

Jeet Mohinder Singh vs Harminder Singh Jassi on 26 October, 1999

Equivalent citations: AIR 2000 SUPREME COURT 256, 1999 (9) SCC 386, 1999 AIR SCW 4361, (1999) 8 JT 432 (SC), 1999 (6) SCALE 703, 1999 (4) LRI 956, 1999 (9) ADSC 265, 1999 (8) JT 432, (1999) 10 SUPREME 99, (2007) 1 PUN LR 606, (2000) 1 SCJ 150, (2000) 1 RECCIVR 1, (1999) 6 SCALE 703

Author: R.C. Lahoti

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

CASE NO.:
Appeal (civil) 154 of 1999

PETITIONER:
JEET MOHINDER SINGH

RESPONDENT:
HARMINDER SINGH JASSI

DATE OF JUDGMENT: 26/10/1999

BENCH:
DR. A.S. ANAND CJI & S. RAJENDRA BABU & R.C. LAHOTI

JUDGMENT:

JUDGMENT 1999 Supp(4) SCR 33 The Judgment of the Court was delivered by R.C. LAHOTI, J. This is an appeal under Section 116A of the Representation of the People Act, 1951 preferred by the appellant (petitioner before the High Court) feeling aggrieved by the judgment of the learned Designated Election Judge of the High Court of Punjab and Haryana, dismissing the election petition laying challenge to the election of the respondent.

Legislative Assembly elections in the State of Punjab inclusive of '109- Talwandi Sabo' Constituency, took place in the months of January and February, 1997 as per the election schedule announced by the Election Commission of India. The nomination papers were to be filed from 13.1.1997 to 18.1.1997. The scrutiny of nomination papers was to take place on 21.1.1997 at 11A.M. The constituency was to go for polls on 7.2.1997. The counting of votes was to take place on 9.2.1997. The respondent filed his nomination papers on 16.1.1997. The appellant filed his nomination papers on 18.1.1997. At the scrutiny held on 21.1.1997, the nomination papers of the appellant and the respondent both were accepted. There were four other candidates whose nomination papers were also accepted. In all 92,586 votes were cast out of which 1226 votes were rejected as invalid. The appellant got 33,290 votes whereas the respondent got 36,483 votes. The respondent was declared elected by a margin of 3,193 votes. Other candidates namely S/Shri Jagdeep Singh, Jaspal Singh,

Surjit Singh Thekedar and Gurucharan Singh got 11463, 8088, 1906 and 133 votes respectively. The appellant was the official candidates of Shiromani Akali Dal. The returned candidate, i.e., the respondent was official candidate of Indian National Congress. The other four were the candidates of BSP, Janta Dal and independents.

According to the appellant, the nomination paper filed by the respondent was invalid and therefore should have been rejected. The respondent was also guilty of various acts of commission and omission which amounted to corrupt practices within the meaning of Section 123 of the Representation of the People Act, 1951 (hereinafter the Act, for short) and therefore his election was liable to be declared void and set aside. The learned Designated Election Judge of the High Court has found none of the allegations made by the appellant proved. Consequently, the election petition has been held liable to be dismissed. Here itself, it may be stated that though a number of corrupt practices were alleged as having been committed by the respondent in the election petition, however, at the time of hearing of the appeal, Shri Rajendra Sachhar, the learned counsel for the appellant has made his submissions only as regards some of the corrupt practices which in his submission should have been held proved as having been committed by the respondent. The main thrust of the submissions of the learned senior counsel for the appellant has been towards the illegal acceptance of the nomination papers of the respondents as regards which submissions have been made in very many details. In the succeeding paragraphs, we will notice the pleadings confined to the submissions made before us at the time of hearing.

The findings recorded on the following issues only are subject matter of this appeal :-

Issue No. 1 Whether the election of the respondent is liable to be declared void for the reasons enumerated by the petitioner in para No. 6(a) to 6(h) of the petition?.....OPA.

Issue No. 3. Whether the returned candidate is guilty of corrupt practices of bribery within the provisions of Section 123(1) and also alleged undue influence under Section 123(2) of the Representation of People Act, as alleged in Para Nos. 8(a) to (c) of the election petition?.....OPA.

Issue No. 5 Whether the returned candidate has incurred expenditure excess than the authorised expenditure as provided under Section 77 of the Representation of People Act and thus allegedly committed corrupt practices within the purview of Section 123(1) and 123(6) of the Representation of People Act, as alleged in para No. 10(a) to (g) of the election petition? If so, to what effect?.....OPA.

Issue No. 6. Whether the returned candidate has committed corrupt practices of undue influence as defined under Section 123(2) of the Representation of People Act, as alleged in para No. 1 l(a) to (o) of the election petition?.....OPA.

Issue No. 12. Relief.

The pleadings relevant to these issues insofar as necessary for the purpose of deciding this appeal shall be suitably extracted and reproduced at their appropriate places hereinafter.

We will take up for consideration and deal with the submissions made by learned counsel for the parties issue wise.

Issue No. 1 : As to whether the nomination paper of the respondent was illegally accepted?

According to the appellant, the returning officer Manvesh Singh was specially brought by transfer as the Sub Divisional Magistrate, Talwandi Sabo on 9th December, 1996 i.e., on the eve of the election at the instance of the respondent. He was earlier also posted at Talwandi Sabo and had developed contacts with the returned candidate who was an influential Minister in the Congress Government having been a Minister of State for Co- operation. Before 9th December, 1996 the returning officer was posted at Bhatinda where his wife was also serving as lecturer in government college. The returning officer having been thus specially brought to Talwandi Sabo for favouring the respondent did oblige him by making false entries as to presentation of papers before him and thereby illegally accepted the nomination papers of the respondent which were otherwise liable to be rejected.

Undisputedly the respondent was not an elector of Talwandi Sabo Assembly Constituency. He was registered as an elector in the electoral roll of Pucca Kalan Assembly Constituency. As required by sub section (5) of Section 33 of the Act, the respondent was required to file alongwith the nomination paper a copy of the electoral roll of that Constituency (i.e., Pucca Kalan Assembly Constituency) or of the relevant part thereof or a certified copy of the relevant entries in such roll which the respondent had not done at the time of presentation of the nomination paper on 16.1.1997. However, such a document though not filed alongwith the nomination paper, could be produced before the returning officer at the time of scrutiny. The election petition alleges that the returning officer conducted scrutiny of nomination papers at 11 A.M. on 21.1.1997. The appellant and some other candidates were present at the time of scrutiny in the office of the returning officer. The respondent or his election agent or any other person on his behalf was not present at the time of scrutiny.

The returning officer did not exhibit all the nomination papers at the time of scrutiny nor allowed inspection thereof. He only announced that all the nomination papers were accepted. The appellant's specific request for inspection of the nomination papers was not allowed by the returning officer who said that there was no need of such inspection.

The averments made in the election petition as regards the illegal acceptance of the nomination papers of the respondent as set out in the election petition (the relevant parts thereof) are extracted

and reproduced hereunder :

Para 6

(f) That, in fact a certified copy of the electoral roll was applied for on January 21, 1997 in the office of the Deputy Commissioner, Bhatinda, who was the District Election Officer. The Election Office is located near Railway Station, Bhatinda, in the old Tehsil Complex, which is at a distance of about 40 kilometres from Talwandi Sabo. After completing all the formalities and passing through various dealing hands, the copies were reported to have been delivered on January 21, 1997. This certified copy was then carried to Talwandi Sabo and handed over to the Returning Officer some time after the scrutiny was over, may be on the next day. The Returning Officer favoured the returned candidate and recorded the receipt time at 10.00 A.M. on nomination papers. No copy could possibly be produced at 10.00 A.M. when it had been applied for on January 21, 1997 at Bhatinda.

This Hon'ble Court would appreciate that copy must have been obtained during usual office hours and following the usual procedure. Thereafter the distance of 40 kms, was covered from Bhatinda to Talwandi Sabo. The route also includes busy bazars of four kilometers with two railway crossings.

(g) That the Returning Officer who was the Sub-Divisional Magistrate, Talwandi Sabo, was available to the returned candidate inasmuch as he was specially brought by transfer to Talwandi Sabo just on the eve of election on December 9, 1996. The gentleman had already served at Talwandi Sabo earlier and had developed close contracts with the returned candidate who was an influential Minister in the then Congress Government as Minister of State for Cooperation. He was posted at Bhatinda and his wife was also serving there as Lecturer in Government College, Bhatinda, yet he was specially got transferred to Talwandi Sabo at the instance of the returned candidate. This was apparently a wrong entry to validate the nomination papers of the returned candidate by inserting the words "Received at 10.00 A.M. on 21.1.1997". In fact, upto the time of scrutiny, there was no such copy produced before the Returning Officer, and thus his nomination papers were liable to be rejected.

(h) That since the returned candidate is a person whose nomination papers were wrongly accepted by the Returning Officer and, therefore, the result is materially affected so far as the returned candidate is concerned and the election is liable to be declared void."

All the material averments made in the election petition have been denied by the respondent in his counter/written statement. As to the production of the certified copy of the electoral roll, it is stated by the respondent that the certified copy showing the name of the respondent as entered in the electoral roll of Pucca Kalan Constituency was produced before the returning officer of Talwandi Sabo at 10 A.M. on 21.1.1997 i.e., one hour before the commencement of scrutiny of nomination papers and thus at the time of scrutiny the certified copy was very much there before the returning officer and thus the mandate of Section 33 of the Act was fully complied with. It is specifically denied that the certified copy was handed over to the returning officer at any time after the scrutiny was over. The distance of the election office Bhatinda from Talwandi Sabo is hardly 24 kms. and it

does not take more than half an hour to cover this distance by car. The returned candidate had applied for the certified copy of the relevant entry at 9 A.M. on 21.1.1997 in the election office at Bhatinda which was supplied to him within 15-20 minutes and thereafter the returned candidate immediately rushed in his car from District Election Office to Talwandi Sabo to produce the said certified copy in the office of the returning officer which he succeeded in handing over to the returning officer in his office at 10 A.M. It was denied that the returning officer was brought by the returned candidate to Talwandi Sabo by getting him transferred on 9.12.1996. The allegations as to any corrupt practice having been committed by the returned candidate was denied. It was submitted that the respondent had correctly filed the return to expenses. It was further submitted that the observer never took possession of any printed posters from the office complex of the respondent. The posters referred to in para 10 (f) of the election petition was got printed and distributed by the Block Congress Committee Talwandi Sabo and Maur Mandi in routine in the 3rd week of December i.e., much earlier to filing of nomination papers by the respondent. The poster was never distributed by the respondent during election process as alleged by the appellant. The respondent had got printed 3500 posters of different sizes and types from Satguru Printing Press for Rs. 2800 @ 80 paise per poster. The respondent also got printed 2000, 1800, 1500 posters for Rs. 1800, Rs. 1875 and Rs. 900 @ 90 paise, Rs. 1.25, Rs. 3.90 per poster respectively depending on the size and type of different posters. Hand bills in campaigning were 10,000 got printed at the cost of Rs. 1000 only. The total expenditure thus incurred by the respondent on the printing of posters was Rs. 10,275 which was correctly shown in the return of the expenses. It is wholly wrong to say that the cost of the two posters mentioned in the election petition was Rs. 1,40,000.

The learned Designated Election Judge has found the allegation made by the election petitioner not proved. He has held that the certified copy Ext. R-5/1 was duly obtained on 21.1.1997 and produced by the respondent at 10 A.M. before the returning officer. It was available with the returning officer at the time of scrutiny of the nomination papers which was held at the appointed time i.e., 11 AM on 21.1.1997. The learned senior counsel for the appellant has vehemently attacked the correctness of the findings so arrived at.

Whether Manvesh Singh, the returning officer was deliberately brought to and posted at Talwandi Sabo to favour the returned candidate, i.e., the respondent? Manvesh Singh, was posted as Secretary to the Regional Transport Authority, Patiala when he was examined in the Court (on 1.7.1998). At the time of election, he was posted as Sub-Divisional Magistrate of Talwandi Sabo.

The averments made in the election petition vide para 6(g) setting out the alleged reason for transfer are verified to be true to the personal knowledge of the appellant. In his deposition before the Court the only fact stated by the appellant is that Manvesh Singh had enjoyed one posting earlier also at Talwandi Sabo and he was posted for the second time just on the eve of election. This factual part is not denied even by Manvesh Singh himself who admitted that once earlier also between 25.8.1995 and 24.8.1996 he had remained posted at Talwandi Sabo as SDM. His wife was a lecturer in Bhatinda. In September, 1996, he had sought for a transfer to Bhatinda so as to join his wife which request was allowed by the State Government. However, the State Government transferred him back to Talwandi Sabo on 17/18.12.1996. He had not made any representation for transferring him back. In between there was a change in the leadership of the State Government. In October, 1996 Smt.

Rajender Kaur Bhattal became the Chief Minister of the State in place of Shri Harcharan Singh Brar. Beyond these facts, there is no other shred of evidence brought on record enabling an inference being drawn that the returned candidate or Manvesh Singh, the returning officer or any one else in particular was instrumental in bringing Manvesh Singh to Talwandi Sabo. Transfers and postings are ordinary incidents of service and ordinarily any transfer or posting is presumed to have been made to satisfy the administrative exigencies of service. Merely because a government servant happens to be posted twice at a particular station within a short range of time, an inference as to his having been 'brought' to a particular station for a particular purpose cannot be drawn. The documentary evidence brought on record by the appellant himself through Karam Singh (PW 11), Superintendent of Punjab, Civil Secretariat, goes to show that Smt. Rajender Singh Bhattal, the Chief Minister of the State had passed an order Ex. A/12 on 10.12.96 directing certain postings/transfers of PCS officers. There were as many as 24 transfers and not that Manvesh Singh alone was transferred for the purpose of being accommodated or posted to fulfil somebody's demand.

On the principal controversy as to whether the certified copy of the relevant extract from the voters list of Pucca Kalan Constituency showing the respondent as an elector entered therein was available or not before the returning officer at the time of scrutiny of nomination papers at 11 A.M. on 21.1.1997, the case sought to be made out by the appellant at the trial is at variance with the one set out in the election petition. We cannot resist observing that both the parties have twisted the facts in this regard; while the appellant has tried to develop a case far too away from the truth; the respondent too in his anxiety to defend himself and playing very safe has gone on to making exaggerations. However, the truth lies somewhere in between and has been brought out in the testimony of Manvesh Singh, the returning officer whom we find a witness of truth giving a natural and unembellished version of the events as they had happened. His testimony also finds support from documentary evidence.

The relevant legal provisions around which revolves the controversy are contained in sub-section (5) of Section 33 and sub-sections (1), (4), (5), (6) and (8) of Section 36 of the Act. The same are extracted and reproduced hereunder :-

"33 (5). Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

36 (1). On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

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(4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control :

Provided that in case [an objection is raised by the returning officer or is made by any other person] the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjointed.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

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(8) Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board."

As we have already stated it is the common case of the parties that the respondent being not an elector of Talwandi Sabo Constituency, but of Pucca Kalan Constituency-a different constituency within the meaning of sub- section (5) of Section 33, a copy of the electoral roll of Pucca Kalan Constituency or of the relevant part thereof or a certified copy of the relevant entries in electoral roll of Pucca Kalan Constituency was required to be filed along with the nomination papers or produced before the returning officer at the time of scrutiny. The provision is mandatory. A failure to satisfy the requirement of this provision would entail the rejection of nomination paper, non-compliance being a defect of a substantial character.

A perusal of the averments made in the election petition goes to show that the scrutiny of the nomination papers was conducted by the returning officer at 11 A.M. on 21st January, 1997 whereas the appellant and some other candidates were present for the purpose of scrutiny. It is not pleaded, not even suggested in the election petition, that the scrutiny did not take place at the appointed time as was attempted to be proved by the appellant in his deposition before the Court. The second important fact discernible from the averments made in the petition is that the certified copy of the requisite electoral roll was applied for on 21 st January, 1997 and was available with the respondent

on that day itself though according to the appellant it could not have been produced before the returning officer on that day at 10 A.M. i.e., the time at which it purports to have been produced before the returning officer according to the endorsement made under his hand on such certified copy. The certified copy bears an endorsement at the top of it and reads as -"received at 10.00 A.M. on 21.1.1997" in the hand of the returning officer Manvesh Singh. According to the appellant no such copy was produced upto the time of the scrutiny and apparently the said endorsement was falsely made to validate the nomination paper of the returned candidate and hence the nomination papers filed by the respondent were liable to be rejected.

The certified copy is Ex. R-5/1. It was issued by the District Election Officer, Bhatinda on an application Ex. `R/6' moved by one Bhupinder Singh (RW 17) who is sister's son (Bhanja) of Harminder Singh Jassi, the returned candidate. Ext. A/33 is the official receipt showing the deposit of the copying charges. Ext. A/32 is the copying register which has an entry showing the receipt of the copying application and delivery of the certified copy. The witnesses relevant in this connection are Satpal (PW

39) who had issued the certified copy Ext. R-5/1 and Yadwinder Singh Bhalla (PW 41) in-charge Naib-Tehsildar (Elections) in the office of District Election Office, Bhatinda under whose signature the copy was certified and then issued. Other than these, the witnesses whose testimony would need to be scrutinised in connection with the preparation and delivery of certified copy from the District Election Office are the appellant, the respondent and Bhupinder Singh (RW 17).

The endorsements made by the copying department which are in the shape of a rubber stamp with columns filled in by hand on the certified copy of the electors roll, Ext. R-5/1, show the application for copy having been presented on 21.1.1997 and the certified copy having been prepared and delivered on 21.1.1997. The application for certified copy Ext. `R/6' bears the date "20.1.1997" under the signature of the applicant Bhupender Singh. In the register of copies Ext. `A/32' the date of receipt of application is shown as 20.1.1997. In the column meant for recording the number and date of receipt the entry is 399456 (receipt number) and 20.1.1997 (the date). The receipt Ext. `A/33' bears the serial number 399456. It is dated 21.1.1997. According to this receipt the amount of Rs. 12 being on account of copying fee was received on 21.1.1997. It is borne out from the testimony of Satpal (PW 39) that the copying application Ext. `R-6' was presented to Shri Rajkumar Gupta who was the Tehsildar. Shri Rajkumar Gupta was the best person to disclose the exact time and date of the presentation of the application and how it was dealt thereafter but the appellant has chosen not to produce him as a witness. The appellant has felt satisfied by examining Satpal (PW 39) and Yadwinder Singh Bhalla (PW 41) in this regard.

Bhupender Singh (RW 17) has stated that in the early hours of 20th January, 1997 he received a message from the respondent asking him to obtain certified copy of the requisite entry of the electoral roll by making a proper application. He went to the District courts (where the District Election Office is situated) at about 1.30 p.m. and moved the application for certified copy some time in the later part of the day. The dealing clerk asked him to pay Rs. 12 on account of copying charges which he did. He was asked to collect the certified copy either in the evening of 20th January, 1997 or in the morning of 21st January, 1997. He went to the District Election Office at

about 8.30 a.m. on 21st January, 1997. He was accompanied by the respondent who kept waiting in his car outside the office premises. He obtained the certified copy and gave it to the respondent who examined it. Thereafter both rushed in the car of the respondent from the District Election Office to Talwandi Sabo, went straight to the office of the returning officer, i.e., the SDM, Talwandi Sabo and presented the certified copy to him at about 10 A.M. To the same effect is the testimony of the respondent Harminder Singh Jassi in this regard. Bhupender Singh has further stated that the receipt for Rs. 12 was given to him by the clerk concerned along with the certified copy on 21st January, 1997.

The learned senior counsel for the appellant has invited attention of the Court to many other copying applications and entries in that regard contained in the copying register and other papers which go to show that similar applications for certified copies made by some other applicants or candidates were received and copies delivered on the same day. A substantial part of submissions made by the learned counsel for the appellant is directed towards the inconsistency in the dates appearing on the documents Ext R-5/1, Ext. `R/ 6', Ext. `A/32' and Ext. `A/33'. It was submitted that if the application for certified copy was made on 20th January, 1997 accompanied by a tender by Bhupender Singh of Rs. 12 towards copying charges as to which the receipt was also prepared, there is no reason why the receipt would have been prepared and issued on 21.1.1997. The receipt should have been issued on 20.1.1997 itself and the amount lodged in Government treasury as was done in respect of other applications for copies. Any amount of money tendered to government treasury for a particular purpose cannot be retained by any one without a receipt and proper entry made in books. Thus a false record appears to have been brought into existence at the behest of the respondent to falsely support the plea of the application having been made on 20.1.1997 and certified copy pursuant thereto having been delivered on 21.1.1997.

The learned counsel for the appellant has tried to borrow strength in support of his submission from the statement of Yadwinder Singh Bhalla (PW

41) who has stated that he used to come to his office at about ten or quarter-past-ten in the morning everyday. The certified copy could not be issued except under his signatures. He did not sign any paper at his residence and whatever official work he did, he used to do in the office only. It was submitted by the learned counsel for the appellant that the certified copy issued under the signature of Yadvinder Singh Bhalla (PW 41) could have been so issued only after 10 or 10.15 A.M. Then it was impossible to produce the same at 10 A.M. on the same day before the returning officer in his office situated at a distance of about 40 kilometers.

On behalf of the appellant reliance was also placed on the statement of M.L. Mina (PW 49) an official of the Railways who had brought the record of opening and closing of railway crossing Kartar Singh Wala and the statement of R.C. Singhal (PW 42) Executive Engineer, Roads and Bridges. According to M.L. Mina (PW 49) Kartar Singh Wala railway crossing was closed from 9.12 a.m. to 9.32 a.m. and 10.11 a.m. to 10.23 a.m. on 21st January, 1997 as per the entry Ext. `A/50' made in the relevant record maintained for the purpose. According to R.C. Singhal (PW 42) the distance between the election office, Bhatinda and the office of SDM, Talwandi Sabo is 31.30 kilometers. There is an alternate route also which is via Anaj Mandi. The length of the distance via that alternate route

between the two points stated herein above is 30.79 kilometers. The width of the road connecting the two points is 18 feet to 40 feet. The entire road is well maintained. If the railway crossings are open, in the opinion of the witness, it would take hardly 30 minutes to reach Talwandi Sabo from the election office. It was stated by learned counsel for the appellant that assuming the time of presentation of the certified copy to the returning officer as 10 A.M. on, 21.1.1997, as per the endorsement made by the returning officer thereon, and calculating the time backwards by adjusting the commuting time, the certified copy should have been delivered before 9 a.m. which certainly was not done as per the oral testimony of the officials associated with the preparation and delivery of the certified copy.

Two other submissions made by learned senior counsel for the appellant may also be noted. Firstly, it is submitted that the plea taken by the respondent in his written statement in response to the averments made in sub-para (f) (g) and (h) of para 6 of the election petition is that the distance between election office, Bhatinda and Talwandi Sabo is hardly 24 kilometers which does not take more than half an hour to cover by car. The returned candidate had applied for the certified copy at 9 A.M. on 21.1.1997. It was supplied to him within 15 to 20 minutes whereafter the returned candidate immediately rushed in his car to Talwandi Sabo so as to produce the same before the returning officer at 10 A.M. The evidence adduced on behalf of the respondent is that the certified copy was applied for on 20th January, 1997 which being at variance from the plea taken in the written statement is liable to be discarded. Secondly, the plea taken in the written statement is of the respondent himself having applied for the certified copy while the evidence adduced is of Bhupender Singh having moved the application which evidence being again contrary to the pleadings, is liable to be excluded from consideration. It was submitted by the learned senior counsel for the appellant that the story of the certified copy having been applied for at 9 A.M. on 21.1.1997, the same having been prepared and delivered within 15-20 minutes and thereafter having been produced before the returning officer at 10 A.M. in spite of the railway crossing gate having remained closed for some time is a 'fantastic story', not liable to be accepted even for a moment by the Court.

It is true that Yadvinder Singh Bhalla has stated his practice of being used to coming to the office everyday at about 10 or 10.15 A.M. The witness has merely stated his usual practice. He was not asked any question about the time of his arrival in the office on the eventful day of 21st January, 1997.

In the examination-in-chief itself he has stated that though ordinarily such copies were issued after two days but sometimes in view of emergency the copies were issued within half-an-hour. In view of the elections and consequent rush of work, the office used to be opened at 9 A.M. from 16.1.1997 and also used to be kept open by sitting till late in the office. The witness went on to say that the application Ext. 'R/6' was received by Shri Rajkumar Gupta on 20.1.97 as per the endorsement and the signature in the hand of Shri Rajkumar Gupta which he identified. The witness was not able to state the time at which Shri Rajkumar Gupta had actually received the application. We have already observed that the appellant should have examined Rajkumar Gupta to make the position clear and throw light on the grey areas which the appellant has not done. There is some inconsistency as to the actual date of receipt of copying application Ex. A/33 between the entry in copying register Ext. 'A/32' and the entry on receipt Ext. 'A/33' which could also have been best explained by Rajkumar

Gupta alone. Satpal (PW 39) has stated that the copying application along with the copying fee of Rs. 12 was handed over by Rajkumar Gupta to him on 21.1.97 and that is why the date of receipt of copying application has been mentioned by him on the certified copy Ext. R- 5/1 as 21.1.97. He was confronted with entries as to dates in Ext. 'A/32' which he refused to explain as those entries were not in his hand and he had no direct or personal knowledge thereof. Here also, the non-examination of Rajkumar Gupta by the appellant assumes significance. The possibility of application for certified copy having been moved on 20th January, 1997 cannot be ruled out from the evidence adduced on behalf of the appellant. We have to take a realistic and practical view of the things as they happen.

In spite of the office timings being fixed, it is clear from the testimony of Yadvinder Singh Bhalla (PW 41) that to cope with the extraordinary rush of work on account of election, the office was opened before the appointed time and was kept open beyond the appointed closing hours. It appears that the returned candidate had instructed Bhupender Singh who is his sister's son to move an application for certified copy which was done late in the day of 20th January, 1997. The person who received the copying application accompanied by the copying fee kept the application and the amount with him so as to have it brought on record as the first item soon on the office getting functional on 21.1.97. The candidate, i.e., the respondent being in dire need of the certified copy was waiting on his legs accompanied by Bhupender Singh and took care to see that the certified copy was prepared and delivered in right earnest immediately on the concerned copying staff being available in the District Election Office in the early hours of the day. Probably he used his influence in expediting the delivery of the certified copy and then rushed to produce the same before the returning officer. In the early hours of the day and January being in winter, there would not have been much crowd or traffic on the way. In spite of the railway crossing being closed, the respondent and Bhupender Singh reaching the returning office at 10 a.m. is not a feat impossible of performance. We have no reason to doubt the independence and trustworthiness of Manvesh Singh as a returning officer who was the Sub-Divisional Magistrate and entrusted by the election commission with the task of performing his duties as one of the returning officers in the legislative assembly elections. In the performance of his official duties, he has made an endorsement on the certified copy certifying the date and time of the receipt thereof by him. In the absence of weighty and trustworthy evidence to the contrary the correctness of the endorsement made by the returning officer cannot be doubted. On the evidence adduced by the appellant, on whom did lay the onus of proving the incorrectness of the endorsement made by the returning officer, the onus has not been discharged. The correctness of the time endorsed on the certified copy has been deposed to on oath by the Returning Officer and we are not inclined to doubt the same. In our opinion, the High Court has not erred in recording a finding that the certified copy was produced by the respondent before the returning officer on 21.1.97 at 10 A.M., i.e., an hour before the appointed time of scrutiny of the nomination papers.

It was submitted by the learned senior counsel for the appellant that the respondent had summoned Rajkumar Gupta Tehsildar alongwith the record but the witness was given-up without being examined. He submitted that an adverse inference should be drawn against the respondent for non-examination of witness summoned by him. The learned senior counsel for the respondent has pointed out that the witness was given-up being unnecessary. We have already observed that the onus of proving the averments made in the election petition did lay on the appellant. It was for the

appellant to have examined Rajkumar Gupta. If the appellant has failed in discharging his own onus, he cannot bank upon the plea of non-examination of a witness by the respondent which witness was essentially a witness to be examined the appellant in the facts and circumstances of the case. The appellant cannot be permitted to derive strength from the weakness, if any, of the respondent.

The learned counsel for the respondent has rightly submitted that there was no need for the respondent to have exercised his influence for managing or procuring ante-timing of the production of certified copy before the returning officer. Though as the nomination papers filed by the respondent were not accompanied by the certified copy of the electoral roll, as per the Act itself the respondent had time to produce the certified copy upto 11 a.m. on 21.1.97 by which time the certified copy could have been conveniently procured and produced. There is no reason why the respondent would have gone on to the extent of pressurising the returning officer to ante-time the receipt of the certified copy and there is no reason why the returning officer would have obliged him. We find substance in the submission of the learned counsel for the respondent.

The learned counsel for the appellant submitted that the order of the returning officer made on the nomination paper of the respondent is a bald "accepted" which does not satisfy the requirement of sub-section (6) of Section 36. Inasmuch as the nomination paper was not accompanied by certified copy of the electoral roll and the certified copy was produced subsequently, the returning officer should have passed a speaking order on the nomination paper wherefrom it could be clearly spelt out that the certified copy had been subsequently produced and the defect in the nomination paper as initially filed had stood rectified and therefore the nomination was being accepted, submitted the learned senior counsel. In his submission, failure on the part of the returning officer to pass a reasoned or speaking order has a dual effect. Firstly, it probabilises the appellant's case that the certified copy was not available before the returning officer at the time of scrutiny. Secondly, it is non-compliance with the mandatory provisions of sub-section (6) of Section 36 which vitiates the acceptance of the nomination papers of the returned candidate. This submission has been stated only to be rejected summarily. On a plain reading of sub-section (6) of Section 36, it is clear that the Parliament has chosen to treat the case of acceptance of nomination paper differently from the case of rejection. While a decision as to accepting or rejecting has to be endorsed on each nomination paper, the reasons are required to be recorded in writing by making a brief statement thereof only in the case of rejection of nomination paper. In our opinion, the High Court has rightly held that there was no non-compliance with the provisions of Section 36 (6) merely because the returning officer had simply endorsed acceptance on the respondent's nomination paper without recording in writing a brief statement of his reasons for such acceptance.

According to Manvesh Singh (RW 2) neither the appellant nor the respondent was present at the time of scrutiny of nomination papers though the election agent of the appellant was present. He had made a contemporaneous record of the presence of persons who were actually present at the time of scrutiny. On behalf of the respondent, Nirranjan Singh (RW

13) who too was a candidate at the election has been examined. He has stated that he had visited the office of the returning officer at about 9.40 A.M. on 21st January, 1997. He had continued to remain

present thereat until the scrutiny of the nomination papers was over. According to him, respondent and Bhupender Singh had come to the office of the returning officer at about 9.45 or 10 A.M. In the presence of the witness the respondent had handed over a paper to the returning officer which was certified copy of the entry in the voter's list. The scrutiny took place at 11 A.M. i.e., the appointed time.

Neither the appellant nor the respondent were present at the time of the scrutiny. The reason assigned by the witness for his presence at the election office is that he was curious to know whether the respondent filed the certified copy of the entry in the voters list because if the respondent's nomination would have been rejected then he would have been granted the Congress ticket as he himself was a Congressite and an aspirant for contesting the election as a Congress candidate. We do not find any reason to disbelieve the presence of this witness around and in the office of the returning officer as stated by him. We do not agree with the learned senior counsel for the appellant in his criticism of credibility of the witness on the ground that the factum of such presence of Niranjan Singh has not been pleaded in the written statement filed by the respondent. Who was present at the time of scrutiny of nomination papers is not required to be pleaded in the written statement unless in the facts and circumstances of the case it may be such a material fact as must be pleaded. There is nothing unnatural about the person who himself had filed his nomination paper being present at or around the office of the returning officer so as to learn what was transpiring there at and what was the result of the scrutiny. On the other hand, the appellant has made a departure from his averments in the election petition. We have already noticed that though it was not the case of the appellant as pleaded that the scrutiny did not take place at the appointed time still he has deposed before the court that the scrutiny had taken place beyond the time appointed for the purpose and the returning officer was not present in his office at the appointed time for scrutiny and had reached there only at about 11.15 A.M. whereafter the scrutiny was held.

Inasmuch as we find that the appellant was not present before the returning officer at the time of scrutiny of nomination papers we see no substance in his plea that he had asked for inspection of all the nomination papers and yet the returning officer had denied the same to him.

It was submitted in the alternative by the learned senior counsel for the appellant that even if the appellant's case that the certified copy of the relevant entry from the electoral roll of Pucca Kalan Constituency was not produced by the respondent until the scrutiny was over was held liable to be discarded, the appellant was still entitled to succeed on the case set up by the respondent himself. According to the respondent, the said certified copy was filed by him at 10 A.M. on 21.1.97. According to Section 33 (5) such certified copy can be produced only either with the nomination paper or at the time of scrutiny. The statute does not contemplate any other time for production of such copy. Placing reliance on *Parmar Himatsingh Jugatsingh v. Patel Harmanbhai Narubhai*, AIR (1974) SC 951, *Narbada Prasad v. Chhaganlal*, AIR (1969) SC 395, *Sri Babu Ram v. Smt. Prasanni and Ors.*, [1959] SCR 1403, *Rattan Amolsingh v. Atma Ram*, [1955] 1 SCR 499, *Birad Mal Singhvi v. Anand Purohit* and AIR (1988) SC 1796, the learned senior counsel submitted that if the law prescribes the manner of doing a particular thing in a particular way then the thing shall be done either in that manner or not at all. The provisions of Section 33(5) are mandatory in character. Consequences of non-compliance are provided in Section, 36(2)(b). The manner of compliance

therefore ceases to be technical or as a matter of mere formality. Any deficiency therein would be deadly. Inasmuch as on the own showing of the respondent the certified copy was filed neither as accompanying the nomination paper nor at the time of scrutiny, it should be held that the certified copy was not filed at all and therefore the nomination paper of the respondent should have been rejected. Illegal acceptance of the nomination paper of a returned candidate implies the result of election having been materially affected and therefore the election of the respondent is liable to be set aside.

For two reasons the submission has to fail. Firstly, on the language of sub section (5) of Section 33 of the Act, it cannot be held that the time of presentation of the certified copy is a constituent of the 'manner' of compliance. Where the candidate is an elector of a different constituency, Section 33 (5) prescribes the 'manner' of proving the factum of the candidate being an elector of a different constituency in one of the three modes : (i) by producing a copy of the electoral roll of that constituency or (ii) a copy of the relevant part thereof or (iii) a certified copy of the relevant entries in such roll. Any other mode of proof is excluded. This has been explained by the Constitution Bench of this Court in *Ranjit Singh v. Pritam Singh and others*, AIR (1966) SC 1626. So far as the time is concerned, as we will deal with shortly hereinafter the earliest and outer limits of time are prescribed. The requisite document has to be produced either with the nomination paper which is the earliest point of commencement of time limit or at the scrutiny of the nomination papers which is the outer limit. It is pertinent to note that Section 33(5) does not specifically provide who shall produce the requisite document before the returning officer. All that it provides for is that one of the three the documents must be produced.

In *Ranjit Singh's* case (*supra*) the candidate had filed three nomination papers. With one of them he had attached a copy of a part of the electoral roll. No such copy was attached with the other two nomination papers. The nomination paper with which a copy of part of the roll had been filed was rejected on the ground that the name of the parliamentary constituency, the name of the village and the assembly constituency and the part number of the electoral roll of the candidate were not mentioned and also because the name of the parliamentary constituency (House of the People) of the proposer was not given. The other two nomination papers were rejected on the ground that a copy of the electoral roll of the constituency concerned or of the relevant part thereof or a certified copy of the relevant entries had not been filed alongwith each of those nomination papers. The returning officer refused to look into the copy of a part of the electoral roll made the candidate had filed alongwith his nomination paper which had stood already rejected when the other two nomination papers were taken up for scrutiny. When the matter came up before this court, the Constitution Bench stated the object of Section 33(5) in the following words :

"The object of this provision obviously is to enable the returning officer to check whether the person standing for election is qualified for the purpose. The electoral roll of the constituency for which the returning officer is making scrutiny would be with him, and it is not necessary for a candidate to produce the copy of the roll of that constituency. But where the candidate belongs to another constituency the returning officer would not have the roll of that other constituency with him and therefore the provision contained in S. 33(5) has been made by the Legislature to enable the

returning officer to check that the candidate is qualified for standing for election. For that purpose the candidate is given the choice either to produce a copy of the electoral roll of that other constituency, or of the relevant part thereof or a certified copy of the relevant entries in such roll before the returning officer at the time of the scrutiny if he has not already filed such copy with the nomination paper."

Repelling the argument of the opposite party that the compliance of Section 33(5) must be made as regards each of the nomination papers, the Constitution Bench opined that it would be enough if the candidate has one copy with him at the time of the scrutiny and shows it again and again as each nomination paper is taken up for scrutiny by the returning officer and hence where a number of nomination papers have been filed and a copy has been filed with one of them that is enough compliance of Section 33(5). The returning officer is not prevented by Section 33(5) from looking at the copy filed with one nomination paper in spite of its having been rejected because 'the purpose of filing the copy is to ensure that the returning officer is able to check whether the candidate concerned is qualified or not and that purpose would be effectively served even if only one copy is filed with one nomination paper and no copies are filed with the other nomination papers.' The Constitution Bench went on to observe that may be that for certain purpose each nomination paper stands by itself but so far as filing of a copy with the nomination paper under Section 33(5) is concerned, we must look at the object behind the provision and if that object is served by filing a copy with one nomination paper, we see no sense in requiring a copy being filed with each nomination paper where there are more than one.

As to the manner of compliance with Section 33(5) the Constitution Bench expressed itself as under :

".....the object of producing the copy under S. 33 (5) is to enable the returning officer to check whether the candidate and the proposer are qualified or not, one for the purpose of standing and the other for the purpose of proposing. In order to check this, the returning officer must have a complete copy of the relevant part. If the copy is not a complete copy it is possible that a name which may have been included in the draft or in the first amendment may have been excluded in the second amendment made on the basis of an order of the appellate officer. Therefore to enable the returning officer to decide whether a candidate is qualified to stand or whether a proposer is qualified to propose he must have a complete copy of the relevant part of the roll. If he has not a complete copy he will not be able to decide whether the candidate or the proposer has the necessary qualification." (para 12) The Court however upheld the rejection of nomination paper because the copy of electoral roll produced was incomplete and that was a defect of a substantial character.

Applying the abovesaid statement of law to the facts of the case at hand two inferences follow. Firstly, the object sought to be achieved by Section 33(5) is fulfilled if the requisite document is available before the returning officer at the time of scrutiny even if the same was not filed along with the nomination paper; meaning thereby the production of the requisite document subsequent to the filing of the

nomination paper but before the time of scrutiny so as to be available before the returning officer at the time of scrutiny would meet the requirement of Section 33(5). It would have been better if the document required to be filed with the nomination paper and not so filed was produced before the returning officer at the time of scrutiny because in that case the production would have been in the presence of all those who might have chosen to remain present at the time of scrutiny and that would have avoided all such insinuations being hurled at the returning officer and/or the returned candidate as is being done in the case at hand. But that does not mean that the document made available to the returning officer before the time of scrutiny cannot be looked into by him at the time of scrutiny for the purpose of satisfying himself of the compliance by a candidate with Section 33(5) of the Act. It is possible and permissible for the candidates to demand and inspect the nomination papers of their rivals and the Returning Officer is under an obligation to enable them to do so. Thus, there is no great sanctity in producing the Electoral Roll only at the time of scrutiny. Secondly, Manvesh Singh, the returning officer has deposed on oath that he had been supplied with the electoral roll of Pucca Kalan Constituency under the instructions of the Election Commission and that was available with him which could have been looked into for the purpose of satisfying himself whether the respondent was an elector of Pucca Kalan Constituency or not. The returning officer was not obliged to call for the electoral roll of different constituency and meet the deficiency in the nomination officer. But in the present case it was already available with him and as per his own statement he would have looked into it. The requirement of Section 33(5) as explained by the Constitution Bench in Ranjit Singh's case (supra) would have been satisfied by looking into that electoral roll even if the disputed certified copy Ex. R-5/1 would not have been produced by the respondent. The statement on oath of the returning officer as to the availability of such voters list with him has not been disputed on behalf of the appellant by directing pin-pointed cross-examination on this part of the statement. We have no reason to disbelieve the same.

We are therefore clearly of the opinion that the nomination papers filed by the respondent cannot be said to have been illegally accepted by the returning officer. We uphold the finding recorded by the learned Designated Election Judge on this issue.

Having dealt with the principal plea of the appellant relating to illegal acceptance of the respondent's nomination papers we would now turn to examining how far the appellant has succeeded in proving the allegations as to corrupt practice (to the extent to which they have been pressed for decision in this appeal by the learned senior counsel for the appellant.

Before we may proceed to deal, in exercise of our appellate jurisdiction, with the pleas raised on behalf of the petitioner-appellant canvassing commission of corrupt practices by the respondent which in the opinion of the High Court the election petitioner has failed in proving, we would like to state a few well-settled legal

principles in the field of election jurisprudence and relevant to our purpose. They are :

(i) The success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the Court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves enormous load on the public funds and administration [See : Jagan Nath v. Jaswant Singh, AIR (1954) SC 210; Gajanan Krishnaji Bapat v.

Dattaji Raghobaji Meghe, [1995] 5 SCC 347.

(ii) Charge of corrupt practice is quasi-criminal in character. If substantiated it leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career. A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Two consequences follow. Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to hilt, the standard of proof being the same as in a criminal trial. [See Quamarul Isam v. S.K. Kanta, AIR (1994) SC 1733, F.A. Sapa v. Singora, AIR (1991) SC 1557, Manohar Joshi etc. v. Damodar Tatyaa @ Dada Saheb Rupwati etc., [1991] 2 SCC 342, Ram Singh v. Col. Ram Singh, AIR (1986) SC 3.

(iii) The Appellate Court attaches great value to the opinion formed by the Trial Judge more so when the Trial Judge recording findings of fact is the same who had recorded the evidence. The Appellate Court shall remember that the jurisdiction to try an election petition has been vested in a Judge of the High Court. Secondly, the trial judge may have had the benefit of watching the demeanour of witnesses and forming first-hand opinion of them in the process of evaluation of evidence. The Supreme Court may re-assess the evidence and come to its own conclusions on feeling satisfied that in recording findings of fact the High Court has disregarded settled principles governing the approach to evidence or committed grave or palpable errors. [See : Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe, [1995] 5 SCC 347; Kripa Shankar Chatterji v. Gurudas Chatterjee, [1995] 5 SCC 1.

(iv) Section 83 of the Act requires every election petition to contain a concise statement of the material facts on which the appellant relies. If the election petition alleges commission of corrupt practice at the election, the election petition shall set forth full particulars of any corrupt practice 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. Every election petition must be signed and verified by the appellant in the manner laid down for the verification of pleadings in the CPC. An election petition alleging corrupt practice is required to be accompanied by an affidavit in Form 25 read with Rule 94A of the Conduct of Election Rules, 1961. Form 25 contemplates the various particulars as to the corrupt practices mentioned in the election petition being verified by the appellant separately under two headings: (i) which of such statements including particulars are true to appellant's own knowledge, and (ii) which of the statements including the particulars are true to information of the appellant. It has been held in Gajanan Krishnaji Bapat's case (supra) that the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice so as to bind him to the charge levelled by him and to prevent any fishing or roving enquiry, also to prevent the returned candidate from being taken by surprise.

With so much statement of law we proceed to deal with the relevant issues relating to corrupt practices.

Issue No. 3 Allegations of bribery?

The case as to corrupt practice of bribery committed by the respondent is to be found mentioned in para 8 of the election petition which is extracted and reproduced hereunder :-

"8. That the returned candidate is also guilty of corrupt practice of bribery within the purview of Section 123 (1) of the Act and also of undue influence under Section 123(2) of the Act the material facts and particulars thereof constituting the above corrupt practices are as under

:-

(a) That on February 6, 1997 at about 11.00 P.M., Sarvshri Harpal Singh son of Kirpal Singh and Chamkaur Singh son of Hakam Singh, residents of Gandhi Basti, Maur Mandi, came to the camping site of the petitioner and reported that the returned candidate accompanied by Shri Sangram Singh, Station House Officer, Police Station Maur Mandi and others were distributing cash and liquor to the voters in Gandhi Basti.

(b) That the Station House Officer also threatened the voters to vote for Shri Harminder Singh Jassi, Respondent, and in case they do not vote for Shri Jassi, he will teach them a lesson.

(c) That on getting this information the petitioner immediately telephoned the observer at Bhatinda at about 11.45 P.M. the observer replied that he will take due care of it. However, he arrived in the Maur Mandi after a short while and sent for the petitioner. Sarvshri Harpal Singh and Chamkaur Singh, Gora Lal and Ashok Kumar accompanied the observer to Gandhi Basti, the place where the above incident

occurred. When they arrived at Gandhi Basti at about 1.45 A.M. the returned candidate accompanied by the Station House Officer and others was seen leaving the Basti, and this was pointed out to the observer. He went to the spot and made enquiries from various residents of that place. The petitioner believes that he verified about the distribution of cash and liquor and threats of the Station House Officer to the Voters as explained above, in the presence of the returned candidate. The petitioner further believes that the observer sent a report in this regard to the Election Commission of India. It further transpired that the returned candidate with the Station House Officer contacted Shri Roop Singh son of Shri Sadhu Singh and Shri Roshan Singh son of Shri Baljit Singh, residents of Gandhi Basti, Maur during their visit in the area on the night of February 6, 1997 and offered them Rs. 200 per vote. They declined to accept the illegal gratification offered to them. This happened at about 11.30 P.M. On February 6, 1997 in their houses in Gandhi Basti Maur. They were influential persons in the Basti. Shri Sangram Singh, Station House Officer, was specially got posted as Station House Officer, Police Station Maur Mandi, at the instance of the returned candidate on the eve of elections, i.e., on January 3, 1997. For this coveted post, he was naturally beholden to the returned candidate and willing to help him in any manner. Infact, he helped him to further his election prospects.

It may further be mentioned that the transfer of Shri Sangram Singh, Station House Officer, Police Station Maur was in violation of the Model Code of Conduct issued by the Election Commission of India which prohibited all transfers after announcement of the elections in Punjab. The petitioner reported this matter to the Election Commission of India, New Delhi and the Chief Electoral Officer, Punjab, Chandigarh on January 12, 1997 through Fax.

Thus, the returned candidate is guilty of corrupt practices of bribery within the meaning of Section 123(1) and undue influence under Section 123(2) of the Act."

A perusal of para 8 of the election petition shows that the factum of the respondent accompanied by Sangram Singh, SHO distributing cash and liquor to the voters in Gandhi Basti is alleged to have been brought to the knowledge of the appellant by S/Shri Harpal Singh (PW6) and Dr. Chamkaur Singh (PW8). Sub-para (a) and (b) of para 8 of the election petition do not set out the names of the persons who were offered cash and liquor. A reading of sub-para (c) of para 8 of the election petition especially looking at the manner in which the averment has been made gives an impression that Roop Singh and Resham Singh having been offered the bribe of Rs. 200 each for casting their votes in favour of the returned candidate was an information gathered by the observer. The petition does not allege such names of the persons who were allegedly offered the bribe to have been brought to the knowledge of the appellant by any one directly. The petition does not give any particulars of the names of the persons threatened by SHO and the time and place of thereat to the voters. In the affidavit accompanying the petition it is stated that the facts stated in paras 8(a), 8(b) and 8(c) of the petition are based on the information received from Harpal Singh and Chamkaur Singh who have been examined at the trial as PW6 and PW8 respectively.

The averments made in the petition have been specifically denied in the written statement filed by the respondent.

The appellant filed replication to the written statement filed by the respondent. It is in the replication that the appellant has come out with an averment (vide para 8) that some amongst the electors who were threatened by Shri Sangram Singh, SHO were Jagseer Singh (not examined), Dharminder Singh, PW 13, Jawsant Singh (not examined), Jagraj Singh (not examined), and Mander Singh (not examined). Here itself, we may observe that material facts and particulars as to commission of corrupt practice are required to be given in the election petition and not in the replication filed much after the expiry of period of limitation for filing election petition. The material facts and particulars alleged for the first time in the replication and not forming part of averments made in the election petition cannot be tried and cannot be made subject matter of issues framed by the Court. The learned Designated Election Judge has taken care to frame the issues only by reference to the averments made in the election petition and not by referring to the averments made for the first time in the replication. Firstly, the respondent does not have an opportunity of denying the averments-whether facts or particulars, introduced for the first time in replication. Secondly, as already stated, material facts and particulars as to corrupt practice are required to be supported by an affidavit in the prescribed proforma. The replication is not supported by any affidavit in the prescribed proforma.

The learned Designated Election Judge has discussed the relevant pleadings and the evidence adduced by the parties in the High Court. He has assigned reasons for arriving at the finding that the corrupt practices alleged in para 8 of the election petition were not proved. We have carefully perused the findings so recorded. Upon an independent evaluation of the evidence adduced by the parties through which we have been taken by the learned counsel for the parties, we find ourselves in entire agreement with the view taken by the High Court. While recording our general agreement with the finding arrived at by the learned Designated Election Judge, still we would briefly assign the reasons for finding the allegation as to corrupt practice not proved.

Harpal Singh (PW6) stated that Dr. Chamkaur Singh had come to his house and at about 10 p.m. on 6.2.97 he had accompanied Dr. Chamkaur Singh to see him off upto his house. On the way the two saw the respondent accompanied by SHO Sangram Singh offering money and liquor to about 50- 60 persons standing inside a boundary wall situated at a distance of about one furlong from his house. He accompanied by Dr. Chamkaur Singh informed the appellant who in his turn informed the observer Shri R. Bhardwaj (PW

43) who promptly reached there. The observer reached the place of the incident and made enquiries from Sher Singh Goldy and Sharvan Singh who were present. Rest of the persons had fled away. The persons present were in possession of liquor and told the observer that the liquor was supplied to them by the respondent and SHO, Sangram Singh. Room Singh and Resham Singh had told the observer that the respondent had given them the offer of paying Rs. 200 per vote cast in his favour. Dr. Chamkaur Singh (PW8) deposed generally on the same lines as Harpal Singh (PW6). Room Singh (PW 12) deposed to having been offered a bait of bribe and liquor by respondent. He also deposed to the SHO having threatened him with dire consequences if he did not arrange votes for

the respondent though he did not give out the name of the SHO. In cross-examination he stated that he did not know the appellant at all. He further stated that he had not accepted either the liquor or the money from the respondent nor did the threat given to him bring out any result. He has positively stated that he gave this information to the observer and the latter had noted his name in a diary. Dharminster Singh (PW

13) also deposed on similar lines as Roop Singh (PW 12). He further stated that he had made a complaint to the observer as regards the threat given to him and the observer had noted his name also in his diary. The observer is Shri R. Bhardwaj (PW 43). He was an additional commissioner of income-tax.

Patiala. He stated that at about 11.30/11.45 p.m. on 6.2.1997 he received a telephonic call from the appellant that liquor and money were being distributed by the respondent in order to purchase the voters and one S.I. Sangram Singh was accompanying the respondent. Looking at the seriousness of the allegation made, he immediately rushed to village Mor Mandi as per the information given by the appellant. He did not find the respondent though SHO Sangram Singh did meet him. He visited Gandhi Basti, the place forming subject matter of the complaint. He did not find any corroborative evidence to substantiate the allegations of the appellant that money and liquor were distributed. He interviewed about 7 to 10 persons in order to verify the allegations made by the appellant in Gandhi Basti but none substantiated the allegations so made. No specific complaint was made against the conduct of SHO Sangram Singh though the observer as deposed to by him, was eager to enquire about his conduct keeping in view the seriousness of allegations levelled against him. The only thing objectionable which the observer found in the conduct of Sangram Singh was that he was found to be moving in a private Maruti car and could not explain why it was so. However, the election petition does not raise any grievance about the SHO moving in a private Maruti car and we cannot uphold the allegations as to corrupt practice substantiated merely because the person accused of committing corrupt practice was an SHO moving in a private Maruti car. Nothing has been brought on record to show to whom the Maruti car belonged. In our opinion the statement of R. Bhardwaj (PW 43), the observer examined on behalf of the appellant, is by itself enough to demolish the case of the appellant as regards the corrupt practice alleged in para 8 of the election petition. The testimony of Dharminster Singh and Roop Singh (PW 12 & 13) stands contradicted and its effect demolished by the testimony of R. Bhardwaj (PW 13) who is an independent witness. Harminder Singh, the returned candidate who appeared in the witness box as RW1 and Sangram Singh, SI (RW5) have denied the averments as to corrupt practice made in the election petition as also those deposed to by Harpal Singh (PW6), Chamkaur Singh (PW8) Roop Singh, (PW12) and Dharminster Singh (PW13).

Issue No. 5 : As to respondent having incurred expenditure in excess of the prescribed limit and filed false return of expenses?

Issue No. 5 is based on the averments made in para 10 of the election petition. According to the appellant, the respondent incurred and authorised expenditure over and above the limit prescribed by Section 77 of the Act read with Rules 86 and 90 of the Conduct of Election Rules, 1961 and thereby committed a corrupt practice within the meaning of Section 123(6) of the Act.

According to Section 77(1) every candidate at an election shall either by himself or by his election agent keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both days inclusive. According to Section 77(3), the total of the said expenditure shall not exceed such amount as may be prescribed. The incurring or authorising of expenditure in contravention of Section 77(3) amounts to corrupt practice under sub-section (6) of the Section 123 of the Act. The maximum election expenses which the respondent could have incurred, as per Rule 90 is Rs. 1,35,000. The respondent filed his nomination papers on 16.1.1997. The result of the election was declared on 10.2.1997. For the purpose of Section 77 read with Section 123(6) of the Act the expenses relevant are those incurred by the respondent between 16.1.97 and 10.2.97, both days inclusive.

The grievance of the appellant related to expenses incurred by the respondent in maintaining lunger (common kitchen) for the electors of the constituency, the expenses incurred on vehicles engaged and utilised by the respondent for the purposes of the election and the expenditure incurred on posters and stickers used as a part of canvassing programme of the respondent. The learned senior counsel for the appellant has very fairly stated the though all the averments made in the petition were put to trial and evidence was adduced by the appellant but at this stage he would press for decision only the alleged expenses incurred on account of the posters which were got printed, distributed and pasted in the constituency by the respondent. The relevant part of the averments made vide para 10 of the election petition to the extent to which pressed for decision before this Court are extracted and reproduced hereunder :

10. That the returned candidate has incurred and authorised expenditure over and above the prescribed limit, provided under Section 77 of the Act, and thus committed a corrupt practice within the purview of Section 123(6) of the Act. The material facts and particulars are given hereunder :

(a) That the limit in Section 77 of the Act for expenses for an Assembly Constituency in Punjab is Rs. 1.35 lakhs. This limit equally applies to 109-Talwandi Sabo Constituency. However, the return of expenses filed by the returned candidate does not conform to Rule 86 of the Conduct of Election Rules, 1961.

(b) That as per the return of expenses filed by the returned candidate, the total expenditure shown by him is Rs. 44,832 only. But, in fact, he incurred expenditure manifold higher than the prescribed limit under Section 77 of the Act.

"(d) That from the office complex of the respondent, the observer also took certain pointed posters, which did not carry any printline on them. Such posters were stickers of two types, one round and the other rectangular.

Another poster carrying the photograph of the returned candidate and the then Chief Minister of Punjab, Smt. Rajinder Kaur Bhattal. The petitioner was informed that the observer sent a report to the Election Commission of India in this regard."

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(o That the returned candidate also got published various posters and hand bills. One such poster has the Caption "Pichhle Panj Saalan which Harminder Singh Jassi Walon Talwandi Sabo Halke which Karwai Gai Vikas Karjan Da Verva" (The development achievements of Shri Harminder Singh Jassi in Talwandi Sabo Constituency during the last five years.) This poster was widely distributed and affixed in the constituency in all the villages and towns. The estimate is that this poster was printed and published to the extent of 50,000. The cost of such posters is Rs. 50,000. The other posters utilised were with the Caption "Vidhan Sabha Halke Talwandi Sabo Taon Congress (I) De Umeedwar" with printed photographs of the returned candidate and the then Chief Minister of Punjab, Smt Rajinder Kaur Bhattal. This poster is without any printline and the observer had taken hold of these posters from the office complex of the returned candidate at Talwandi Sabo. Similarly, another poster was also affixed and distributed all over the Constituency with the same Caption, but carried only photo print of the respondent with his election symbol. This of course, is with the print line of the press as Sat Guru Press. These posters were freely distributed and affixed and the estimate is that both these posters were printed and published to the tune of 50,000 each the cost of the two posters comes to Rs. 1,40,000 as per the market rate. The returned candidate has shown in all expenditure on these posters as Rs. 8,375. There is substantial difference between the actual cost and the one shown in the return of expenses to the tune of Rs. 1,81,625.

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(g)Thus the returned candidate has incurred much more expenditure and authorised the same over and above the one prescribed under Section 77 of the Act and committed a corrupt practice within the purview of Section 123 (6) of the Act.

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The averments made by the appellant have been denied in the written statement. It is denied that the respondent at any time incurred or authorised the expenditure beyond the amount of Rs. 44,832 as stated in the return of expenses. It was denied that the observer had taken in possession certain posters from the office complex of the respondent in his presence. As to the poster with the caption "pichhle panj slan which....." the respondent stated that the poster was got printed and distributed by the block congress committees of Talwandi Sabo and Mor Mandi in routine in the third week of December, i.e., much before the filing of nomination paper by the respondent. The said poster was neither got printed nor distributed nor pasted by the respondent or on his behalf in the constituency. The respondent had got printed 3500 posters of different sizes and types from Satguru Printing Press for Rs. 2800. He had also got printed 2000, 1500 and 1000 posters respectively for Rs. 1800, 1875 and 900 and handbills ten thousands in numbers for Rs. 1000 only. The total expenditure incurred by the respondent on the printing of posters was Rs. 10275 which has been

correctly shown in the return of the expenses.

Here itself, we may state that as per the affidavit filed in support of the election petition the averments made in sub-para (a) (b) and (e) of the para 10 are stated to be true to the personal knowledge of the appellant while the contents of sub-paras (c) (d) (f) and (g) are stated to be based on information received from Pratipal Singh Bhindal and believed by the appellant to be true. The infirmity with which the averments made in the election petition suffer from is that the dates between which the posters are alleged to have been distributed and pasted in the constituency are not mentioned in the election petition. From the averments made in the petition it cannot be deduced that the expenditure on account of the posters even if incurred by the respondent, was so incurred between the date of nomination and the date of declaration of result of the election. In the absence of the appellant having made a positive allegation of the alleged expenses having been incurred between the date of nomination of the respondent and the date of declaration of the result the applicability of sub-section (3) of Section 77 would not be attractive.

Pratipal Singh Bhindal has been examined as PW 48. In his statement without giving any dates he has simply stated that in his estimation about 1,50,000 posters like A1 to A3 were pasted/exhibited in the constituency. One of the impugned poster does not refer to the respondent or to his activities in the constituency. As per explanation 1 appended to sub-section (1) of Section 77 any expenditure incurred or authorised by a political or by any other association or body of persons or by any independent other than the candidate or his election agent is not be counted as of expenditure by the candidate or his election agent attracting applicability of Section 77. The posters were distributed generally in the interest of the political party and its candidates highlighting the achievements of the political party and its leadership, the expenses could not be counted as the expenses as that incurred by the respondent.

Shri R. Bhardwaj, PW 43, the election observer had visited the election office of the respondent on 4.2.97. He had also taken into possession some election material in the shape of posters, stickers, pamphlets, small flags etc. (Exts. A/42 to A/49). In his estimation, about 60000 posters were pressed into service on behalf of the congress party and similar quantity was pasted by the appellant also. He has merely given an estimate of the quantity of posters and that too as made use of by Congress party. The respondent has in his own statement substantiated the plea taken in the written statement. Surinder Singh (RW 16), the proprietor of M/s Satguru Printing Press has been examined on behalf of the respondent who too has supported the statement of the respondent consistent with the plea taken in the written statement and has also proved the concerning vouchers.

In the above state of evidence no inference can be drawn that the statement of expenses and the vouchers as filed by the respondent were false or that the expenditure incurred on the posters had resulted into crossing the prescribed limit of expenditure. We agree with the findings recorded by the learned Designated Election Judge that issue no. 7 is not proved.

Issue no 6 : Allegations as to undue influence?

Another corrupt practice amounting to undue influence as defined in section 123(2) of the Act argued and pressed at the time of hearing by the learned senior counsel for the appellant is found alleged in para 11 of the election petition. The gist of the averment made is that one Sukhraj Singh Sarpanch of village Natt was a strong supporter of the respondent. He accompanied by Ajaib Singh went to the houses of Pirthi Singh and Niranjana Singh. Only ladies were present at the houses. They were asked to remove the flags of Shiromani Akali Dal from their houses which the ladies refused to do whereupon Sukhraj Singh and Ajaib Singh gave merciless beating to the ladies, Smt. Amarjeet Kaur and Smt. Gyan Kaur. The ladies suffered multiple injuries. The assailants forcibly removed the flags from their houses.

The incident was reported to the police. The injured ladies were medically examined. The election observer also submitted his report on the incident to the Election Commission. The allegations have been denied in the written statement filed by the respondent. The respondent has denied having anything to do with Sukhraj Singh and Ajaib Singh. The learned Designated Election Judge has extensively dealt with the evidence adduced by the parties and found the incident as to beating of the two ladies and removal of flags from their houses proved. The learned Judge has also found the involvement of Sarpanch Sukhraj Singh and Ajaib Singh also proved. However, the learned Judge has also recorded a finding that there was no iota of evidence to prove the respondent having at any time visited village Natt in order to shield the two persons involved in the incident. The learned Judge has also found that there was "sheer exaggeration" and "faint attempt" made by the appellant to connect the respondent with the incident. In the opinion of the learned Designated Election Judge the incident appeared to be an outcome of the zeal of the Sarpanch Sukhraj Singh and the other person Ajaib Singh who did so of their own and was probably an act of over enthusiasm in politics but there was no reliable evidence not even any facts or circumstances to infer the involvement of the respondent in the incident or to hold the act of Sukhraj Singh and Ajaib Singh having been committed at the behest of the respondent. It is not the case of the appellant that Sukhraj Singh or Ajaib Singh was an agent or election agent of the respondent. During the course of hearing nothing was brought to our notice so as to persuade us to interfere with the finding arrived at by the learned Designated Election Judge.

Under Sections 100 (1)(d)(ii) and 100(2)(a) of the Act any corrupt practice in order to vitiate the election of the returned candidate must be shown to have been committed either by the candidate or his election agent or by an agent other than his election agent in the interest of the returned candidate. Further it should be shown that the result of the election insofar as it concerns a returned candidate has been materially affected by the said corrupt practice. We have already stated that neither Sukhraj Singh nor Ajaib Singh has been shown much less proved to be agent of the respondent. There is no material brought on record to infer the result of the election having been materially affected by the beating of the two ladies. The appellant has been rightly held by the learned Designated Election Judge to have failed in making out a case for setting aside the election of the respondent on the ground of the said corrupt practice involving the beating of the two ladies. The learned counsel for the appellant submitted that Sukhraj Singh was later appointed as a counting agent by the respondent. Merely from this fact it cannot be inferred that the respondent was in the knowledge of the incident which had happened at village Natt and that he had condoned the act of Sukhraj Singh by appointing him as a counting agent and thereby owned the responsibility

of the violence committed by Sukhraj Singh. In *Manohar Joshi v. Nitin Bhaurao Patil and Anr.*, [1996] 1 SCC 169 this Court has held that the requisite consent of the returned candidate or his election agent is a constituent part of the corrupt practices under sub-section (3) and (3A) of Section 123 and an ingredient of the ground under Section 100(l)(b). Such consent has to be pleaded and proved. Implied consent of the candidate cannot be read into the provision. Whenever the requirement is of consent, it must be free consent given by the giver of the consent of his own volition. It must be specifically alleged and positively proved. In the case at hand there are neither such pleadings nor proof as to the alleged violence having been committed by Sukhraj Singh and Ajaib Singh with the consent of the returned candidate or of his election agent.

We are clearly of the opinion that none of the findings arrived at by the learned Designated Election Judge negating proof of alleged corrupt practices by the respondent is liable to be interfered with in this appeal. The findings are confirmed.

As an upshot of the above discussion, the appeal is held liable to be dismissed and is hereby dismissed with cost quantified at Rs. 10,000.