

R.P. Moidutty vs P.T. Kunju Mohammad & Anr on 28 September, 1999

Equivalent citations: AIR 2000 SUPREME COURT 388, 2000 (1) SCC 481, 1999 AIR SCW 4528, 1999 (6) SCALE 204, 1999 (8) ADSC 602, (1999) 7 JT 457 (SC), (1999) 3 ANDHWR 251, (1999) 3 SCJ 396, (1999) 8 SUPREME 372, (1999) 6 SCALE 204

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Bench: S.Rajendra Babu, R.C.Lahoti

PETITIONER:

R.P. MOIDUTTY

Vs.

RESPONDENT:

P.T. KUNJU MOHAMMAD & ANR.

DATE OF JUDGMENT: 28/09/1999

BENCH:

S.Rajendra Babu, R.C.Lahoti

JUDGMENT:

R.C. LAHOTI, J.

This appeal under Section 116A of The Representation of the People Act, 1951 (hereinafter, the Act, for short) has been preferred by the candidate who lost at the election and also in the election petition challenging the election of respondent No.1, who had succeeded at the polls.

Election to the 65 - Guruvayur Legislative Assembly constituency in Kerala was held on 27.4.1996. The appellant contested the election on the symbol of 'ladder' of the Muslim League Party with the support of the United Democratic Front. The respondent No.1 was an independent candidate supported by the Left Democratic Front owing allegiance to Communist Party of India (Marxist). There were seven other contesting candidates also. The result was declared on 8.5.1996. The real contest was between the appellant and the respondent No.1. The appellant secured 37034 votes. Respondent No.1 secured 39870 votes. Thus the respondent no. 1 succeeded by a margin of 2836 votes over the appellant.

According to the petitioner (appellant herein) the result of the election was materially affected and vitiated by the commission of corrupt practice within the meaning of Sub Sections (3) and (3 A) of Section 123 of the Act by the respondent No.1. According to the appellant, the Marxist Party had launched Video Cassette Ex. P-2 entitled as 'VICHARANA' (i.e. Trial). The script of the video film was written by the respondent No.1. He had also directed and produced the said video film. It was exhibited throughout the constituency during the election. The photo-contents of the video cassette as also the speeches contained therein were highly objectionable and inflammatory.

The petitioner alleged that he would have obtained more votes if only the returned candidate had not committed corrupt practice as defined in sub-sections (3) and (3A) of Sec. 123 of the Act. It will be useful to extract and reproduce the relevant part of pleadings as to the said corrupt practice as raised in the petition. Paras 4 and 5 of the petition read as under:-

"4. As the main part of the election propaganda, the Communist Party of India (Marxist) has launched a Video Cassette known as "VICHARANA". The script of the video cassette is written by the 1st respondent and he directed and produced the video film. The actors in the play are well known film actors in Malayalam viz. Mamokoya, Pallissery Jose, Shreeram and others.

5. After the nomination of the 1st respondent as a candidate of the Left Democratic Front he has exhibited the Video Film 'VICHARANA' (trial) throughout the Muslim predominant areas of Guruvayoor Constituency. More than 50% of the voters in the Guruvayoor Constituency are Muslim. The contents of this video cassette with speeches are highly objectionable and inflammatory, offending sections 123(3) and (3A) of the Representation of the People Act. It is submitted that the incidents narrated in the film do not have any real bearing on the deeds actually committed by the group of persons in focus."

Paragraphs 6 to 8 set out the contents of the video cassette. To put it briefly, the film depicts the demolition of Babri Mosque on 6.12.1992 and the worst riots which broke out thereafter. The dialogues contained in the video cassette aimed at fixing the responsibility for all the incidents on Shri P.V. Narasimha Rao, the then Prime Minister and also the then President of the Indian National Congress (I) which was leading the United Democratic Front which had sponsored the candidature of the petitioner. All the incidents recorded in the video cassette were blown out of proportion exhibiting untold and extreme miseries of the muslim population affected by the riots so as to develop in the minds of the muslim population hatred against Shri P.V. Narasimha Rao, Indian National Congress (I) and the United Democratic Front and thereby materially and adversely affect the election prospects of the petitioner. Paragraphs 10 to 13 set out the dates and the places at which the cassette was displayed for viewing in the constituency. The names of three persons who exhibited the film for viewing at different places are also given as Shri P.C. Sahoo, Shri K.T. Bharathan, Shri Vijayan - all local leaders of C.P.I (M) and it is alleged that each one of them did so 'with the consent of the first respondent.' There are other averments made in the petition which are not relevant for the present discussion.

The affidavit accompanying the petition reads as under:-

" That the statements made in paragraphs 4,5,6,7,8,9,10,11,12 and 16 of the accompanying Election Petition and the schedule about the commission of corrupt practices (sic.) the first respondent and the particulars of such corrupt practice mentioned in the said paragraph of 4,5,6,7,8,9,10,11,12 and 16 of the Election Petition and the Schedule are true to the best of my knowledge and information. I am advised that these acts of the 1st respondent constitute corrupt practices under section 123(3) and (3A) of the Representation of People Act, 1951. I beg to state that the particulars of such corrupt practice mentioned in the said paragraphs of the Election Petition and the schedule may be read as part of this affidavit.

I state that the facts stated about the corrupt practices are true to the best of my knowledge and information and I believe them to be true.

Dated this the 24th day of June, 1996."

(Underlining supplied) All the averments abovesaid made in the petition have been specifically denied by respondent no.1 but simply so without raising any explanatory or clarificatory plea in that regard.

The learned Designated Election Judge framed a number of issues and tried them. Here itself, it may be mentioned that preliminary objections were raised to the maintainability of the petition inter-alia on the ground that the averments made in the petition were lacking in material particulars and therefore could not have been tried in view of Section 81 (3) of the Act. However, the learned Trial Judge over-ruled the preliminary objections upholding entertainability of the petition. As against the order deciding the preliminary objections, the respondent No.1 had preferred an appeal to this Court which was dismissed reserving liberty to respondent No.1 to press the objections for decision in the event of the final decision after the trial of the election petition going against him. In short, the Supreme Court had not decided the appeal preferred by respondent No.1 on merits but had postponed the decision on merits of such pleas to a later event and if only an occasion may arise for the purpose.

By the judgment under appeal, the learned Designated Election Judge of the High Court has directed the petition to be dismissed holding that commission of any corrupt practice within the meaning of Sec. 123 was not proved.

It cannot be disputed that the averments made in the petition, if they satisfy the requirements of pleading a corrupt practice in an election petition and are held to be proved then they do amount to corrupt practice on the part of the first respondent within the meaning of sub-sections (3) and (3A) of Section 123 of the Act. Under sub-section (3), an appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, caste or community etc. or appeal to religious symbols etc. for the furtherance of the prospects of the election of that candidate or prejudicially affecting the election of any candidate amounts to a corrupt practice. Under sub-section (3A) the promotion of, or

attempt to promote, feeling of enmity or hatred between different classes of the citizens of India on the ground of religion, caste, community etc. by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate amounts to corrupt practice.

We may briefly notice the findings arrived at by the High Court. According to the High Court though there was a total denial by the returned candidate of the allegation that he had scripted, directed and produced the cassette 'Vicharana', he admitted during his deposition before the court that he had worked as a co-ordinator for the making of the film and he had a role in contacting the actors for acting in the film. The returned candidate had visited the site of shooting once or twice and had also assisted the producer in contacting the actors in the film. Though the evidence pointed out to there being no written script for the film but that appeared to be highly unnatural looking at the way the dialogues were recited in the film. The evidence pointed out to the returned candidate being a co-ordinator in making the film which factum was concealed by the returned candidate in his written statement. A co-ordinator is one who has a substantial role to play in the production of a film. The High Court felt satisfied that the conclusion flowing from the cumulative effect of the proved facts was that the returned candidate had acted as co-ordinator of the film by getting the actors selected, had probably also chosen the location for the scenes being shot and was physically present on two days of the shooting. It was to be held that the cassette 'Vicharana' was produced by the returned candidate on the basis of a script prepared or suggested by him but there was no sufficient evidence to show that he had directed the said film (para 20). The exhibition of the cassette 'Vicharana' in the Guruvayur constituency was with the consent and knowledge of the returned candidate (para 21). In spite of arriving at the abovesaid findings, the High Court held that it had not been established that Babri Mosque was a religious symbol of the muslims (para 22) and therefore commission of corrupt practice within the meaning of sub-sections (3) and (3A) of Section 123 was not made out. Vide para 27 the High Court has held that though the evidence does not disclose that there was a total communal slant to the depiction of the incidents relating to the destruction of Babri Masjid, the Bombay riots, the alleged attack on the mosque at Tellicherry and the Poonthura incidents, it does indicate that there was an intention to convey to the viewers the impression that the rulers of the day were conniving with the Hindu community and were not taking steps to protect the interests of the muslim community. The manner of depiction in the cassette had a tendency to disturb the mind of the viewers but it could not be said that the cassette contained a direct communal appeal or a seeking of votes on the ground of religion, caste or community. There was no reference in the video cassette either to the election petitioner or to the returned candidate. It could not be inferred that there was an appeal to garner votes on the ground of religion or the use of or appeal to religious symbol for the furtherance of the prospects of the election of the returned candidate or to affect the candidature of the election petitioner (para 27). The charge of corrupt practice was therefore not brought home to the returned candidate under Section 123(3) of the Act. Vide para 29, the High Court has held that in spite of the cassette having been exhibited and the muslim population in the constituency being not very literate and on the other hand mainly consisting of women and fishermen of muslim community yet there was no untoward incident. The visual and speech contents of the cassette neither promoted nor attempted to promote feelings of enmity or hatred between two classes of citizens. Certainly the contents did not further the election prospects of first

respondent nor prejudicially affect the election of petitioner. The exhibition of the cassette could not be said to be corrupt practice within the meaning of Section 123 (3A) of the Act. Vide para 31, the High Court has also recorded a finding that it was not proved that the exhibition of the video cassette had materially affected the result of the election in Guruvayur constituency.

It is basic to the law of elections and election petitions that in a democracy, the mandate of the people as expressed at the hustings must prevail and be respected by the Courts and that is why the election of a successful candidate is not to be set aside lightly. Heavy onus lies on the election petitioner seeking setting aside of the election of a successful candidate to make out a clear case for such relief both in the pleadings and at the trial. The mandate of the people is one as has been truly, freely and purely expressed. The electoral process in a democracy such as ours is too sacrosanct to be permitted to be polluted by corrupt practices. If the court arrives at a finding of commission of corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent then the election of the returned candidate shall be declared to be void. The underlying principle is that corrupt practice having been committed, the result of the election does not echo the true voice of the people. As the consequences flowing from the proof of corrupt practice at the election are serious, the onus of establishing commission of corrupt practice lies heavily on the person who alleges the same. The onus of proof is not discharged merely on preponderance of probabilities; the standard of proof required is akin to that of proving a criminal or a quasi-criminal charge. Clear cut evidence, wholly credible and reliable, is needed to prove beyond doubt the charge of corrupt practice. [See: Ram Chandra Rai vs. State of Madhya Pradesh & Ors. (1970) 3 SCC 647; Manphul Singh vs. Surinder Singh AIR 1973 SC 2158; Rahim Khan vs. Khurshid Ahmed and others AIR 1975 SC 290; Bir Chandra Barman vs. Shri Anil Sarkar and others AIR 1976 SC 603; Lakshmi Raman Acharya vs. Chandan Singh and others AIR 1977 SC 587; Amolak Chand Chhazad vs. Bhagwandas Arya (Dead) and anr. AIR 1977 SC 813]. The legislature has taken extra care to make special provision for pleadings in an election petition alleging corrupt practice. Under Section 83 of the Act ordinarily it would suffice if the election petition contains a concise statement of the material facts relied on by the petitioner, but in the case of corrupt practice the election petition must set forth full particulars thereof including as full a statement as possible of (i) the names of the parties alleged to have committed such corrupt practice, (ii) the date, and (iii) place of the commission of each such practice. An election petition is required to be signed and verified in the same manner as is laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. However, if the petition alleges any corrupt practice then the petition has additionally to be accompanied by an affidavit in Form No. 25 prescribed by rule 94A of the Conduct of Elections Rules, 1961 in support of the allegations of such corrupt practice and the particulars thereof. Thus, an election petition alleging commission of corrupt practice has to satisfy some additional requirements, mandatory in nature, in the matter of raising of the pleadings and verifying the averments at the stage of filing of the election petition and then in the matter of discharging the onus of proof at the stage of the trial.

In *F.A.Sapa etc.etc. vs. Singora and others etc.* AIR 1991 SC 1557, this Court has held:

"A charge of corrupt practice has a two dimensional effect: its impact on the returned candidate has to be viewed from the point of view of the candidate's future political

and public life and from the point of view of the electorate to ensure the purity of the election process. There can, therefore, be no doubt that such an allegation involving corrupt practice must be viewed very seriously and the High Court should ensure compliance with the requirements of Section 83 before the parties go to trial. While defective verification of a defective affidavit may not be fatal, the High Court should ensure its compliance before the parties go to trial so that the party required to meet the charge is not taken by surprise at the actual trial. It must also be realised that delay in complying with the requirements of Section 83 read with the provisions of the C.P.C. or the omission to disclose the grounds or sources of information, though not fatal would weaken the probative value of the evidence ultimately lead at the actual trial. Therefore, an election petitioner can afford to overlook the requirements of Section 83 on pain of weakening the evidence that he may ultimately tender at the actual trial of the election petition. The charge of corrupt practice has to be proved beyond reasonable doubt and not merely by preponderance of probabilities. Allegation of corrupt practice being quasi- criminal in nature, the failure to supply full particulars at the earliest point of time and to disclose the source of information promptly may have an adverse bearing on the probative value to be attached to the evidence tendered in proof thereof at the trial. Therefore, even though ordinarily a defective verification can be cured and the failure to disclose the grounds or sources of information may not be fatal, failure to place them on record with promptitude may lead the court in a given case to doubt the veracity of the evidence ultimately tendered."

Though the decided cases illustrative of the nature of particulars required to be pleaded in support of an averment of corrupt practice are available in plenty, it would suffice to refer to two only. In *Rahim Khan vs. Khurshid Ahmad & Ors.* 1975 (1) SCR 643, it was held that it was not the requirement of Sections 83 and 87 of the Act or Rule 94-A and Form No. 25 thereof to mention the names of the witnesses as a source of information or as a part of the particulars. Every witness need not be mentioned as a source and every source informant need not be examined necessarily. However, omission to do so in a given case may reflect on the credibility of the evidence depending on the facts and circumstances of an individual case. The court has to be careful to insist that the means of knowledge are mentioned right in the beginning to avoid convenient embellishment and irresponsible charges; though, good and reliable testimony should not be stifled nor proof of corrupt practices thwarted by technicalities of procedure.

In *Azhar Hussain vs. Rajiv Gandhi* 1986 (2) SCR 782 , the corrupt practice alleged was referable to the returned candidate and as committed at the meetings organised during the election campaign. This court held that dates and particulars of the meetings should be given so as to eliminate the possibility that witnesses could be procured later on for adducing evidence. In the context of the charge of corrupt practices referable to distribution of certain pamphlets, this Court held that the pleadings should have stated who had distributed the pamphlets when, where and to whom they were distributed and in whose presence. This court further observed that no amount of evidence could cure the basic defect in the pleadings.

Application of the abovenoted well settled principles to the case at hand raises a gloomy picture indeed. The petition is bereft of some material facts and particulars. It does not set out names of even a few persons who viewed the film and/or in whose presence it was exhibited though it was not necessary for the petitioner to have alleged the names of each and every person who had viewed the video film. However, the names of a few persons who had viewed the film and in whose presence it was exhibited were expected to have been alleged in the election petition so as to put respondent No.1 on notice that these were the persons who were proposed to be examined by the petitioner in support of his averments. The petitioner's pleading in this regard fails to satisfy the requirement of proviso to sub section (1) of Section 83 of the Act as explained in Azhar Hussain's case (Supra).

We have carefully perused the marshalling of evidence as done and the process of reasoning as applied by the High Court. We have found it difficult to sustain the same and uphold all the findings arrived at by the High Court. The High Court has been much influenced by the consideration that the returned candidate has in his written statement completely denied all the allegations made in the petition but during his statement in the Court made certain admissions which belie his total denial of the case of the petitioner. The High Court expected the first respondent to have been more truthful in his written statement i.e. he should have atleast admitted so much parts of the allegations made by the petitioner as were correct according to him also and should have denied only so much parts thereof as were not acceptable to him. To this extent, the High Court may be right but we cannot subscribe to the view that if a part of the denial is found to be false then for this reason alone the rest of the denial of the petitioner's case by the first respondent can also be termed as untruthful and then to proceed to hold that proof of part can be taken to be proof of the whole.

In proof of the averments made in para 4 of the petition as to the respondent's contribution made in bringing out the cassette, the witnesses examined on behalf of the petitioner can be grouped into three. The main testimony consists of the statements given by the three actors namely Mammokkoya (PW 6), Jose Pallissery (PW 7) and Shreeraman (PW 8) who have played leading roles in the film. The second set consists of Sunny Joseph (PW 22) who was the cameraman and had done the videography. The third set of witnesses is Neelan (PW 10) and Abdul Razak (PW 20). Neelan was an employee of Asianet News Division who was called by the petitioner to prove the contents of an interview telecast in April, 1996 by Asianet wherein the respondent No. 1 is alleged to have made certain incriminating admissions as to the video cassette 'Vicharana'. Abdul Razak (PW 20) claimed to have viewed the interview.

We would first proceed to assess the testimony of the three main actors. Mammokkoya (PW 6), has not stated anything material to advance the case of the petitioner and in the opinion of the High Court itself the impression created by this witness was that he was trying to hide more than he was willing to reveal. Most of the answers given by this witness to the questions asked on behalf of the petitioner were evasive. In the opinion of the High Court the answers given by this witness left the distinct impression in the mind of the court that the witness was not a witness of truth. Jose Pallissery, (PW 7) stated nothing to connect the first respondent with the direction or production of the film. All that he has stated is that Shreeraman (PW 8) had asked him to act in the film and also made him understand that the request was at the instance of Mr. Bennie, the director of the film. Shreeraman (PW 8) stated that he was not aware who had made the film. The remuneration of the

actors was paid by one Sukumaran Nair in his capacity as the production manager. Production was done by a group of people. The only role ascribed by Shreeraman (PW8) to the first respondent is that the later had telephoned him to call some artists for acting in the film for video cassette 'Vicharana'. Thus, the testimony of the three actors has not revealed anything concrete to connect the first respondent with the film either as a producer or as a director of the film. The three actors were examined by the petitioner. Their being untruthful witnesses or their criticism by the High Court that they were concealing the truth could not have been pursued further to hold that what was not told by them was the truth. Mammokkoya (PW 6) did not see respondent No.1 at any time at the place of the shooting. All the three actors have stated one Mr. Bennie to be the director of the film. Mr. Bennie Tholath was examined as RW 2 by the first respondent who stated that he, and not the first respondent, had directed the film. He also stated that he had directed the film 'Vicharana' at the instance of the private secretary of Mr. V.S. Achuthanandan the then leader of the opposition in the Kerala Legislative Assembly. He could not tell the name of the private secretary. Even if the testimony of Shreeraman (PW 8) was to be accepted all that it leads to is that the first respondent had asked one of the actors to act in the film and on one or two occasions he had also visited the shooting site but without doing anything positive there. From this much evidence, the direction or production of the video film cannot be attributed to the first respondent.

In the election petition, vide paras 14 and 15, it was alleged that the District Collector and District Election Officer, Ernakulam had issued a direction to Shri A.P. Varkey, Ernakulam District Secretary of CPI (M) to expunge the offending portion from the video cassette. One Shri A.P. Varkey filed Criminal Misc. Case No.920/1996 before the High Court of Kerala seeking quashing of the direction of the District Collector. In the petition filed before the High Court there was an admission contained that the first respondent had written the script of video cassette and also directed and produced the same. These averments were denied in the written statement filed by the first respondent. It was submitted that what had transpired between the District Collector and Shri A.P. Varkey and what were the proceedings taken by Shri A.P. Varkey, were not in the knowledge of the first respondent but in any case he was not bound by the contents of the criminal petition filed by Shri A.P. Varkey. Shri A.P. Varkey was examined by the petitioner as P.W.2. He stated to have made use of the cassette 'Vicharana' during the election campaign on behalf of CPI(M). He also stated that the directives given by the District Collector for removing the objectionable portions from the video cassette as pointed out by the District Collector were complied with by removing the same and thereafter only the cassette was displayed. During cross-examination he admitted that the contents of the criminal petition filed in the High Court were based on hearsay information. He also admitted that the election propaganda in Trichur District had nothing to do with the first respondent and the first respondent had neither requested the witness or the Ernakulam District Committee of the party for any help in election propaganda on behalf of the first respondent. In spite of such admissions made by the witness, the so-called admission contained in the criminal petition Exhibit P3 has been held to be and used as a piece of incriminating evidence against the first respondent by the learned Designated Judge. Firstly, the admission, if any, was the admission of the witness and not the admission of the first respondent. Secondly, the witness had itself discredited the worth, if any, of the so-called admission by stating that it was based on hearsay. Thirdly, if the witness was not speaking the truth then the witness had stood discredited. The witness was examined by the petitioner and by holding him to have been discredited an inference against the first respondent

could not have been drawn by the High Court.

Having dealt with the principal testimony of the three actors we may now deal with Sunny Joseph, P.W.22. According to him he had shot only a part of the video film and that too at the location of a hotel. None associated with the shooting at other locations has been examined on behalf of the petitioner. Sunny Joseph stated in the examination-in-chief itself that the producer of the film was Sukumaran Nair. He had paid the remuneration to the cameraman. Mr. Bennie was the director of the video film and had instructed the witness for shooting of the film. He specifically denied having been instructed for shooting by the first respondent or anyone at his behest. He also denied the suggestion that the cassette was scripted, produced and directed by the first respondent. In our opinion, the evidence brought on record by the petitioner himself through his own witness Sunny Joseph, P.W.22 was sufficient to demolish the case of the petitioner insofar as it related to the corrupt practice attributed to the first respondent.

Let us now deal with the third set of witnesses. It was only at the stage of trial that the election petitioner made an attempt at adducing evidence of the contents of an interview telecast on Asianet Television wherein the first respondent was alleged to have claimed that he had made the film. The record of the interview was not available and could not be produced. Neelan (PW 10) chief of the News Division of Asianet did not depose to any admission as to the video cassette having been made by the first respondent. He stated in the examination-in-chief itself that the record of interview was destroyed on account of time having elapsed and it was humanly impossible to remember the contents of interview. Another witness Abdul Razak (PW 20) was examined who claimed to have viewed the television interview telecast by Asianet wherein the returned candidate had participated and during the course of interview admitted that he was very confident of winning at the election as he had succeeded in exposing the communal fascist forces before the electorate. The witness went on to say that the respondent no.1 had during the interview admitted to have written the script of 'Vicharana' and also prepared the cassette. When cross-examined, the witness fumbled and could not give details of the interview said to have been viewed by him. He could not give date of the interview viewed by him, the name of the programme wherein the interview was telecast, the person who was interviewing the first respondent and so on. Such piece of evidence has been relied on by the High Court for the purpose of inferring an incriminating admission by the first respondent. The first respondent in his statement did admit having participated in the interview telecast by Asianet but did not admit having made any such admission as was sought to be put in his mouth .

The infirmity in the finding arrived at by the High Court is writ large. Firstly, an admission is a substantive piece of evidence and when the same was relied on for proving a corrupt practice, it ought to have been pleaded in the election petition so as to give the first respondent an opportunity of meeting and explaining the same but this has not been done. Secondly, an interview telecast on television would have been viewed by hundreds of persons yet the petitioner could find only one person to depose to the contents of the interview. An admission put in the mouth of the first respondent and denied by him cannot be believed unless cogent and convincing evidence was adduced in proof thereof. Lastly, an alleged admission sought to be relied on as an incriminating piece of evidence must be proved with precision. Unless the phraseology in which the so called admission was couched is brought before the court, the court may not be in a position to act upon it

as an incriminating link in the chain of evidence. A suggestion denied constitutes no evidence.

There is no evidence adduced nor any material brought on record wherefrom an inference that the cassette was displayed for viewing by P.C. Sahoo, K.T. Bharathan or Vijayan at the instance of or with the consent of the first respondent could be drawn. It is not the case of the petitioner that any one of the said three persons was the agent of the first respondent. There is absolutely no evidence or material available on record to connect the first respondent with choosing of any of the locations where shooting was done. The inference in that regard appears to be a guess-work merely certainly not permissible when the allegation to be brought home is criminal or quasi-criminal in nature.

The first respondent who appeared in the witness-box as RW1 has stated on oath that he had no part to play either in the preparation of the script or in the production or direction of the film 'Vicharana'. On the telephonic request of Mr. Sukumaran Nair who was the producer of the cassette 'Vicharana' he had extended some help to him by asking the actors to agree for acting in the film and he had also visited the shooting sites on two occasions. He stated that he had seen the video cassette only twice - once after the polls and second before filing the written statement. The video film was never displayed in the constituency either at his instance or in his presence. He denied having at any time claimed to have produced or directed the video film or written its script. He stated that he was not a member of the Communist Party (Marxist). We have carefully read the statement of the first respondent and we do not find his having been discredited in cross-examination. His testimony inspires confidence.

Bennie Tholath, (RW2) examined on behalf of the first respondent is the witness who had directed the video film 'Vicharana'. He clearly stated that the persons involved in preparation of the script for 'Vicharana' were Sukumaran Nair, Secretary to Shri V.S. Achuthanandan, the then leader of the opposition, Babu Pallissery, the District Secretary of the DYFI, Trichur District and Joseph, a freelance journalist. The witness had directed the film at the instance of Sukumaran Nair. He specifically stated that the first respondent had no part to play in the preparation of the script. He further stated that the first respondent had done nothing particular in connection with the making of the video film 'Vicharana'. The witness further stated that normally what is done by a coordinator in the production of a film was not done by the first respondent. The witness denied any role having been played by the first respondent either in the preparation of the script or in the production of the cassette either as a writer or as a producer or director insofar as the first respondent is concerned.

In the above state of evidence, we are definitely of the opinion that the High Court was not justified in arriving at a finding that the first respondent had worked as a coordinator of the cassette 'Vicharana' and had a substantial role to play in the production of the film. The High Court was also not justified in holding that the cassette 'Vicharana' was produced by the first respondent on the basis of a script prepared or suggested by him. The evidence produced by the petitioner utterly failed to satisfy the standard of proof required for bringing home a criminal or a quasi-criminal charge. These findings of the High Court cannot be sustained and hence are set aside.

There is also a sharp divergence between the pleadings and the proof. In the petition the petitioner has not alleged the actors in the film having been hired, engaged or even introduced to the producer

by the first respondent. The petition merely alleges the names of the actors playing in the film. Yet the High Court has found a case proved which was not specifically pleaded.

Para 4 of the petition alleges the script of the video cassette 'Vicharana' to have been written by the first respondent and the film having been directed and produced by the first respondent. The High Court has not found the video film to have been directed and produced by the first respondent. The finding recorded by the High Court is that the first respondent was co-ordinator in the production of the video film. What has been found is certainly not the case pleaded. So far as the writing of the script is concerned, there is no evidence available on record to hold that there was any script fully written available while the film was under production. The testimony of the witnesses examined on behalf of the petitioner and dealt with by the High Court in its judgment goes to show that there was only an incomplete script available which had left room for improvisation. The High Court having viewed the video film proceeded to apply a parity of reasoning and held that the dialogues recited by the actors in the video film could not have been so recited unless there was a written script available and that goes to show that a fully written script was in existence and available. The written script has not been produced in the Court. Certainly, there is no evidence adduced to attribute authorship of the script, complete or incomplete, to the respondent No.1. Even if the deficiency in the pleadings was ignored and all the findings arrived at by the High Court were accepted as correct, still, in our opinion, the facts found may give rise to a strong suspicion of the respondent No.1 having had something to do with the production of the video film 'Vicharana' but suspicion howsoever strong cannot take the place of proof of the charge of corrupt practice.

The High Court has nowhere found nor is it the case of the petitioner that the respondent No.1 was himself exhibiting the video film. Similarly, the High Court has not arrived at a finding as to any particular named person having exhibited the video film as an agent of or with the consent of the respondent No.1. Earlier summarising the conclusions arrived at by the High Court, we have already noticed one of the findings arrived at that the video cassette does not contain an appeal to garner votes on the ground of religion or the use of or appeal to religious symbol for the furtherance of the prospects of the election of the returned candidate or to prejudicially affect the election of any candidate. In spite of the hard labour put in by the learned counsel for the appellant, he has not been able to dislodge the abovesaid finding. The principal ingredient of sub sections (3) and (3 A) of Section 123 of the Act is therefore missing. Having ourselves read the evidence, with the assistance of the learned counsel for the parties, while we uphold this finding of the High Court, we have no hesitation in our mind also to record that the other findings arrived at by the High Court in favour of the election petitioner cannot be sustained for want of proper pleadings and requisite evidence and hence are liable to be set aside.

The affidavit filed by the petitioner in support of the election petition as required by Rule 94 A also does not satisfy the requirement of proviso to sub section (1) of Section 83 of the Act and Form No. 25 appended to the Rules. The several averments relating to commission of corrupt practice by the first respondent as contained in paragraphs 4 to 12 and 16 of the petition have been verified as true to the best of " my knowledge and information " - both, without specifying which of the allegations were true to the personal knowledge of the petitioner and which of the allegations were based on the information of the petitioner believed by him to be true. Neither the verification in the petition nor

the affidavit gives any indication of the source of information of the petitioner as to such facts as were not in his own knowledge.

The verification of the petition does not even satisfy the requirement of Order 6 Rule 15 of the CPC. The verification reads as under:

VERIFICATION I, R.P.Moidutty, S/o.Abubakker Haji, aged 54, petitioner in the above election petition do hereby declare that the averments in para 1 to 17 are true and made from personal knowledge and on the basis of personal enquiry I believe that all the averments made in para 1 to 17 is true.

Signed and verified in this the 21st day of June, 1996.

PETITIONER : " [Underlining supplied] All the averments made in paras 1 to 17 of the petition have been stated to be true to the personal knowledge of the petitioner and in the next breath the very same averments have been stated to be based on the information of the petitioner and believed by him to be true. The source of information is not disclosed. As observed by the Supreme Court in F.A. Sapa etc.etc. vs. Singora and others AIR 1991 SC 1557, the object of requiring verification of an election petition is to clearly fix the responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time, discouraging wild and irresponsible allegations unsupported by facts. However, the defect of verification is not fatal to the petition; it can be cured [see:

Murarka Radhey Sham Ram Kumar vs. Roop Singh Rathore and Ors. AIR 1964 SC 1545, A.S. Subbaraj vs. M. Muthiah 5 ELR 21]. In the present case the defect in verification was pointed out by raising a plea in that regard in the written statement. The objection was pressed and pursued by arguing the same before the Court. However, the petitioner persisted in pursuing the petition without proper verification which the petitioner should not have been permitted to do. In our opinion, unless the defect in verification was rectified, the petition could not have been tried. For want of affidavit in required form and also for lack of particulars, the allegations of corrupt practice could not have been enquired into and tried at all. In fact, the present one is a fit case where the petition should have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings.

For the foregoing reasons, we do not find the ultimate finding arrived at by the High Court liable to be interfered with. The dismissal of the election petition by the High Court is upheld though for the reasons set out in this judgment. The appeal is accordingly dismissed. No order as to the costs.