PETITIONER:
LAXMI NARAYAN NAYAK

Vs.

RESPONDENT:
RAMRATAN CHATURVEDI AND ORS.

DATE OF JUDGMENT22/12/1989

BENCH:
PANDIAN, S.R. (J)
BENCH:
PANDIAN, S.R. (J)
KULDIP SINGH (J)

CITATION:
1991 AIR 2001 1989 SCR Supl. (2) 581
1990 SCC (2) 173 JT 1989 Supl. 438
1989 SCALE (2)1439

ACT:
The Representation of Peoples Act, 1951: Sections 123(2), (3) and (3A)--Corrupt Practice--Bribery--Proof of--Element of 'bargaining'--Necessity for.

HEADNOTE:
Elections to the Madhya Pradesh Vidhan Sabha were held in the months of February/March 1985. The appellant and Respondent No. 1 were the contesting candidates from Niwadi Legislative Assembly constituency No. 34. Respondent No. 1 having secured majority of votes, was declared elected on 6.3.1985 to the Madhya Pradesh Vidhan Sabha. The appellant challenged the election of the respondent No. 1 in the High Court of Madhya Pradesh Jabalpur alleging that the first respondent was guilty of adopting corrupt practices within the meaning of sub-sections (2), (3) and (3A) of Section 123 of the Representation of Peoples Act, 1951. Respondent No. 1 denied the allegations made in the election petition. The High Court dismissed the Election Petition holding that the appellant had not substantiated all the charges levered by him against respondent No. 1. Hence this appeal by the appellant. Before this Court the appellant pressed only issues 3, 4 and 5 and gave up the rest.
Dismissing the appeal, this Court,
HELD: An election petition where corrupt practices are imputed must be regarding as proceedings of a quasi-criminal nature wherein strict proof is necessary. Since, a charge of corrupt practice, the consequence of which is not only to render the election of the returned candidate void, but in some cases to impose on him a disqualification it must be proved on appraisal of the evidence adduced by both the parties particularly by the election petitioner who assails the election of a returned candidate. [591B-C]
The element of bargaining is completely absent in the present case. Needless to say that it is necessary for the purpose of proving the corrupt practice of bribery to establish that there was an element of bargaining. [592C]
582
Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi, [1987] Supp. SCC 93; Kona Prabhakara Rao v. M. Seshagiri Rao & Anr., [1982] 1 SCC 442; Manphul Singh v. Surinder Singh, [1974] 1

SCR 52; Jamuna Prasad Mukheriya & Ors. v. Lachi Ram & Ors., [1955] 1 SCR 608; Rahim Khan v. Khurshid Ahmed & Ors., [1974] 2 SCC 660; Ram Sharan Yadav v. Thakur Muneshwar Nath Singh & Ors., [1984] 4 SCC 649; Rahim Khan v. Khurshid Ahmed
JUDGMENT:
& Ors., [1977] 1 SCR 490; Lakshmi Raman Acharya v. Chandan Singh & Ors., [1977] 2 SCR 412 and Ramji Prasad Singh v. Ram Bilas Jha & Ors., [1977] 1 SCC 260; Mohan Singh v. Bhanwar Lal & Ors., [1964] 5 SCR 12; Harjit Singh Mann v. S. Umraon Singh & Ors., [1980] 1 SCC 713; lqbal Singh v. S. Gurdas Singh & Ors., [1976] 1 SCR 884; Lalroukung v. Haokholal Thangam & Anr., ELR Vol 41 Page 35, referred to.

&

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4359 (NCE) of 1986.

From the Judgment and Order dated 30th Sept. 1986 of the Madhya Pradesh High Court in Election Petition No. 43 of 1985.

R.B. Mehrotra for the Appellant.

S.S. Khanduja for the Respondents.

The Judgment of the Court was delivered by

S. RATNAVEL PANDIAN, J. The appellant was one of the 11 contestants from Niwadi Legislative Assembly Constituency No. 34 of Madhya Pradesh Vidhan Sabha. The election was held in the months of February/March 1985, the polling date of which was on 2.3.1985. The appellant was a nominee of the Janta Party. The first respondent was sponsored by the Congress Party. As the first respondent had secured majority of votes i.e. by a margin of 5,000 votes over and above his next rival candidate, namely the appellant herein the first respondent was duly declared on 6.3.1985 as successfully elected.

The appellant presented an election petition in the High Court Madhya Pradesh at Jabalpur, calling in question' the election of the first respondent alleging that the first respondent was guilty of adopting corrupt practices within the meaning of sub-sections (2), (3) and (3A) of Section 123 of the Representation of People's Act, 1951 (hereinafter referred to as the 'Act'). It is hardly necessary to stress

583

that the pleadings were traversed and denied by the first respondent in his statement. The High Court dismissed the election petition and hence by this appeal under Section 116A of the Act, the appellant challenges the correctness of the decision of the High Court. Of the several issues framed upon the pleadings of the parties only issues 3, 4 and 5 are pressed before us as the main grounds in support of the appeal and the rest are given up. Hence for the purpose of the present appeal, we have to examine and deal with these three relevant issues alone as set out by the High Court. These issues are:

"(3) Whether the nomination paper of Shri Pratap Singh, son of Mitilal, the respondent No. 11 had been improperly rejected? If so, whether the election is liable to be set-aside under Section 100(1)(c) of the R.P. Act, 1951?

(4) Whether the respondent No. 1 held a meeting at Niwadi on 28.2.1985 and told the electors that he would present silver shield to the electors of the polling booth recording maximum number of votes in his favour? If so, whether respondent No. 1 is guilty of corrupt practices under Section 123(1) of the Act?

(5) Whether Shri Shital Prasad Sharma, S.D.O. (Revenue) and

Shri Dubey, S.D.O. police accompanied with respondent No.- 1 at various places between 9.2.1985 and 2-3-1985 and asked the electors to vote for him? Whether Shri Sharma distributed money in village Teharka and asked voters to vote for respondent No. 17 If so, effect.

The High court which has dealt with on the various aspects of the matter has held that the appellant has not substantiated all the charges levelled by him against the first respondent challenging the declaration of the first respondent as having been duly elected.

Normally, this Court in an appeal as the one on hand does not interfere on a finding of facts of this type unless there are prima facie good grounds to show that the High Court has gravely erred resulting in serious prejudice to the appellant. We, therefore shall now examine whether there are any compelling reasons justifying our interference with the findings of the High Court.

This Court in a catena of decisions has laid down the principles as to the nature of pleadings in election cases, the sum and substance of which being:

584

(1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi, [1987] (Supp.) SCC 93 and Kona Prabhakara Rao v. M. Seshagiri Rao & Anr., [1982] 1 SCC 442.

(2) The allegations in the election petition should not be vague, general in nature or lack of materials or frivolous or vexatious because the Court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide Manphul Singh v. Surinder Singh, [1974] 1 SCR 52; Kona Prabhakara Rao v. M. Seshagiri Rao & Anr., [1982] 1 SCC 442 and Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi, [1987] (Supp.) SCC 93.

(3) The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide Jumuna Prasad Mukhariya & Others v. Lachhi Ram & Others, [1955] 1 SCR 608 and Rahim Khan v. Khurshid Ahmed and Others, [1974] 2 SCC 660.

(5) The evidence produced before the Court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide Ram Sharan Yadav v. Thakur Muneshwar Nath Singh and Others, [1984] 4 SCC 649.

(5) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents vide Rahim Khan v. Khurshid Ahmed & Ors., [1975] 1 SCR 643; M. Narayana Rao v. G. Venkata Reddy & Others, [1977] 1 SCR 490; Lakshmi Raman Acharya v. Chandan Singh & Ors., [1977] 2 SCR 412 and Ramji Prasad Singh v. Ram BilasJha and Others, [1977] 1 SCC 260.

6. The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded vide Rahim Khan v. Khurshid Ahmed and Others, [1975] 1 SCR 643; Mohan Singh v. Bhanwarlal & Others, [1964] 5 SCR 12 and Ramji Prasad Singh v. Ram Bilas Jha and Others, [1977] 1 SCC 260.

585

In the light of the above principles, we shall now examine the pleadings and the evidence adduced to establish

the allegations in the election petition.

Reverting to the case, the first question that arises for consideration in relation to issue No. (3) is whether the nomination papers of the 11th respondent, Pratap Singh has been improperly rejected rendering the election of the returned candidate (first respondent) as void.

The 11th respondent (Pratap Singh) filed his nomination paper for contesting the election from this Niwadi constituency and delivered the same to the Returning Officer by his proposer as contemplated under Section 33(1) of the Act. He also made a request to the Returning Officer to send some authorised person thereby enabling him to make and subscribe the oath as he was-

seriously iII and could not present himself either before the Returning Officer or any other authorised officer for making or subscribing the oath of affirmation as required under Article 173(a) of the Constitution of India. The Returning Officer did not comply with the request of Pratap Singh and rejected his nomination on 7.2.85. According to the petitioner, this rejection is improper and as such the election is liable to be set aside as per Section 100(1)(c) of the Act.

The plea of the appellant that the nomination paper has been improperly rejected, is countered by the respondent No. 1 in his written statement denying the plea of the appellant that he was seriously ill and stating that under Article 173 of the Constitution, it is only for the Election Commission to authorise some person enabling the candidate to make and subscribe the oath according to the form set out for the purpose in the Third Schedule; that the Returning Officer has no authority to send any Officer to any ailing candidate enabling him to subscribe the oath and that the respondent No. 11 neither approached the Election Commission nor made any such request to the Returning Officer.

It is seen from the additional document No. 9 that the 11th respondent sent the letter of request to the Returning Officer to appoint some authorised officer at Newadi so that he could subscribe his oath and along with that letter he had enclosed a medical certificate given by PW-2. The certificate is issued by PW-2 (Block Medical Officer PHC, Newadi) certifying that respondent No. 11 was under his treatment as an OPD patient from 6.2.83 for bronchitis for which the

586

patient was advised rest atleast for three days. In his evidence, PW-2 has stated that he could not say about the condition of the patient without reference to the certificate or the OPD register and he might have 'advised the 11th respondent to take rest as he usually advised the patients. In the cross-examination, he has deposed that the 11th respondent had no other ailment and that he was moving in the town. On consideration of the oral and documentary evidence, the High Court rejected the plea of the appellant holding bronchitis is not a disease which would incapacitate a person from moving about and under those circumstances, there was no justification, whatsoever, for Pratap Singh not taking oath as required under Article 173 of the Constitution.

On carefully going through the material on record, we also agree with the view taken by the High Court that the 11th respondent was not suffering from any serious ailment which disabled him to take the oath before the Returning Officer. It is not the case of the appellant that the Returning Officer had any enmity against the 11th respondent or was favourably disposed towards the first respondent.

It is apposite to refer to the decision in Harjit Singh Mann v. S. Umraon Singh and Others, [1980] 1 SCC 713 in which this Court while dealing with the mandatory requirement of taking oath as contemplated under Article 173(a) has observed thus:

> "It is not in controversy that it was obligatory under clause (a) of Article 173 of the Constitution for the appellant to make and subscribe, before a person authorised in that behalf by the Election Commission, an oath or affirmation according to the form set out for the purpose in the Third Schedule, and that he cannot be qualified to be chosen to fill a seat in the legislature of a State without doing so. The importance of that requirement of the Constitution has been reiterated in sub:section (2) of Section 36 of the Act for ground (a) thereof provides that the Returning Officer shall reject a nomination paper on the ground that on the date fixed for the scrutiny of nominations the candidate, was inter-alia, not qualified to be chosen to fill the seat in the Legislative Assembly under Article 173 of the Constitution. The requirement for the making and subscribing the oath or affirmation was, therefore, clearly mandatory."

As the 11th respondent has not taken the oath, before the person
587
authorised in that behalf by the Election Commission for no valid reason, we are in full agreement with the conclusion arrived at by the High Court that the plea of the appellant that the nomination paper of Pratap Singh has been improperly rejected, is devoid of any merit.

The next contention is that the election of the returned candidate (first respondent) is to be declared void as the said election was tainted with corrupt practices within the mischief of Section 100(1)(b) of the Act. What are corrupt practices are enumerated and defined in. Section 123 of the Act.

The pleading on this aspect in the election petition reads thus:

> "The respondent No. 1 had organised a rally and a procession on 28.2.1985 at Niwadi. That procession evitimately culminated into a public meeting. Shri Ramratan Chaturvedi, Respondent No. 1 made a speech in that public meeting and told the electors that he will present a silver shield to the electors of that polling booth which would record the maximum number of votes in his favour. Several electors from Niwadi Legislative Constituency were present in that meeting. The respondent No. 1 thus promised a gratification to the electors to vote for him. As the promise was given by the respondent No. 1 himself, he is guilty of corrupt practice under Section 123(1) of the R.P. Act, 1951 and his election is liable to be set aside under Section 100(1)(b) of the R.P. Act, 1951."

The first respondent though admitted in his written statement that there was a procession, has denied of having addressed any public meeting on 28.2.85 promising any gratification in the form of a silver shield to the electors of the polling booth where a maximum number of votes would be

cast in his favour. The appellant in support of his pleadings besides examining himself as PW-1 examined three more witnesses. PW-14, PW-17 and PW-18. The first respondent examined himself with another as RWs 1 and 3 respectively.

The evidence of PW- 1 is chat he was informed by PW- 16 that the first respondent in a public meeting at Niwadi, organised in connection with the election, promised that he would present a silver shield to the electors of the polling booth which would record a highest number of votes in his favour. It is to be noted that the appellant who examined himself on 29.10.85 on which date itself the cross-examination was

588

over, further examined himself on 8.4.86 i.e. after six months of the first examination and then deposed about this alleged promise. Indisputably, this evidence is in the nature of hear-say. PW-16 claims to have attended the meeting and 'heard the first respondent making the speech promising the voters that the particular booth where he would secure a highest number of votes would be awarded with a silver shield by him. His further evidence is that those who attended the meeting, generally talked amongst themselves that those who would vote for Congress party would get that shield. This witness in his crossexamination states that he did not ask anyone as to who would get the shield and where it would be kept and that he did not inform anyone else except the appellant. He has further deposed the first respondent did not say that the shield would be awarded to the workers. He admits that his brother Nathuram Ahirwar was a Janta Party leader and Member of the Legislative Assembly. Needless to say that the appellant herein was a nominee of the Janta Party. PW-16 nowhere in his evidence has mentioned the date of the alleged meeting. PW- 17 falls in line with PW-16 and states that he too attended the meeting in which the first respondent made the promise of gratification of awarding silver shield. The evidence of PW-17 that the first respondent promised that the shield would be given only to the person who would procure a large number of votes in his favour is diametrically opposite to the evidence of PW-16 that the promise of presentation of shield was not for the workers who would procure more votes but only to the particular booth where he would secure highest number of votes. PW17 belongs to the same caste to which PW- 16 belongs. PW-18 who was a sarpanch of Murara village has stated that the first respondent announced in the public meeting that he would award a shield to the polling stating where he would secure highest number of votes. Admittedly, he was in the Socialist Party and that he could not say as to what was meant by silver shield nor he was told by anyone about it. Not even a suggestion was made to the first respondent (RW-1) during the cross-examination that he made such a promise in the public meeting. PW-3, who was the Superintendent of Pre-matric Harijan Hostel, Niwadi has testified to the fact that there was no rally started from harijan ashram. He has also stoutly denied the suggestion that on 28.2.1985 there was a meeting within the precincts of Harijan Ashram in which the first respondent promised the award of silver shield. According to him, no such meeting was ever held. The High Court on analysis of the above oral evidence, after observing that the evidence adduced by the appellant is 'sketchy and insufficient to prove the corrupt practice' concluded. "that the charge of corrupt practice under Section 123(1)(A) of the Act is not proved."

589

The learned counsel appearing on behalf of the appellant

herein assails the conclusion of the High Court contending that the High Court has not approached and evaluated the evidence on PWs 1, 16 to 18 in the proper perspective and this observations that the evidence is 'sketchy and insufficient to prove the corrupt practices' is unjustifiable and bereft of sound reasoning, which submissions are opposed by the counsel for the first respondent.

Before adverting to the contesting contentions of the parties, we shall examine the legal position with regard to the nature of the proceedings and the quality of evidence required in proof of allegations of corrupt practices.

'Bribery' which is one of the corrupt practices enumerated under Section 123 of the Act is defined in sub-section (1) of that Section. For the purpose of this case, we reproduce the relevant part of that Section as the allegations contained in the election petition that the promise of gratification was a silver shield to the voters in general of a particular booth where the appellant would secure the highest number of votes in his favour:

> (1) 'Bribery', that is to say--
> (A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object directly or indirectly of inducing--
> (b) an elector to vote or refrain from voting at an election, or as a reward to--
> (ii) an elector for having voted or refrained from voting.

The word 'gratification' is not defined in the Act, but the Explanation to sub-section (1) of Section 123 furnishes an indication as to what amounts to gratification in the view of the Parliament. In Mohan Singh v. Bhanwarlal & Others, [1964] 5 SCR 12 the Constitution Bench of this Court after making a reference to this Explanation observed as follows:

590

> "The Explanation extends the expression 'gratification' to include all forms of entertainment and all forms of employment for reward but not payment of bona fide expenditure incurred at or for the purpose of election if duly entered in the account of election expenses. Gratification in its ordinary connotation means satisfaction. In the context in which the expression is used and its delimitation by the Explanation, it must mean something valuable which is calculated to satisfy a person's aim, object or desire, whether or not that thing is estimable in terms of money; but a mere offer to help in securing employment to a person with a named or unnamed employer would not amount to such gratification."

In lqbal Singh v. S. Gurdas Singh & Ors., [1976] 1 SCR 884 Alagiriswa J. speaking for the Bench taking aid of Sections 161, 17 I(B) and 17 i(E) of the Indian Penal Code stated thus:

> "It would be noticed that the Explanation to Section 123(1) of the Representation of the People Act and the Explanation to Section 161 of the Indian Penal Code relating to gratification are similar. In addition, the Representation of the People Act refers to all forms

of entertainment and all forms of employment for reward. The employment for reward is covered by illustration (a) to S. 161 of the Indian Penal Code. The words "all forms of entertainment" in the Explanation to Section 123(1) of the Representation of the People Act apparently refer to offence of treating found in S. 171--E of the Indian Penal Code. When Parliament enacted the provision regarding bribery in the Representation of the People Act, it should have had before it the comparable provision in the Penal Code. It is to be noticed that the giving of any gratification with the object of inducing the receiver or any other person to vote is an offence while acceptance of gratification by a person either for himself or for any other person or for inducing any other person to vote is an offence. In other words giving is an offence if paid to the voter or such giving induces another person to vote. It is not giving a gratification in order that he may induce another person to vote that is an offence whereas receipt of a gratification in order to induce another person to vote is an offence."

591

According to Section 123(1)(A)(b)(ii) of the Act, any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing an elector to vote or refrain from voting at an election is a corrupt practice. See Harjit Singh Mann v.S. Umrao Singh and Others, [1980] 2 SCR 501.

It is an accepted principle that an election petition where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. Since, a charge of corrupt practices, the consequence of which is not only to render the election of the returned candidate void, but in some cases to impose him a disqualification must be proved on appraisal of the evidence adduced by both the parties particularly by the election petitioner who assails the election of a returned candidate. This principle has been reiterated and approved in a series of decisions. See Manphul Singh v. Surinder Singh, [1974] 1 SCR 52; Rahim Khan v. Khurshid Ahmed, [1974] 2 SCC 660; M. Narayana Rao v. G. Venkata Reddy & Others, [1977] 1 SCR 490; Ram Sharan Yadav v. Thankur Muneshwar Nath Singh & Others, [1984] 4 SCC 649; Ramji Prasad Singh v. Ram Bilas Jha & Others, [1977] 1 SCC 260 and Lalroukung v. Haokholal Thangjom & Anr., ELR Vol 41 Page 35.

As pointed out in M. Narayana Rao v. G. Venkata Reddy, [1977] 1 SCR 490; this Court ordinarily and generally does not, as it ought not to, interfere with the findings of fact recorded by the High Court unless there are compelling reasons for the same, especially findings recorded on appreciation of oral evidence. Bearing in mind the above proposition of law, we shall scrutinise the evidence available on record and find out whether the conclusions arrived at by the High Court suffers from any infirmity warranting interference of the said conclusions.

As we have pointed out in the earlier paragraph of the judgment, PW 1 (appellant) only after a period of 6 months of his first examination in the Court came forward with this allegation that the first respondent made a promise of

gratification. Indisputably his evidence is in the nature of hear-say. PW 16 whose brother was a Janata Party leader and an M.L.A. does not mention even the date of the meeting in which the first respondent is said to have made the promise. The evidence of PW 16 and PW 17 is inconsistent and contradictory as we have pointed out supra. There is no consistent evidence as to the
592
nature of the statement said to have been made by the first respondent. Whilst PW 16 and PW 18 state that the first respondent promised the award of the silver shield to the particular polling booth where he would secure the highest number of votes, PW 17 states that the promise was only to the person who would procure a large number of votes. Therefore, in view of this inconsistent, unsatisfactory and vague evidence, no conclusion could be arrived at that the first respondent made the promise to any particular person or persons who would secure the highest number of votes in his favour. There is absolutely no evidence that the first respondent made any promise of gratification to any elector or electors who would vote in his favour. Similarly there is no evidence that voters were influenced by the alleged promise of gratification or the first respondent obtained any promise from the voters in return as a condition for the shield alleged to have been presented. Thus the element of 'bargaining' is completely absent in the present case. Needless to say that it is necessary for the purpose of proving the corrupt practice of bribery to establish that there was an element of 'bargaining'. See Harjit Singh Mann v. S. Umrao Singh and Others, [1980] 2 SCR 501. In this connection, reference can be made to a decision of this Court in lqbal Singh v. Gurdas Singh & Ors., [1976] 1 SCR 884. In that case the election of the returned candidate was challenged by the appellant therein on various grounds, one of which being that the returned candidate or his agent held out an inducement to get gun licences issued for people who would vote for the returned candidate. The Court rejected the plea on the ground that there was no evidence regarding bargaining of votes by promise of gun licences and there was no evidence of obtaining promise of votes from the voters in return.

For the reasons above-mentioned, we come to the conclusion that the appellant has not discharged the onus of proof cast upon him by adducing cogent, reliable and satisfactory evidence, but on the other hand he has miserably failed to establish the charge of corruption.

Now, we shall pass on to the last contention.

The charge under issue No. (5) is that Shri Shital Prasad Sharma, Sub-Divisional Officer (Revenue) and Shri Dubey, Sub Divisional Officer, (Police), accompanied the first respondent to various places between 9.2.1985 and 2.3.1985 and requested the electors to vote in favour of the first respondent and that Shri Sharma distributed money in the village-Teharka and asked the voters to vote in favour of the first respondent.
593

It is found from the judgment of the High Court that this issue was earlier declared vague and it was thereafter the first part of the issue which was re-cast as per the particulars substituted in the amended pleadings in paragraph 6(a) of the election petition. These allegations relate to the charge of obtaining or procuring the assistance of the Government servants in service for the furtherance of the prospects of the election of the first respondent failing within the mischief of Section 123(7) of the

Act. These allegations are stoutly opposed by the first respondent inter-alia contending that "these pleadings are in violation of the provisions contained in Section 83(b) of the Act as no details of the date and place of commission of each such practice have been mentioned and in absence thereof, it is not possible for this respondent to effectively rebute such vague allegations", and the allegations that Shri Sharma distributed money to the voters are also too vague to be rebutted properly as the names of the voters to whom money is said to have been paid and also lack of particulars with regard to the date, time and the amount of money allegedly distributed.

In support of the above allegations, the appellant examined himself and six other witnesses of PWs 1, 11, 12, 14, 15, 16 and 18. Barring this oral evidence, there is absolutely no contemporaneous documentary evidence. Though the appellant filed the application in August 1985 under Section 86(5) of the Act praying for amendment of his election petition, he has not testified to the amended pleadings in his examination held on 9.10.1985, but tendered evidence only on 8.4.1986 that is after six months of his earlier examination. He has deposed that on 24.2.85 he saw the first respondent and Dubey, SDO (Police) going together in a jeep towards Orchha and that PW 11, Nathu Ram Naik told him that Dubey had asked him to vote in favour of the first respondent. He continued his evidence stating that he saw Dubey walking along with the first respondent in a rally organised by the Congress party and headed by the first respondent, that PWs 12 and 13 informed him on 28.2.1985 at Niwadi that when these two witnesses refused to vote for the first respondent at his request, the first respondent asked Dubey to persuade them to vote for him, that thereupon Dubey asked PWs 12 and 13 to vote for the first respondent lest they would not be permitted to sit in a temple-presumably in the village. He further deposed that on 24.2.1985 when he visited Prithvipur, he saw rally headed by the first respondent accompanied by Dubey and Sharma. Later on, Shri Chaturbhuj Naik informed that both Dubey and Sharma took the resignations of Naik and others from Janata Party. According to PW 11, the SDO (police) by name Dvivedi
594
asked him as well PWs 14 and 15 to work for the first respondent and also threatened them that they would be falsely implicated in criminal cases if they failed to do so and that in consequence of it he and PW 15 resigned from the Janata Party and joined Congress party though they subsequently worked for the Janata Party candidate. When this witness was confronted whether he had any documentary evidence in support of his version, he stated that his joining the Congress Party appeared in the local newspaper but he was not having a copy of the same. The evidence of PW 14 is that the SDO (police), Chaturvedi and SDO (Civil) whose name he does not know, were leading the rally and those two were sitting on the dias of a public meeting organised by the Congress Party and that both them threatened him and PW 11 to work for the first respondent. PW 15 also speaks to the fact that SDO (Police), Chaturvedi called him as well PW 11 and some others and threatened all of them to resign from the Janata Party and work for the Congress and that when they refused to do so, they were all threatened by these two government officials, stating that they would be falsely implicated in criminal cases and that they out of fear resigned from the Janata Party and worked for the Congress Party.

Be it noted, whilst the name of the SDO (police) is

mentioned by PW-1 as 'Dubey' as mentioned in the amended pleading as well in issue No. (5), PWs 14 and 15 mention the name of the said Police Officer as 'Chaturvedi'. PW-11 gives the name of the Officer as 'Dvivedi'. The police officer, RW 6 swears his name as 'Dvivedi'. Therefore, it follows that the insertion of the name as 'Dubey' in the amended pleading is incorrect. Thus, we find material and irreconcilable contradictions not only amongst the evidence of PWs but also between the pleading and the evidence even in respect of the name of the SDO (police) which create a legitimate suspicion as to whether Dubey was in any way concerned with the election. PW-12 does not mention the name of the police officer who threatened him to vote for the Congress as well the date of the meeting. It is evidence of PW 16 that Sharma, SDO (Civil) asked all those persons attending the meeting in favour of the first respondent so that they could get the silver shield. PW-18 who admits to have been a member of the Socialist Party has given the evidence falling in line with that of PW- 16.

On consideration of the evidence of the above witnesses, the High Court has held "In view of this statement of the election petitioner, it must be held that there is no one like Shri Dubey, SDO (police) and, therefore, there would be no question of respondent No. 1 procuring assistance of Shri Dubey. The distinction between Shri
595
Dubey and Shri Dvivedi is rather well-known and even the election petitioner is aware of it. Under the circumstances, there is no justification why proper plea in that behalf was not taken". If we have to accept the evidence of PW- 1 that the SDO (police) Dubey assisted the first respondent, then the evidence of the other witnesses giving a different name either as 'Chaturvedi' or 'Dvivedi' has to be rejected. On the contrary, if the evidence of the other witnesses is to be accepted then their evidence does not support the issue No. (5) that one Dubey assisted the first respondent in his election. The learned counsel appearing for the appellant pleaded that no importance should be attached to the variation regarding the name of the SDO (police) as the fact remains that SDO (police) had assisted the first respondent and procured votes in his favour. We are unable to see any force in this submission. Next coming to the allegations made against Sharma, SDO (Civil), PW 1 does not allege anything against him and as such on the basis of the evidence of PW 1, it cannot be said by any stretch of imagination that Sharma had assisted and procured votes in favour of the first respondent within the mischief of Section 123(7) of the Act. The evidence of the other witnesses relating to the alleged participation of Sharma in the election does not inspire confidence. No acceptable evidence is available that Sharma distributed money.

In opposition to the evidence, let in on the side of the appellant, RW 6 (SDO police by name Dvivedi) has deposed that he was assigned duty at Dabra on 24.2.1985 in connection with the visit of the Prime Minister and that he was not in the Headquarters on that date and the distance between Niwadi and Dabra is about 80 kms. RW 4(SDO (Civil) Sharma) has denied all the allegations made against him by the appellant. Much argument was advanced on the basis of Exh. P-6, a photograph showing that in a meeting addressed by Chaturvedi this witness was also present, but RW 4 explains that it was not a meeting of the Congress Party but was a public meeting held to facilitate first respondent on his return from foreign trip. RW 1 in his evidence totally denied all the allegations covered by issue No. (5).

On a scrupulous examination of the evidence of the witnesses examined on the side of the appellant, we arrive at an irresistible conclusion that the appellant has miserably failed to establish the allegations of corrupt practices within the mischief of Section 123(7) of the Act relating to issue No. (5). Even assuming that RWs 4 and 6 had accompanied the rally, as pointed out by the High Court, no inescapable inference can be drawn that these two officials were assisting the first respondent in procuring votes and probably they might have ac-
596
companied the rally for maintaining the law and order.

Further, when the learned Judge of the High Court, who has very carefully marshalled the evidence, has not found it possible to candidly accept the evidence of these witnesses for the reasons assigned in the judgment, we find no reason to take a contrary view. Moreover, we too after a close scrutiny of the evidence and the pleadings especially relating to issue No. (5), are in agreement with the views of the High Court and are fully satisfied that the appellant has miserably failed in substantiating his charges covered by issue No. 3 to 5 which are alone pressed before us as indicated in the earlier part of this judgment and the judgment under appeal does not suffer from any legal infirmity resulting in serious prejudice to the appellant.

In the result, the judgment of the High Court is upheld and the appeal is dismissed with costs.

Y. Lal Appeal dismissed.

?
597