second Respondent, who was an independent candidate, secured 860 votes. According to the Appellant, the Second Respondent whose name is identical to that of the Appellant was maliciously set up by the First Respondent to contest the election and in that process indulged in various corrupt practices, namely, inducing the Second Respondent by offering bribe, issued a pamphlet which was marked as Annexure IV in the High Court in the name of the Second Respondent deceptively which attracted Section 123(1)(A) and (4) of the Act and consequently his election was liable to be set aside. One other allegation of the Appellant raised in the Election Petition was that the First Respondent was convicted in two criminal cases, namely, Sessions Case No.4 of 1975 (Crime No.136/1974 of Pattambi Police Station) for offences under Sections 143, 148, 323, 324 and 302 read with 149, IPC for murdering one Syed Ali, an S.F.I. activist and that the First Respondent was the second accused in Crime No.463/1994 of Kunnamkulam Police Station where again he was convicted by the Judicial First Class Magistrate, Kunnamkulam in CC No.167/1995 along with other accused and was sentenced to undergo two years rigorous imprisonment apart

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from a fine of Rs.2000/- for the offences under Sections 143, 147, 148, 151, 332, 353 and 427 and 149, IPC and Section 3(2)(r) of the Prevention of Destruction to Public Properties Act. It is the contention of the Appellant in the Election Petition that the First Respondent concealed the above convictions in his nomination which was a deliberate suppression and in violation of Section 33A(1) of the Act. It is based on the above three substantive grounds, the Appellant challenged the successful election of the First Respondent in Election Petition No.1 of 2011.

3. As far as the allegations against the First Respondent were concerned, the allegation relating to the issue of bribery falling under Section 123(1)(A) was levelled in paragraphs 4, 5, 6 and 9 of the Election Petition. The allegation relating to the issuance of pamphlets attracting Section 123(4) of the Act was made in paragraphs 11, 12, 13, 14 and 15 of the Election Petition. The allegation relating to the criminal conviction and its suppression was raised in paragraph 7 of the Election Petition.

4. The various above allegations were refuted on behalf of the First Respondent in the written statement filed as against the Election Petition. The First Respondent filed I.A.No.3 of 2011 contending that the Election Petition was liable to be rejected on the ground that it was not filed in accordance with Section 83 as well as Section 86 of the Act. The contentions raised in the I.A. were to the effect that as regards the issue of bribery, though the same was referred to in paragraphs 4, 5, 6 and 9 of the Election Petition, in the affidavit, which was mandatory as per the proviso to Section 83(1) of the Act, the Appellant failed to support the said allegations with exception to what was stated in paragraph 9 of the Election Petition. It was contended in the I.A. that while the allegations relating to the offer of bribe to the Second Respondent by way of a gift of Rs.50,000 and a promise to pay Rs.1,00,000/- after the elections were raised in paragraphs 4, 5, 6 and 9, the affidavit

A did not support the allegations in paragraphs 4, 5 and 6 of the Election Petition and the affidavit only mentioned paragraph 9. It was, therefore, contended that it was not in compliance with the proviso to Section 83(1) and consequently, the Election petition was liable to be rejected on the ground of want of cause
B of action.

5. As far as the allegation of corrupt practice falling under Section 123(4) of the Act was concerned, the First Respondent by referring to Annexure IV took the stand that the pleadings in paragraphs 11, 12, 13 and 14, which pertained to Annexure
C IV-pamphlet in the name of the Second Respondent contended that there was no pleading as to which part of it was false and incorrect and how based on Annexure IV alone it was stated that a false statement in relation to the personal character or
D conduct of any candidate or in relation to the candidature or withdrawal of any candidate with reasonable calculation would prejudice the prospect of that candidate's election. It was, therefore, contended that the Appellant failed to plead the required facts and material particulars to support the ground of corrupt practice stipulated under Section 123(4) of the Act.

E 6. With regard to the allegations based on criminal convictions, it was contended that of the two criminal cases which were referred to by the Appellant in the Election Petition, in one case the First Respondent was acquitted by the
F Sessions Court in Criminal Appeal No.248/2000 and that in CC No.167 of 1995, the sentence awarded was less than a year and, therefore, there was no violation of Section 33A of the Act. The First Respondent, therefore, prayed for the dismissal of the Election Petition as the same was not in conformity with Section 83 of the Act.

G 7. On behalf of the Appellant a counter affidavit was filed to I.A. No.3 of 2011. In the counter affidavit a categorical stand was taken on behalf of the Appellant that the required facts and material particulars as required under Section 83 have
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been fully pleaded with supporting Affidavit and, therefore, it was in compliance of the Act and the Election Petition cannot be dismissed *in limine*. In other words, it was contended that there was full compliance of both the substantive parts of Section 83 as regards the furnishing of the facts as required under Section 83 as well as material particulars with supporting affidavit as required under the proviso to Section 83(1) of the Act and, therefore, the prayer of the First Respondent as made in I.A. No.3 of 2011 was liable to be rejected.

8. The High Court having examined the rival contentions of the parties, reached a conclusion that in support of the Election Petition, the averments contained in paragraphs 4, 5 and 6 of Election Petition were not specifically affirmed and that the affidavit only referred to paragraph 9 of the Election Petition. The High Court further held that since the averments contained in paragraph 9 of the Election Petition only referred to personal information of the Appellant, which lacked in very many material particulars, there was total lack of pleadings as required under Section 83 of the Act and consequently, the said allegation did not give scope for any cause of action to support the Election Petition.

9. For the allegation based on Annexure IV, here again the High Court held that the statement contained in the said Annexure did not make out a cause of action as against the First Respondent in order to attract the allegation of corrupt practice as stipulated under Section 123(4) of the Act and, therefore, on that ground as well, the Election Petition could not be proceeded with.

10. As far as the allegation based on the criminal cases was concerned, the High Court has found that the conviction in Sessions Case No.4 of 1975 was set aside in Criminal Appeal No.248 of 2000, which was also admitted by the Appellant and the conviction in CC No.167 of 1995, the certified copy of which was placed before the Court, disclosed that the

A sentence awarded was less than a year and consequently, there was no violation of Section 33A of the Act.

11. Based on the above findings, the High Court held that the I.A. filed by the First Respondent deserved to be allowed and, consequently, for want of cause of action the Election Petition itself was dismissed.

12. We heard Mr. Romy Chacko, learned counsel for the Appellant and Mr. Pallav Shishodia, learned Senior Counsel for the First Respondent. Mr. Romy Chacko learned counsel for the Appellant in his submissions contended that the Appellant stood in the election for Kunnamkulam Constituency in 2011 as a candidate of CMP, under the banner of UDF. He pointed out that Appellant lost the election with a thin margin of 408 votes and that the Second Respondent who had the same name as that of the Appellant secured 860 votes. According to the Appellant, but for the candidature of the Second Respondent, there was every scope for the Appellant to win the election. It was the contention of the Appellant that the First Respondent, with a view to mislead the voters, indulged in the corrupt practices of bribery, as well as, issuance of pamphlet with misleading and distorted version about the candidature which was covered by Sections 123(1)(a) and 123(4) of the Act and that the Appellant otherwise had a very good chance of success in the election.

13. The learned counsel contended that the Election Petition contained the required averments both relevant facts and material particulars and was also supported by the affidavit filed in accordance with the proviso to Section 83(1) and Rule 94A of the Conduct of Election Rules, 1961 (hereinafter called "the Rules") and, in any event, if in the opinion of the High Court there was anything lacking in the affidavit or the Election Petition filed by the Appellant, the High Court should have given an opportunity to carry out necessary amendment to the Election Petition and also to file additional affidavit in support of the

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Election Petition. The learned counsel contended that the outright rejection by the High Court of the Appellant's right to file necessary amended Election Petition and affidavit deprived the valuable rights of the Appellant under the provisions of the Act. A

14. In support of his submissions, the learned counsel relied upon the decisions in **Balwan Singh vs. Lakshmi Narain and others** reported in AIR 1960 SC 770, **Umesh Challiyill vs. K.P. Rajendran** reported in (2008) 11 SCC 740, **G.M. Siddeshwar vs. Prasanna Kumar** reported in (2013) 4 SCC 776, **Raj Narain vs. Smt. Indira Nehru Gandhi and another** reported in (1972) 3 SCC 850, **G. Mallikarjunappa and another vs. Shamanur Shivashankarappa and others** reported in (2001) 4 SCC 428, **Sardar Harcharan Singh Brar vs. Sukh Darshan Singh and others** reported in (2004) 11 SCC 196, **Harkirat Singh vs. Amrinder Singh** reported in (2005) 13 SCC 511. The learned counsel in his submissions, relating to improper resumption of nomination papers which according to Appellant was in violation of Section 33A of the Act, relied upon the decisions in **Shaligram Shrivastava vs. Naresh Singh Patel** reported in (2003) 2 SCC 176, **Resurgence India v. Election Commission of India and another** reported in AIR 2014 SC 344 and **People's Union for Civil Liberties (PUCL) and another vs. Union of India and another** reported in (2003) 4 SCC 399. B C D E

15. As against the above submissions, Mr. Pallav Shishodia, learned Senior Counsel appearing for the First Respondent submitted that there was no violation of Section 33A of the Act in the filing of the nomination by the First Respondent. The learned Senior Counsel pointed out that to support the said submission, the Appellant referred to two criminal cases in which the First Respondent was involved and that in one criminal case the Appellant was acquitted by the Appellate Court in Criminal Appeal No.248 of 2000 and that F G

A in the other criminal case in CC No.167 of 1995, the sentence imposed was less than a year and, therefore, there was no violation of Section 33A.

16. As regards the other deformity in the Election Petition, the learned Senior Counsel contended that the First Respondent in his written statement to the Election Petition pointed out the serious defects in the Election Petition, but yet the Appellant did not take any steps to correct the errors. The learned Senior Counsel further contended that when the First Respondent filed I.A. No.3 of 2011 raising a preliminary objection as to lack of cause of action in the said I.A., the Appellant filed a counter affidavit maintaining his stand that his Election Petition fully complied with the statutory requirement of the Act and, therefore, nothing more was required to be done. The learned Senior Counsel, therefore, contended that since sufficient opportunities were made available to the Appellant and the same having not been availed by him, the High Court cannot be expected to show any extraordinary indulgence to the Appellant for filing any further affidavit to fill up the serious lacunae in his pleadings. The learned Senior Counsel, therefore, contended that none of the decisions would support the said stand of the Appellant and, therefore, the impugned judgment does not call for any interference. It was also contended on behalf of the First Respondent that such defects which have been noted by the High Court while allowing I.A. No.3 of 2011 and dismissing the Election Petition were not merely cosmetic in nature in order to extend any further opportunity to the Appellant.

17. Having heard learned counsel for the respective parties and in order to appreciate the legal issues raised in these appeals which have been elaborately dealt with by the High Court in its judgment, the relevant sections to be noted are Sections 83, 86, 123(1)(A) and 123(4) of the Act as well as Rule 94A and Form 25 of the Rules. The said provisions are as under:

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83. Contents of petition.—(1) An election petition— A

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and B
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings: C

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

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. E

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

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

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

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

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

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

E (5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

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

G (7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude

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the trial within six months from the date on which the election petition is presented to the High Court for trial. A

123(1)(A). Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) "Bribery", that is to say— B

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

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

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

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

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

123(4). The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election. F.

Rule 94A. Form of affidavit to be filed with election petition.- The affidavit referred to in the proviso to sub-section (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25. G

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FORM 25

I,, the petitioner in the accompanying election petition calling in question the election of Shri/ Shrimati..... (respondent No..... in the said petition) make solemn affirmation/oath and say-

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(a) that the statements made in paragraphs..... of the accompanying election petition about the commission of the corrupt practice of and the particulars of such corrupt practice mentioned in paragraphs of the same petition and in paragraphs of the Schedule annexed thereto are true to my knowledge;

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(b) that the statements made in paragraphs of the said petition about the commission of the corrupt practice of and the particulars of such corrupt practice given in paragraphsof the said petition and in paragraphs of the Schedule annexed thereto are true to my information;

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(c)

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(d)

etc.

Signature of deponent

Solemnly affirmed/sworn by Shri/Shrimati..... at Fthis Day of 20.....

Before me, Magistrate of the first class/
Notary/Commissioner of Oaths."

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18. When we read Section 83, the substantive part of Section 83(1) consists of three important elements, namely, that an Election Petition should contain a concise statement of material facts which an election petitioner relies upon. The emphasis is on the material facts which should be stated in a concise form. Under Section 83(1)(b) it is stipulated that the

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Election Petition should set forth full particulars of any corrupt

practice which is alleged by the petitioner. A reading of the said sub-clause 83(1)(b) is to the effect that such particulars should be complete in every respect and when it relates to an allegation of corrupt practice it should specifically state the names of the parties who alleged to have committed such corrupt practice and also the date and place where such corrupt practice was committed. In other words, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should be in a position to gather every minute detail about the alleged corrupt practice such as the names of the persons, the nature of the alleged corrupt practice indulged in by such person or persons, the place, the date, the time and every other detail relating to the alleged corrupt practice.

19. To put it differently, when the Election Petition is taken up for consideration, the Court which deals with such an Election Petition, should be in a position to know in exactitude as to what is the corrupt practice alleged as against the parties without giving any room for doubt as to the nature of such allegation, the parties involved, the date, time and the place etc. so that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for any speculation. In that context, both Sections 83(1)(a) and (1)(b) and the proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, inasmuch as the affidavit to be filed in respect of corrupt practice should specifically support the facts pleaded, as well as, the material particulars furnished. Rule 94A of the Rules in turn stipulates that the affidavit should be in the prescribed Form 25 and should be sworn before the Magistrate of 1st class or a notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to comply with the said requirement statutorily. The format of the affidavit as prescribed in Form No.25 elaborates as to the requirement of specifically

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- A mentioning the paragraphs where the statement of facts are contained and also the other paragraphs where material particulars relating to such corrupt practices are alleged. It also mentions as to which of those statement of facts and material particulars are based on the personal knowledge of the election
- B petitioner and such of those statements and particulars that are made based on the information gained by the election petitioner.

20. Therefore, a conspectus reading of Section 83(1)(a) read along with its proviso of the Act, as well as, Rule 94A and
- C Form No. 25 of the Rules make the legal position clear that in the filing of an Election Petition challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate and
- D that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed. In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is
- E supported by legally acceptable material evidence without an iota of doubt as to such allegation, the Election Petition cannot be entertained and will have to be rejected at the threshold. It will be relevant to state that since the successful candidate in an election has got the support of the majority of the voters
- F who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to be called in question by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag the successful candidate to the Court proceedings and make
- G waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency. Therefore, while deciding the issue raised, we wish to keep in mind the above lofty ideas, with which the provisions contained in Section 83(1) read along with Section 86 came to be
- H incorporated while deciding this appeal.

21. Keeping the above statutory prescription in mind, when we examine the case on hand, the allegation of corrupt practice raised by the Appellant in the Election Petition was two fold falling under Sections 123(1)(A) and 123(4) of the Act. Section 123(1)(A) defines the act of bribery, namely, any gift, offer or promise by a candidate or his agent or any other person with the consent of the candidate or with the consent of his election agent of any gratification to any person whomsoever with the object directly or indirectly for inducing a person to stand or not to stand as a candidate or to withdraw or not to withdraw from being a candidate at an election. In the case on hand, the allegation of bribery is made in paragraphs 4, 5, 6 and 9 of the election petition. In paragraph 4, it is alleged that the First Respondent went to the house of the Second Respondent whose father was an active member of CPI (M) and induced him by a gift of Rs.50,000 in cash and promised to give Rs.1,00,000/- for developing his printing press, if he agreed to file his nomination to contest from 062 Kunnamkulam Constituency and further promised to bear all the expenses for the election and by such inducement he was successful in making the Second Respondent submit his nomination in the said constituency styling himself as an independent candidate. It also contained the allegation that the persons who signed the nomination of the Second Respondent as proposers were workers/members of CPI (M). The handwritings found in Form No.18 appointing the counting agents of Respondent Nos. 1 and 2 were of the same person. On the above broad averments, it was contended that the same would fall under Section 123(1)(A) of the Act. In paragraph 9, it was reiterated that the Second Respondent filed his nomination as an independent candidate at the instance of the First Respondent by an offer of gratification for a gift of Rs.50,000 with a promise to pay Rs.1,00,000/-after the elections and that the said inducement was made by the First Respondent with the ulterior motive of creating a confusion among the voters and divide the votes,

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A inasmuch as, the names of the Appellant as well as that of Second Respondent are identical.

22. With that we come to a crucial question as to how it was contended on behalf of the First Respondent that the said averments were not in conformity with the provisions of Section 83 of the Act or that in the affidavit which was filed in support of the Election Petition, there was no reference to paragraphs 4, 5 and 6 and that the affidavit only mentioned about paragraph 9 alone. It was contended that the Election Petition was not filed in compliance with Section 83 read with Rule 94A and Form 25. The sum and substance of the stand of the First Respondent in the written statement as regards the allegation of bribery was that in paragraph 4 there was no specific pleading as to who paid the bribe, the date, time and place at which the alleged bribe was paid as mandated under Section 83(1)(b) of the Act and that the said pleading of corrupt practice was not supported by the affidavit and, therefore, the entire pleadings in paragraph 4 has to be eschewed from consideration. As far as the averments contained in paragraph 9 were concerned, according to the First Respondent, the entire averments in paragraph 9 will not satisfy the statutory requirement of Section 83(1)(b) and further the said averments relating to corrupt practice were based on information and not based on personal knowledge.

23. It was further contended that the allegation of bribery having been pleaded in paragraphs 4, 6, 9 and 10 of the Election Petition, those averments contained in paragraphs 4, 6 and 10 of the Election Petition were not supported by the affidavit as required under the proviso to Section 83(1) of the Act. In the affidavit filed in support of I.A.No.3 of 2011, the First Respondent while reiterating the above contentions, stated that after striking off and eschewing paragraphs 4, 7, 9 to 15 and grounds (a), (c), (d) and (e) of the Election Petition, there were left no material facts giving any cause of action for the Election

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Petition subsist. It was, therefore, prayed that the Election Petition should be dismissed at the threshold. A

24. The Appellant in his counter affidavit to I.A. No.3 of 2011, did not state anything as regards the filing of proper affidavit relating to paragraphs 4, 6 and 10 which related to corrupt practice. On the other hand, it was contended that the Election Petition contained full material facts and particulars of corrupt practice including the date, place and name of the parties. It is relevant to note that till the present impugned judgment came to be passed by the High Court, there was no prayer made either in writing or orally for permitting the Appellant to file necessary amendment to the Election Petition or file any additional affidavit curing the defects relating to failure to support the averments contained in paragraphs 4, 6 and 10 of the Election Petition by way of fresh affidavit or for supplementing the averments already made with additional particulars or details relating to the allegation of corrupt practices. B
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25. The High Court while dealing with the above issues, after referring to paragraphs 4 as well as 9 of the Election Petition, held as under: E

"It is a complex sentence. By reading it, one cannot be say that the allegation is that first respondent personally approached the second respondent or paid the cash or promised Rs. 1,00,000/- for developing his printing press. In such circumstances, there is force in the submission of the learned senior counsel appearing for the first respondent that the allegations are too vague to constitute an allegation of corrupt practice, to set aside the election of the returned candidate under section 100(1)(b) of the Act. Added to this the affidavit shows that the allegations in paragraph 4 was not supported by the affidavit. The question is if it does not constitute a complete cause of action, whether the election petition is liable to be dismissed *in limine* at the threshold or is it is for the court F
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A to post the case to enable the election petitioner to file
another affidavit or an application to amend the election
petition. As rightly pointed out by the learned senior
counsel in spite of the written statement filed by the first
B respondent contending that the election petition does not
disclose a complete cause of action and the affidavit filed
is not the affidavit contemplated under the proviso to
Section 83(1) and under section 94A of the Conduct of
Elections Rules, the election petitioner did not take steps
to get the election petition amended or to file another
C affidavit in compliance with proviso to Section 83(1)(a)
and Rule 94A. On the other hand, the counter affidavit
filed by the election petitioner to I.A. 3/2011 shows that it
is the definite case of the election petitioner that there is
no defect in the election petition. He has no case that an
D opportunity is to be granted to cure the defects.
Paragraph 8 of the said counter affidavit reads:-

E “8. It is submitted that the averments in the Election
Petition are fully in compliance with the mandatory
requirements of the Act and Rules, especially under
Sections 83 and 87 of the Representation of the
People Act and Rule 94 of the Conduct of Election
Rules, 1968. Specific averments are set out in the
election petition, pointing out the specific acts as well
as the name/identity of the persons who are parties to
F the transactions which forms the basis of the election
petition.”

G In paragraph 9 of the affidavit he has further asserted
that the affidavit is in accordance with the requirement of
Rule 94. In such circumstances question is whether an
opportunity is to be granted to cure the defect.”

(Underlining is ours)

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26. Thereafter, the High Court after referring to the various decisions of this Court, relating to the interpretation of Section 83(1)(a) of the Act, ultimately held as under: A

"It is clear that the affidavit filed along with the election petition in Form 25 is in accordance with the requirement provided under Rule 94A and as mandated under the proviso to section 83(1) of the Act. The affidavit filed does not support the allegations made in paragraph 4 of the election petition which deals with the allegation of corrupt practice of bribery, based on which election is sought to be declared void under section 100(1)(b) of the Act. Though learned counsel argued that in that case it is the duty of the court to grant an opportunity to cure the defect, I cannot agree with the submission. As pointed out by the Apex Court in **V. Narayanaswamy's case (supra)** when the first respondent pointed out that the election petition does not contain the required concise statement of material facts and the affidavit filed under proviso to Section 83(1) does not satisfy the legal requirement, the case of the petitioner is that it satisfied all the requirements. He did not take any steps to get the pleadings amended or to file an affidavit in conformity with the proviso to section 83(1) and Rule 94A of the Conduct of Election Rules. In such circumstances it can only be found that it is not an affidavit as required under the proviso to section 83(1) and Rules 94A....." B C D E F

27. On the above issue, the contention of the Appellant was two fold. In the first instance, Mr. Chacko, learned counsel contended that even if there was some omission on the part of the Appellant in filing the necessary affidavit, with particular reference to the allegations in paragraphs 4, 6 and 10 of the Election Petition, the High Court ought to have given an opportunity to cure the said defects which were purely cosmetic. It was also contended that the averments, contained in paragraph 9 which were duly supported by the affidavit were G H

A sufficient to prove the allegation of bribery alleged against the
 First Respondent, which the Appellant would have been able
 to sufficiently demonstrate and establish at the time of hearing
 of the Election Petition. According to the learned counsel, the
 Election Petition ought not to have, therefore, been dismissed
 B by the High Court *in limine*.

28. In support of the above contentions the learned
 counsel relied upon the decision in **Balwan Singh (supra)**.
 The learned counsel by relying upon the statement of law at
 page 774 contended that the said decision being a
 C Constitution Bench decision, the High Court should have
 applied the said ruling and extended an opportunity to the
 Appellant to file necessary affidavit in support of the allegation
 contained in the Election Petition. To appreciate the stand of
 the Appellant, we refer to the passage relied upon by the
 D learned counsel which is found in paragraph 8 of the said
 decision. The said part of paragraph 8 can be usefully referred
 to which reads as under:

E “8.....An election petition is not liable to be dismissed
 in limine merely because full particulars of a corrupt
 practice alleged in the petition, are not set out. Where
 an objection is raised by the respondent that a petition
 is defective because full particulars of an alleged corrupt
 practice are not set out, the Tribunal is bound to decide
 whether the objection is well-founded. If the Tribunal
 F upholds the objection, it should give an opportunity to
 the petitioner to apply for leave to amend or amplify the
 particulars of the corrupt practice alleged; and in the event
 of non-compliance with that order the Tribunal may strike
 out the charges which remain vague.....”

G 29. When we refer to the said passage of the Constitution
 Bench decision, we have to bear in mind that in that case when
 we looked into the facts which gave rise to the said judgment,
 we find that in the Election Petition, the allegation of corrupt
 H practice falling under Section 123(5) was alleged to the effect

that the successful candidate indulged in gathering the voters by hiring bullock carts and tractors to and from the polling station. When in the written statement, it was pointed out that the said allegation lacked in detailed particulars by way of Annexure D-1 to the main Election Petition, the election petitioner furnished the details as to who procured the bullock carts and tractors and who were all transported from which village to which polling station and so on. At the instance of the successful candidate, the Election Tribunal declined to accept the said Annexure D-1 and deleted the relevant paragraph in the Election Petition for want of detailed particulars. However, when the election petitioner sought for a review, the Tribunal in review accepted the Annexure D-1. This order in review was challenged before the High Court. The High Court also upheld the order in review passed by the Tribunal, which was ultimately brought before this Court by the successful candidate. It was in this context, it was held that when an objection is raised by the Respondent in the Election Petition pointing out the defects that full particulars of alleged corrupt practice were not set out, the Election Tribunal, while accepting the said statement should give an opportunity to the election petitioner to apply for leave, to amend or amplify the corrupt practice alleged.

30. In the case on hand, the said situation relating to want of particulars and the failure to support the allegations made in the Election Petition by necessary affidavit as required to be filed under the proviso to Section 83(1) was brought to the notice of the Appellant at the instance of the First Respondent in his written statement. The written statement was filed by First Respondent on 24.09.2011. The I.A. No.3 of 2011 was filed on the same date. The counter affidavit to the said I.A. was filed by the Appellant on 06.10.2011. The impugned order came to be passed on 02.12.2011. It is significant to note that in the counter affidavit of the Appellant to I.A. No.3 of 2011, the Appellant did not seek for any prayer to amend or add any plea to the Election Petition or the affidavit filed in support of

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A the Election Petition. On the other hand, in the counter affidavit, the Appellant continued to maintain his stand that whatever particulars required, have been sufficiently set out in the petition and affidavit and it was not lacking in any statutory requirement. Thus, the Appellant allowed the High Court to examine the
B contention raised at the preliminary stage as to the maintainability of the Election Petition for want of compliance of statutory requirement as prescribed under Section 83(1) of the Act read along with Rule 94A of the Rules and as prescribed in Form 25 of the relevant Election Rules. Therefore, when the
C Appellant was not inclined to seek for any amendment to the Election Petition or to the affidavit filed in support of the Election Petition, we fail to understand as to how the Appellant can now raise any grievance to the effect that the High Court ought to have granted an opportunity to the Appellant to amend the
D pleadings. In any event, the ratio of the decision set out in the Constitution Bench decision can have no application to the case on hand, as it materially differed in very many facts and the conduct of the party. We, therefore, do not find any scope to apply the decision in **Balwan Singh (supra)** to the case of
E the Appellant.

31. Reliance was then placed upon the decision in **Umesh Challiyill (supra)**. In that case, a preliminary objection was raised to the effect that the affidavit in Form 25 was not affirmed and as such the affirmation was not duly certified and the verification of the Election Petition was defective, etc. While
F dealing with the said objection, the Election Tribunal summarily dismissed the Election Petition at the stage when the Election Petition was taken up for enquiry. While examining the correctness of the said decision of the High Court, this Court
G has held as under in paragraphs 12 and 13:

“12. Both the defects which have been pointed out by the learned Single Judge were too innocuous to have resulted in dismissal of the election petition on the basis of the preliminary objection. The courts have to view
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whether the objections go to the root of the matter or they are only cosmetic in nature. It is true that the election petition has to be seriously construed. But that apart the election petition should not be summarily dismissed on such small breaches of procedure. Section 83 itself says that the election petition should contain material facts. Section 86 says that the High Court shall dismiss the election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. But not of defect of the nature as pointed out by the respondent would entail dismissal of the election petition. These were the defects, even if the Court has construed them to be of serious nature, at least notice should have been issued to the party to rectify the same instead of resorting to dismissal of the election petition at the outset. (Emphasis added)

13. Learned counsel for the respondent has tried to justify and support the order of the learned Single Judge and submitted that in fact these objections were raised by the respondent in his counter-affidavit and the appellant had sufficient opportunity to have cured them and in that connection, learned counsel for the respondent pointed out that the election petition was presented on 22-6-2006 and the first date of hearing was on 30-8-2006. The appellant should have cured these defects but the same was not done. Therefore, there was no option with the learned Single Judge but to dismiss the election petition. We fail to appreciate this argument of the learned counsel for the respondent for the simple reason that how can the appellant who bona fide felt that his election petition in all respects is complete will entail such a serious consequence of dismissal of the election petition on such minor omissions. In case the learned Single Judge found that the election petition was not in the format then after recording his finding, the learned Single Judge should

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A have given an opportunity to the appellant to amend or
cure certain defects pointed out by the Court. It may be
relevant to mention, these are not the grounds mentioned
in Section 86 of the Act for dismissal of the election
petition. But nonetheless even if it is to entail serious
B consequence of dismissal of the election petition for not
being properly constituted, then too at least the appellant
should have been given an opportunity to cure these
defects and put the election petition in proper format.
C But the learned Single Judge instead of giving an
opportunity has taken the easy course to dismiss the
election petition which in our opinion, was not warranted."

32. What has been stated in the above paragraphs is
that where the defects pointed out were too innocuous and
cosmetic in nature, the Election Tribunal should have given an
D opportunity to rectify those defects instead of throwing out the
Election Petition at the very threshold. There can be no two
opinions about the proposition of law so stated by this Court
in the above referred to decisions. The defects which were
pointed out in those cases were that the affidavit was not sworn
E in the prescribed format and in the verification column, certain
words were missing. It was in that context that this Court held
that when such innocuous mistakes in the format of the affidavit
were noted, in the interest of justice, the proper course was
F that the Tribunal should have called upon the election petitioner
to rectify those minor cosmetic defects instead of dismissing
the Election Petition at the threshold.

33. In the case on hand, since the allegation of bribery
falling under Section 123(1)(A) was a serious allegation, if
G according to the Appellant, for levelling the said allegation there
were no details furnished as to on which date and by whom
the bribe amount was promised to be paid to the Second
Respondent then, when such averments were not duly
supported in the affidavit and when such serious defects were
pointed out in the written statement as well as in the affidavit
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filed in support of I.A. No.3 of 2011, the Appellant having taken a rigid stand that he wanted to go by whatever averments contained in the Election Petition and affidavit filed in support of the Election Petition, he cannot subsequently turn around and state that inspite of such a categoric stand taken by him, the High Court should have gone out of the way and called upon him to rectify the defects, which were very serious defects concerning material particulars relating to corrupt practice, for which there was no necessity for the High Court to show any such extraordinary indulgence to the Appellant. We, therefore, do not find any scope to apply the decision in **Umesh Challiyill (supra)** to support the stand of the Appellant.

34. Mr. Chacko, learned counsel then relied upon the decision in **G.M. Siddeshwar (supra)**. In the said decision, it was held that if there is substantial compliance with the prescribed format of the affidavit, an Election Petition cannot be thrown out on a hyper technical ground particularly when there were some defects in the format which were curable. Paragraphs 37 and 38 are relevant for our consideration which are as under:

"37. A perusal of the affidavit furnished by Prasanna Kumar ex facie indicates that it was not in absolute compliance with the format affidavit. However, we endorse the view of the High Court that on a perusal of the affidavit, undoubtedly there was substantial compliance with the prescribed format. It is correct that the verification was also defective, but the defect is curable and cannot be held fatal to the maintainability of the election petition.

38. Recently, in *Ponnala Lakshmaiah v. Kommuri Pratap Reddy* the issue of a failure to file an affidavit in accordance with the prescribed format came up for consideration. This is what this Court had to say: (SCC p. 802, para 28)

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A “28. ... The format of the affidavit is at any rate not a
matter of substance. What is important and at the heart
of the requirement is whether the election petitioner
has made averments which are testified by him on
oath, no matter in a form other than the one that is
B stipulated in the Rules. The absence of an affidavit or
an affidavit in a form other than the one stipulated by
the Rules does not by itself cause any prejudice to the
successful candidate so long as the deficiency is cured
by the election petitioner by filing a proper affidavit
when directed to do so.”
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We have no reason to take a different view. The
contention urged by Siddeshwar is rejected.”

D 35. A reading of the above paragraphs themselves show
that if the defect was one of format and not of substance, such
defect should also be allowed to be cured. In the case on hand,
we have already held that the defects pointed out in the
Election Petition, as well as, in the affidavit were not of mere
format but of substance and, therefore, we are unable to apply
the ratio in **G.M. Siddeshwar (supra)** to the case on hand.
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36. In **Raj Narain (supra)** paragraph 23 can be usefully
referred to which reads as under:

F “23. Now coming to the appeal against the order on the
amendment application, the learned trial Judge
disallowed the amendments sought on the sole ground
that if those amendments are allowed, it will amount to
amending the statement of material facts and the same
is not permissible in view of Section 86(5). We have
already found that that conclusion of the learned trial
G Judge is not correct. The amendment application was
moved even before the trial of the case commenced. It
is not shown how the amendments sought in respect of
paragraphs 2 and 5 of the petition can prejudice the case
of the respondent. They are merely clarificatory in
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character. This Court ruled in *Shri Balwan Singh v. Shri Lakshmi Narain and others*, that an election petition was not liable to be dismissed in limine because full particulars of corrupt practice alleged were not set out.

It further observed that if an objection was taken and the Tribunal was of the view that the full particulars have not been set out, the petitioner had to be given an opportunity to amend or amplify the particulars. It was only in the event of non-compliance with the order to supply the particulars that the charge which remained vague could be struck out. In that case the amendment was sought after the evidence was closed in the case. This Court allowed the same. Courts are ordinarily liberal in allowing amendment of pleadings unless it results in prejudicing the case of the opposite party. Any inconvenience caused by an amendment can always be compensated by costs. We think that the amendments asked for, should have been allowed and we allow the same. The election petition will be accordingly amended and the respondent will be afforded an opportunity to file any additional written statement, if she so desires."

37. As the statements contained in the said paragraph disclose that when some defects in the Election Petition were pointed out, the Election Petitioner in that case took steps for amending the pleadings which were declined. In contrast to the above case, in the case on hand, in spite of pointing out the defects, the Appellant did not evince any interest to amend either the Election Petition or the affidavit filed in support of the Election Petition. We, therefore, do not find any scope to apply the decision in **Raj Narain (supra)** to the facts of this case.

38. Reliance was placed upon the decision in **G. Mallikarjunappa (supra)**, paragraph 7, which reads as under:

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A "7. An election petition is liable to be dismissed in limine
under Section 86(1) of the Act if the election petition does
not comply with either the provisions of "Section 81 or
Section 82 or Section 117 of the RP Act". The
B requirement of filing an affidavit along with an election
petition, in the prescribed form, in support of allegations
of corrupt practice is contained in Section 83(1) of the
Act. Non-compliance with the provisions of Section 83
of the Act, however, does not attract the consequences
C envisaged by Section 86(1) of the Act. Therefore, an
election petition is not liable to be dismissed in limine
under Section 86 of the Act, for alleged non-compliance
with provisions of Section 83(1) or (2) of the Act or of its
D proviso. The defect in the verification and the affidavit is
a curable defect. What other consequences, if any, may
follow from an allegedly "defective" affidavit, is required
to be judged at the trial of an election petition but Section
86(1) of the Act in terms cannot be attracted to such a
case."

39. There can be no two opinions that consequences
E envisaged by Section 86(1) of the Act will have no application
to the non-compliance of Section 83(1) or (2) or its proviso.
But the question before us is when the mandatory requirement
of the pleadings as stipulated under Section 83(1) and its
F proviso was brought to the notice of the Appellant, as well as,
to the Court, and when a specific application was filed for
rejecting the Election Petition for want of particulars and
consequent lack of cause of action for maintaining the Election
Petition and the election petitioner, namely, the Appellant herein
G chose not to cure the defects but insisted that his Election
Petition can be proceeded with keeping the material defects
on record; he cannot later on be heard to state that at any later
point of time he must be given an opportunity to set right the
defects. We are unable to appreciate such an extreme stand
made on behalf of the Appellant. Therefore, even while applying
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the above proposition of law stated by this Court in paragraph 7, we do not find any scope to interfere with the order impugned in these appeals. A

40. Reliance was then placed upon the decision in **Sardar Harcharan Singh Brar (supra)**. After making reference to the nature of defects in the affidavit, and dismissal of the Election Petition at the threshold, this Court has stated as under in paragraph 14: B

"14.....Therefore, an election petition is not liable to be dismissed *in limine* under Section 86 of the Act, for alleged non-compliance with provisions of Section 83(1) or (2) of the Act or of its proviso. The defect in the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly "defective" affidavit, is required to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case." C D

41. As has been stated therein the defect was only in the form and not in substance. In fact, in the case on hand after pointing out the substantial defects in the Election Petition as well as the affidavit filed in support of the Election Petition, the First Respondent came forward with a separate application, namely, I.A. No.3 of 2011 for rejecting the Election Petition for want of cause of action. When the said I.A. along with an Election Petition was taken up for hearing, the Appellant ought to have realized his serious mistake in not filing the petition as well as the affidavit in the proper manner and should have taken adequate recourse in filing the amended petition and affidavit. The Appellant having failed to take recourse to such a corrective step cannot now be heard to state that the High Court went wrong in dismissing the Election Petition. We, therefore, do not find any support from the said decision to the case on hand. E F G

A 42. The last of the decision relied upon by the learned counsel for the Appellant was **Harkirat Singh (supra)**. In paragraphs 51 and 52, the necessity for pleading material facts and particulars as required under Section 83 of the Act have been succinctly stated. The said paragraphs are as under:

B “51. A distinction between “material facts” and
C “particulars”, however, must not be overlooked. “Material facts” are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. “Particulars”, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more
D informative. “Particulars” thus ensure conduct of fair trial and would not take the opposite party by surprise.

E 52. All “material facts” must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the
F details of the case which is in the nature of evidence a party would be leading at the time of trial.”

G 43. However, this Court found that the High Court without any plea from any party went into the allegations made in the Election Petition and rejected the same holding that the Election Petition did not state material facts and, therefore, did not disclose a cause of action. In paragraphs 82 and 83 it has been held as under:

H “82. As we have already observed earlier, in the present case, “material facts” of corrupt practice said to have

been adopted by the respondent had been set out in the A
petition with full particulars. It has been expressly stated
as to how Mr. Chahal who was a gazetted officer of Class
I in the Government of Punjab assisted the respondent
by doing several acts, as to complaints made against B
him by authorities and taking of disciplinary action. It has
also been stated as to how a police officer, Mr. Mehra,
who was holding the post of Superintendent of Police
helped the respondent by organising a meeting and by
distributing posters. It was also alleged that correct and C
proper accounts of election expenses have not been
maintained by the respondent. Though at the time of
hearing of the appeal, the allegation as to projecting
himself as "Maharaja of Patiala" by the respondent had
not been pressed by the learned counsel for the appellant,
full particulars had been set out in the election petition in D
respect of other allegations. The High Court, in our
opinion, was wholly unjustified in entering into the
correctness or otherwise of the facts stated and
allegations made in the election petition and in rejecting
the petition holding that it did not state material facts and E
thus did not disclose a cause of action. The High Court,
in our considered view, stepped into the prohibited area
of appreciating the evidence and by entering into merits
of the case which would be permissible only at the stage
of trial of the election petition and not at the stage of F
consideration whether the election petition was
maintainable.

83. We, therefore, hold that the High Court was wrong in
dismissing the election petition on the ground that
material facts had not been set out in the election petition G
and the election petition did not disclose a cause of
action. The order passed by the High Court, therefore,
deserves to be quashed and set aside."

A 44. The distinguishing feature which we noted as
between the said case and the case on hand is that here there
was a written statement filed pointing out the serious defects
as regards the material facts and the particulars as set out in
the Election Petition and also the non-compliance of the
B proviso to Section 83(1) in the affidavit filed in support of the
Election Petition. That apart, an I.A. was taken out in I.A. No.3
of 2011 at the instance of the First Respondent to reject the
Election Petition for want of cause of action in which specific
grounds were raised which were contested by the Appellant
C by filing a counter affidavit but yet, even at that stage, the
Appellant did not take the stand that he was inclined to rectify
whatever defects were pointed in the Election Petition as well
as in the affidavit. When such a categoric stand was taken on
behalf of the Appellant and he was fully prepared to accept the
D ultimate decision of the High Court in the application as well
as in the Election Petition, we see no reason why the Appellant
should now be given any further opportunity to cure the defects
which were substantial in nature. Therefore, the said decision
also does not in any way support the case of the Appellant.

E 45. With that when we come to the next part of the
judgment, namely, the alleged corrupt practice under Section
123(4) based upon Annexure IV, which was the pamphlet
distributed in the name of Second Respondent, the contention
was that the First Respondent was responsible for issuing the
F said pamphlet in the name of the Second Respondent with a
view to divert the votes of UDF and thereby, the candidature of
the Appellant was put to serious prejudice. Dealing with the
said issue, the High Court has stated as under in paragraphs
17 and 19:

G “17. The question is even if the case of the election
petitioner is to be accepted and the notice was printed
and published by the first respondent in the name of the
second respondent, whether it is a corrupt practice as
provided under sub section (4) of Section 123. The
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argument of the learned counsel appearing for the election petitioner is that election petitioner is the candidate of the United Democratic Front and by reading the appeal the voters may think that second respondent, who is having identical name as that of the election petitioner, is the candidate of the United Democratic Front and it was printed and published with the intention of causing loss of votes to the election petitioner, as those who read the appeal may think that second respondent is the candidate of the United Democratic Front and would cast their votes to the second respondent on a mistaken impression that instead of the election petitioner second respondent is the candidate of the United Democratic Front. Learned senior counsel appearing for the election petitioner argued that unless Annexure IV appeal contains any statement which are false and either the first respondent believed to be false or did not believe to be true and such statements are in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate and that too reasonably calculated to prejudice the prospects of that candidate's election, it will not constitute a corrupt practice as provided under sub section (4) of Section 123 of the Act.

19. It is clear that in order to attract sub section (4) of section 123, there should be a publication by a candidate or his agent or by any other person with the consent of the candidate or his election agent. The statement of fact in the publication must be false. The candidate should either believe it to be false or does not believe it to be true. The statement must be in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate. The statement must be reasonably calculated to prejudice the prospects of that candidate's election. Even if the

- A statement is false and the candidate did not believe the statement to be true or believe it to be false, unless the statement is in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, it is not a corrupt practice.
- B Even if the statement is in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, unless it was reasonably calculated to prejudice the prospects of that candidate's election, it will not amount to a corrupt practice. Each of the ingredients in the section has its own importance. The omission to plead any one of the ingredients is fatal. In the absence of any of the ingredients, it will not constitute a complete cause of action to challenge the election on the ground of corrupt practice under section 123(4) of the Act."
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46. On a reading of the above discussion made by the High Court with which we fully concur, we do not find any scope to take a different view. The said conclusion of the High Court in the context of Section 123(4) is the only way to understand the implication of the Annexure IV-pamphlet alleged to have been distributed by the Second Respondent at the instance of the First Respondent. Therefore, on this ground, as well, we do not find any scope to interfere with the impugned judgment of the High Court.

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47. The only other ground which was raised in the Election Petition related to violation of Section 33A of the Act wherein, the First Respondent stated to have suppressed his conviction in two criminal cases. As far as those two criminal cases are concerned, Mr. Shishodia, learned Senior Counsel appearing for the First Respondent brought to our notice that the contention of the Appellant based on those two criminal cases were factually incorrect. In the impugned judgment it has been noted that the First Respondent was convicted for offence in Sessions Case No.4 of 1975 but, however, the said conviction
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was set aside in Criminal Appeal No.248 of 2000 which was not in dispute. Similarly, with reference to the conviction in CC No.167 of 1995 the High Court has noted that the certified copy of the judgment in the said case was produced which disclosed that the sentence imposed in the said case was less than a year. Under Section 33A(1)(ii) of the Act, the requirement of the candidate is to furnish the information in the nomination as regards his/her conviction for any offence referred to in sub-sections (i), (ii) and (iii) of Section 8 and if he/she is sentenced to imprisonment for a period of one year or more, only then should it be disclosed in the nomination. As it has been found in the present case that the conviction in CC No.167 of 1995 and the sentence imposed was less than a year, there was no compulsion for the First Respondent to disclose the said conviction in his nomination. Therefore, on this ground when the High Court declined to interfere with the election of the First Respondent, no fault can be found with the said conclusion.

48. Having regard to our above discussions and findings there is no merit in these appeals and the same are dismissed. No costs

Nidhi Jain

Appeals dismissed.