

Before Satish Kumar Mittal, J.

IQBAL SINGH—Petitioner

versus

GAGGANJIT SINGH BARNALA & OTHERS—Respondents

E.P. No. 1 OF 2002

1st July, 2005

Representation of People Act, 1951—Ss. 100, 123(1) & (4)—Election to the Legislative Assembly—Repondent No.1 declared to be elected—Allegations of irregularities and illegalities during the course of counting of votes and declaration of result—Petitioner failing to establish the allegations of illegalities and irregularities—Testimonies of witnesses do not prove the allegations made by the petitioner—Witnesses corroborating the fact that no written complaint to the Election Commission was made by the petitioner about the alleged commission of illegalities & irregularities—On the basis of these allegations, election of respondent cannot be declared void under section 100 of the Act—Allegations of corrupt practices—Must be clear and specific—Petitioner failing to disclose all the material facts and prove at all the allegations regarding distribution of money by respondent or his election agent by leading any cogent evidence—Allegations against respondent of derogatory remarks by petitioner & labelling him to be an extremist during the election campaign—Publication of an interview given by respondent in a Punjabi Daily Newspaper levelling the allegations of terrorism against the petitioner—Petitioner failing to prove the allegations of corrupt practices—Merely because an interview was given by respondent no interence can be drawn that he made any statement of fact or he had given any implied consent for publication of that statement of fact—Allegation in the news item showing an attack on the election symbol of a political party and not on the personal character of petitioner—Petition liable to be dismissed.

Held, that the petitioner has not led any substantial evidence to prove the alleged illegalities and irregularities committed at the time of counting and declaration of result. Thus, all the allegations levelled by the petitioner regarding the illegalities and irregularities committing during the course of counting and declaration of wrong result by fabricating the final result sheet have not been fully established.

(Paras 55 & 60)

Further held, that the commission of corrupt practice by a returned candidate or his agent is a ground for setting aside the election under section 100 of the Act. Under Section 100(1)(b) of the Act, if the corrupt practice is committed by a returned candidate or his election agent, the election is void without any further condition being fulfilled. But, if the corrupt practice is committed by any other person other than the candidate or his election agent, it must be shown that it was committed by him with the consent of the candidate or his election agent. Under section 100(1)(d) (ii), if the corrupt practice is committed in the interest of the returned candidate by an agent, other than his election agent, it is further to be shown that the result of the election, insofar as it concerned the returned candidate, has been materially affected. A combined reading of clauses (b) and (d) (ii) of sub-section (1) of Section 100 shows that there may be a corrupt practice committed by an agent with or without consent of the candidate or his election agent. If it is with the consent of the candidate or his election agent it will fall within the purview of sub-section (1)(b) of Section 100 as the expression 'any other person' under section 100(1) (b) will include an agent other than election agent otherwise it will be within the ambit of sub-section (1)(d)(ii) of the Act.

(Para 67)

Further held, that the allegations of corrupt practice must be clear and specific. Every election petition shall contain a concise statement of material facts on which the petitioner relies. The petitioner has not disclosed all the material facts regarding distribution of money by respondent No. 1 or his election agent. The pleadings are regulated by Section 83 of the Act and it makes obligatory on the election petitioner to give the requisite facts, detail and the particulars of such corrupt practice with full statement with exactness as possible. The allegation of corrupt practice regarding distribution of money has not been given in detail. Even this allegation has not been proved by the petitioner. Neither the petitioner nor his any other witness has stated anything about the distribution of money by respondent No. 1 to the voters. Thus, the allegations regarding corrupt practice have not been properly pleaded nor proved at all by leading any cogent evidence.

(Para 69)

Further held, that from the evidence available on the record, the petitioner has failed to prove the allegations of corrupt practice alleged to have been committed by respondent No. 1 during the course of public meetings.

(Para 77)

Further held, that the first important ingredient of corrupt practice which falls under section 123(4) of the Act is that the alleged false statement was published by the candidate or his agent or by any other person with the consent of the candidate or his election agent. Such corrupt practice falls under clause (b) of Section 100(1) of the Act on which the election of a candidate can be declared void. But if such false statement of facts which amounts to corrupt practice under section 123(4) of the Act is being committed by a third person or by an agent other than the election agent of the petitioner, in the interests of the returned candidate, then such corrupt practice falls under clause (d) (ii) of Section 100(1) of the Act. In that situation, it has to be further established that commission of such practice has materially affected the result of the election of the returned candidate.

(Para 85)

Further held, that regarding the statement relates to the personal character of a candidate, a distinction has been drawn between the personal character of the candidate and his public and political character. The public and political character of a candidate is open to public view and public criticism and even if any false statements are made about the political views of a candidate or his public conduct or character, the same will not be covered under sub-section (4) of Section 123 of the Act.

(Para 86)

Further held, that the consent of respondent No. 1 as required for committing the corrupt practice under section 123(4) of the Act has neither been proved, nor it can be inferred from the circumstances of the case. Merely because an interview was given by respondent No. 1 and his photograph appeared in the newspaper no inference can be drawn that respondent No. 1 raised the slogan "*Atwad de adde nu, vote na pao gadde nu*" or he was author of the said slogan. In elections, generally such kind of slogan is being raised about the

election symbol of the political parties. If any such slogan has been published in a news item, such publication cannot be taken as publication of false statement of fact by the returned candidate pertaining to the character of a particular candidate when on such political symbol, different candidates are contesting the general election. Merely on the basis of the presence of respondent No. 1 at the time of the interview is not sufficient to prove the consent of the returned candidate requisite for constituting the corrupt practice under section 123(4) of the Act. It is dangerous to read into the grounds of Section 100 (1) (b) or in the definition of corrupt practice the implied consent of the returned candidate for any act done by a correspondent of the newspaper or publication of a news item. Such implied consent may create havoc in the election as various candidates contesting the election may have no control over the publication of the news item by the different newspapers.

(Para 91)

Mohan Jain, Advocate, *for the petitioner.*

M.S. Khaira, Senior Advocate with Mr. Abinashi Singh,
Advocate, *for the respondent No. 1.*

JUDGMENT

SATISH KUMAR MITTAL, J.

(1) In this petition filed under Section 80 of the Representation of the People Act, 1951 (hereinafter referred to as the Act), petitioner Iqbal Singh, the defeated candidate, has challenged the election of Shri Gagganjit Singh Barnala (respondent No. 1 herein) as Member of Legislative Assembly, from 80—Dhuri Assembly Constituency (Punjab).

(2) The general election of Punjab Legislative Assembly was held on February 13, 2002. In the said election, eight candidates contested the election from 80-Dhuri Assembly Constituency. The petitioner contested the said election on the party ticket of Shiromani Akali Dal (Mann) which was also known as “Panthak Morcha”, and his election symbol was “cart”. Respondent No. 1, the elected candidate, contested the said election on the party ticket of Shiromani Akali Dal (Badal). The counting of votes was held on 24th February, 2002

at Arya College, Dhuri. The result was declared on the same day, Respondent No. 1 was declared elected as having secured 25538 valid votes. The petitioner secured 23979 valid votes. Thus, respondent No. 1 was declared elected by a margin of 1559 votes over the petitioner.

PLEADINGS OF THE PARTIES :

(3) In this petition, the petitioner has challenged the election of respondent No. 1 on the grounds which primarily fall under Clause (b), (d) (ii), (iii) and (iv) of sub-section (1) of Section 100 of the Act.

(4) In the petition, it has been alleged that at the time of counting of votes and declaration of the result, various irregularities and illegalities were committed. The valid votes of the petitioner were deliberately reduced in connivance with the Returning Officer and other officials by tampering with the Electronic Voting Machines and by fabricating the result sheets. In this regard, it has been stated that the counting of the votes had started at 8 a.m. on 24th February, 2002. Initially, up to 6th round, the counting was going on smoothly. After completion of each round, the number of votes secured by each candidate was announced on public address system. After the 4th round, the petitioner was leading by 1232 votes. As per announcement made, after completion of 6th round, the petitioner had received 17201 votes and respondent No. 1 received 13939 votes. As such, the petitioner was leading with a margin of 3262 votes over respondent No. 1 at the time of completion of sixth round. Thereafter, another announcement was made by the election observer Shri A. Bhattacharya to the effect that the petitioner had secured 15551 votes up to 6th round, whereby he reduced the total votes polled in favour of the petitioner by 1650 votes. When the counting agent of the petitioner objected to the said announcement, the aforesaid observer got furious and ordered the counting agent of the petitioner to leave the counting hall. In the meanwhile, the Deputy Commissioner and Senior Superintendent of Police of the district also came in the counting hall. Subsequently, under the instructions of the Senior Superintendent of Police, force was used to get the counting hall vacated. Subsequently, after some time, in absence of any counting agent, the final result was declared in which respondent No. 1 was declared elected.

(5) The election of respondent No. 1 was materially affected due to the above-mentioned irregularities and illegalities committed during the election process and counting in his favour to the prejudice of the petitioner. The petitioner raised objection and met the Returning Officer as well as the election observer, but they refused to hear the petitioner. It has been alleged that up to 6th round, the petitioner was leading and thereafter the remaining counting was completed in absence of the counting agent of the petitioner hurriedly in which respondent No. 1 was wrongly declared as elected whereas in fact he did not secure more votes than the petitioner. It has been further alleged that after tampering with the Electronic Voting Machines and fabricating the result sheet, respondent No. 1 was illegally declared elected. It has been also alleged that during the course of counting, the counting agents of the petitioner were not shown the ballot account in Form No. 16 before the counting was being made in spite of the objections made by them. It has been alleged that at no point of time, the ballot paper accounts were shown to his counting agents. It has also been alleged that during the counting of 7th round, one Electronic Voting Machine shown to have polled 100% votes. When objection was raised, the said machine was withdrawn on the pretext that the battery of the same had failed and another machine was brought in. This information was supplied to the petitioner by Shri Major Singh, his counting agent on table No. 10 in the counting hall.

(6) In para 20 of the petition, it has been further alleged that rigging of the election is further established from the fact that at one booth i.e.. Booth No. 129 the total number of voters was 620 whereas the total votes shown to have been polled was 642. Actually, from this polling booth, only 393 votes were polled. This fact clearly indicates that grave illegalities were committed in connivance with the Deputy Commissioner and the Senior Superintendent of Police of the district at the time of counting, and wrong result was declared.

(7) In para 21 of the petition, it has been alleged that the fabrication of the result is further established from perusal of the final result on Form 20. In the column of one of the candidates i.e. respondent No. 3-Ms. Sultan Begum, the total number of votes secured by her at various polling stations has been shown as 8368 and the postal ballots secured by her are shown to be 27. But the total of these two figures again has been shown as 8368. This fact itself shows that the final result sheet is a forged and fabricated document.

(8) In para 18 of the petition, it has been alleged that respondent No. 1 had indulged in corrupt practice as defined in Section 123 of the Act. It has been alleged that respondent No. 1 distributed money to the prospective voters at various localities including Pholo Basti, Bajigar Basti, Ambedkar Basti, Ban Bhatt Basti and Luxmi Bagh in Dhuri. In this regard, a complaint was alleged to have been made to the Election Commissioner on 12th February, 2002.

(9) In para 23 of the petition, it has been further alleged that during the election campaign, respondent No. 1 had made derogatory remarks against the petitioner and labelled him to be an **extremist** in a public meeting held on 27th January, 2002 at Old Grain Market, Dhuri, and had also stated that "the petitioner was a terrorist and was involved in many criminal cases". He also raised a slogan "Atwad de adde nu, vote na pao gadde nu". The said slogan was for the petitioner as "cart" was his election symbol. The said fact of the speech was brought to the notice of the petitioner by **Kuldip Singh** son of Jagtar Singh and **Rajpal Singh** son of Joginder Singh, who had attended the said meeting. They informed the petitioner that due to the said speech, many persons have given second thought for polling in favour of the petitioner and same would be injurious to the ultimate decision of the public. It has been stated that these facts are totally false and frivolous as the petitioner is neither a terrorist nor any criminal case was pending against him.

(10) In para 24 of the petition, it has been further alleged that respondent No. 1 in a public meeting held at Amargarh on 2nd February, 2002, made similar remarks against the petitioner by calling him a 'terrorist'. The fact was conveyed to the petitioner by **Harish Kumar** and **Manjinder Sijgh**, who had attended the said meeting.

(11) In para 25 of the petition, it has been further alleged that an interview given by respondent No. 1 was published in the **Rojana Jagbani**, a newspaper of Hind Samachar group of Jalandhar, under the head "Atwad de adde nu, vote na pao gadde nu" da nara Dhuri'ch goonj reha - Gagganjit Singh Barnala. In the said interview, respondent No. 1 has stated that the petitioner had been totally ignored by the voters of the area. He reiterated the allegations of terrorism against the petitioner which in fact were totally false and

frivolous, and respondent No. 1 himself knew that the same were false. Due to the publication of this news item, a great harm had been caused to the petitioner as by virtue of labelling him as terrorist, the mind of the general public had been washed. In fact, respondent No. 1 levelled these allegations against the petitioner just to gain the votes and to prejudice the mind of the voters.

(12) The petitioner has also prayed that after declaring the election of respondent No. 1 as void and setting aside the same, he may be declared as duly elected from 80—Dhuri Assembly Constituency.

(13) In his written statement, respondent No. 1 denied all the material allegations levelled against him by the petitioner. It has been stated that no irregularity was committed at the time of counting. The proper procedure of counting was followed. The signatures of the counting agents were obtained after counting of each round. The counting was held in the presence of the counting agents of the candidates. No alleged objection at the time of counting was raised by the counting agents of the petitioner. No money was distributed by respondent No.1 or by his election agent or by any one on his behalf, as alleged in para 18 of the petition. It has been further stated that respondent No.1 never made any derogatory remarks against the petitioner. At no stage and in any public meeting or elsewhere respondent No.1 labelled the petitioner as terrorist. He never raised any slogan as alleged in para 23 of the petition. The slogan as mentioned in this para has been wrongly attributed to him. Regarding publication of the news item, it has been stated that the same did not come to his notice during the election. It has been stated that respondent No.1 did not make any false allegation against the petitioner nor he made any attack on the personal character of the petitioner. No corrupt practice was committed by him.

(14) Separate written statements have also been filed by respondents No.6 and 7 who are the defeated candidates.

(15) A replication has also been filed by the petitioner to the written statement filed by respondent No.1 in which he denied the averments made by respondent No.1 and reiterated the averments made by him in the election petition.

(16) On the pleadings of the parties, the following issues were framed :—

- “1. Whether respondent No.1 has committed corrupt practice as alleged in paragraphs 18,23 to 25 to the election petition, if so, to what effect ? OPP
2. Whether the election of respondent No. 1 is liable to be set aside on the grounds and reasons stated in paragraph 8, 20 and 21 of the election petition ? OPP
3. Whether the election petition is liable to be rejected, as not maintainable, for want of verification in accordance with the rules ? OPR
4. Relief.”

EVIDENCE LED BY THE PARTIES :

(17) In support of his case, the petitioner examined 19 witnesses including himself. To prove the allegations on issue no. 2, petitioner examined the following witnesses :—

- (a) PW1-Amarjit Singh, Tehsildar, Sangrur. He produced on record the voters list of Booth No. 129 as Ex. P-1 ; copy of Form No. 17-C in respect of Booth No. 129 as Ex. P-2, copy of Form No. 20 showing the final result of the election in respect of 80—Dhuri Assembly Constituency as Ex. P-3, and video tape of voting and counting, which was marked as ‘A’.
- (b) PW-7 Charanjeet Singh, who was the Presiding Officer of Booth No. 129 of Dhuri Assembly Constituency. He has proved Form PS05 for Booth No. 129, which is Voters Turn Out Form and the same was exhibited as Ex. P-10. According to this document, 393 votes were polled in Booth No. 129. He also proved the Presiding Officer Diary of Booth No. 129 prepared at the time of polling. The said document was exhibited as Ex. P-11.
- (c) PW-8 Gurnam Singh, who was Returning Officer of Dhuri Assembly Constituency. This witness has stated that the counting of votes, which was started at 8.00 a.m. on

24th February, 2002, was completed smoothly by noon time. After the counting of each round, the result was used to be announced by the Assistant Returning Officer. The final result was declared with the assistance of the Superintendent at 12.30 noon time. There was no struggle or fight after the 6th round inside the counting hall. The counting remained peaceful throughout. He did not call the Deputy Commissioner or Senior Superintendent of Police of the district. At the time of counting, video film was being recorded. Up to 11.00 a.m., 6th round of counting was completed. Thereafter, the five rounds completed at about 12.30 p.m. and the result was prepared and declared. He has stated that no complaint was made by the petitioner to him after the 6th round. He did not receive any complaint written or oral at the time of counting, though at the time of voting, he did not receive some complaint which has been exhibited as Ex. P-9, which is regarding publication of the news item in "Rojana Jagbani". He also received the copy of a complaint made by the petitioner to the Election Commissioner of India, copy of which has been exhibited as Ex. P-6, which is relating to the distribution of money to the voters in the Constituency. Regarding the announcement made after the 6th round in which the petitioner was declared leading by 3262 votes, this witness has shown his ignorance.

- (d) PW-9-Shiraj Ahmad, who was working as Assistant with the Returning Officer. This witness has stated that he was present at the time of counting to assist the Returning Officer in preparation of result. After every round, the Assistant Returning Officer used to announce the result. The counting was done smoothly and there was no altercation or interruption during the counting. He also stated that Iqbal Singh petitioner was never leading.
- (e) PW-10-Basant Kumar, Upper Division Clerk in the office of Election Commissioner, Delhi, who had brought the diary register pertaining to the month of February and March, 2002.

- (f) PW-11-Jaswinder Singh, Naib Tehsildar, Dhuri, who had brought the copy of Form No. PS-05 of Booth No. 129, Dhuri Assembly Constituency.
- (g) PW 13—Anil Walia, Photographer. He has stated that he had recorded the video cassette of the election up to the date of counting. He did not record any videography of the counting hall.
- (h) PW 14—Atri Bhattacharya, who was the observer for district Sangrur in the Punjab Assembly Election. He has stated that after every round, his officials announced the result but he did not announce any result. After every round, the result was prepared in his presence. He further stated that after the counting, no complaint was given to him. During the counting, no voting machine recorded 100% voting. No machine was changed.
- (i) Petitioner Iqbal Singh examined himself as PW 15 in support of the allegations.
- (j) PW 18—Jagjit Singh, son of Karam Singh, who was the counting agent of the petitioner on table No. 14 in the counting hall. He has stated that after the 4th round of counting, the petitioner was leading. At 10.30 a.m., a pronouncement was made after the 6th round that the petitioner was leading. Subsequently, Mr. Bhattacharya made another announcement whereby he reduced the total votes secured by the petitioner. Though, this witness has not stated that the petitioner has secured how many votes up to 6th round and in the second announcement how many votes were reduced. This witness also stated that after the 6th round, there was scuffle in the counting hall and counting agents of the petitioner were not allowed to remain in the counting hall. He has also stated that he was not shown the ballot paper accounts by the counting officials. However, in cross-examination, he has stated that nobody pushed him to go outside the counting hall at the time of counting. He did not ask for any ballot paper account. He further stated that he cannot say how it has been mentioned in his affidavit that no ballot paper

account was shown to him. After each round, the announcement regarding votes secured by each candidate was made. He used to keep those announcements by writing on a paper. He also used to write number of votes secured by each candidate in each round up to 6th round, but he did not produce the said counting. He has stated that he is not aware whether he had handed over the said paper to the candidate or not.

(18) To prove the allegations of corrupt practice on issue No. 1, the petitioner examined the following witnesses :—

- (a) PW 2—Harbans Singh, who was working as Section Officer in the Office of Election Commission of India, was called to bring the record of receipt of the representations during the election. This witness has stated that the summoned record was not available in the office of Election Commission of India.
- (b) PW 3—Smt. Veena, Junior Assistant, Election Department, Punjab, who was called to bring the diary register containing the entries of representations received in the office of Election Department, Punjab. This witness has brought diary register for the month of February and March, 2002.
- (c) PW 5—Inspector Joginder Singh, who was posted as SHO, P. S. Dhuri. This witness has stated that he received a complaint (Ex. P-6). On the said complaint, the statement of Kuldeep Singh complainant was recorded, copy of which was exhibited as Ex. P—8. He has also stated that on 12th February, 2002, he received another complaint with regard to the publication of the news item in newspaper “Rojana Jagbani” on 6th February, 2002. He made the enquiries on those complaints. But, since the offence was non-cognizable by the police, therefore, he made a report in this regard to the Deputy Superintendent of Police, copy of which has been exhibited as Ex. P—9, On the date of counting of votes i.e. 24th February, 2002, he was present on duty outside the counting hall. He has stated that at one time, petitioner Iqbal Singh was announced to be leading.

- (d) PW 6—Joginder Singh Sandhu, Sub Editor, Rojana Jagbani, Jalandhar, has stated that the news item, which has been exhibited as Ex. P—5, was published on 6th February, 2002. The same was given by him on the basis of interview given by respondent No. 1. The said news item was drafted after the departure of respondent No. 1.
- (e) PW 16—Rajpal Singh, son of Joginder Singh, resident of Village Jakhlan, Tehsil Dhuri, who attended the public meeting held on 27th January, 2002 at Old Grain Market, Dhuri along with one Kuldeep Singh, son of Jagtar Singh, to prove that in the said public meeting, respondent No. 1 has called the petitioner a “terrorist”, who was involved in many criminal cases and also raised a slogan that “Atwad de adde nu, vote na pao gadde nu”.
- (f) PW 17—Kuldeep Singh, son of Didar Singh, who made a complaint to the Returning Officer regarding publication of the news item in Rojana Jagbani on 6th February, 2002.
- (g) PW 19—Harish Kumar, son of Ram Lubhaya, resident of Amargarh, who alleged to have attended the public meeting held on 2nd February, 2002 at Amargarh, in which the petitioner was alleged to have been labelled as terrorist by respondent No. 1.

(19) The petitioner himself appeared as PW 15 in support of the allegation of corrupt practice.

(20) To controvert the allegations levelled by the petitioner, respondent No. 1 examined the following six witnesses, including himself :—

- (a) RW 1—Gagganjit Singh Barnala, respondent No. 1 examined himself and denied all the allegations levelled by the petitioner.
- (b) RW2—Jagdeep Singh, son of Manjeet Singh, counting agent of respondent No. 1. This witness has stated that counting was fairly and peacefully conducted on 24th February, 2002. No objection of any kind was raised by

anybody about the counting or declaration of result. This witness further stated that he attended the public meetings addressed by respondent and in those meetings no slogan like "Atwad de adde nu, vote no pao gadde nu" was raised by any one including respondent No. 1.

- (c) RW 3—Sukhwinder Singh Dhandra, son of Modan Singh, resident of village Dhandra, who attended the public meeting held on 27th January, 2002 at Old Grain Market, Dhuri. This witness has stated that in that meeting, the petitioner was neither addressed as a terrorist by respondent No. 1 nor any slogan as "Atwad de adde nu, vote na pao gadde nu" was raised by any one or by respondent No. 1.
- (d) RW 4—Nachhattar Singh, who attended the public meeting which was held on 27th January, 2002 at Old Grain Market, Dhuri. This witness has stated that in that meeting, the petitioner was neither addressed as a terrorist by respondent No. 1 nor any slogan as "Atwad de adde nu, vote no pao gadde nu" was raised by any one or by respondent No. 1.
- (e) RW 5—Jagjit Singh, who attended the public meeting which was held on 8th February, 2002 at Amargarh. This witness has stated that in that meeting, the petitioner was neither addressed as a terrorist by respondent No. 1 nor any slogan as "Atwad de adde nu, vote no pao gadde nu" was raised by any one or by respondent No. 1.
- (f) RW 6—Bhagwant Singh, who attended the public meeting at Dhuri. This witness has stated that in that meeting, the petitioner was neither addressed as a terrorist by respondent No. 1 nor any slogan as "Atwad de adde nu, vote no pao gadde nu" was raised by any one or by respondent No. 1.

(21) I have heard the arguments of the learned counsel for the parties.

ARGUMENTS OF THE LEARNED COUNSEL FOR THE PETITIONER :

(22) Shri Mohan Jain, learned counsel for the petitioner submitted that the petitioner has fully proved the allegations of irregularities and illegalities committed during the course of counting as well as manipulation and fabrication of the final result by the Returning Officer in connivance with the other officials, as alleged in paras 8, 20 and 21 of the petition. The learned counsel submitted that from the statements of PW 5—Inspector Joginder Singh, PW 8—Gurnam Singh, Returning Officer, PW 14—Atri Bhattacharya, Observer, PW 15—Iqbal Singh (petitioner) and PW 18—Jagjit Singh, the allegations levelled in para 8 of the petition regarding reducing of the votes of the petitioner after 6th round from 17201 to 15551 and subsequently declaring respondent No. 1 elected illegally, have been fully established. The presence of the Deputy Commissioner and Superintendent of Police at the counting hall for unusual long hours and the announcement made by the election observer after 6th round, have been proved by the evidence of PW5—Inspector Joginder Singh and PW 8—Returning Officer Gurnam Singh, PW 8 has stated that the election observer Mr. Bhattacharya remained present during the counting and he left only after the final result was announced. He has further stated that the result of one round was announced by Mr. Bhattacharya on the mike. On the other hand, PW 14 Atri Bhattacharya has stated that he did not pronounce any result after the 6th round. The result of each round was pronounced by the other officials. He has also stated in his statement that the possibility of leading of the petitioner at one time during the course of counting cannot be ruled out.

(23) The learned counsel for the petitioner further stated that the presence of Deputy Commissioner and the Superintendent of Police in the counting hall after the 6th round of counting has also been established on the record though this fact has been denied by PW 14, who has stated that those officers remained in the counting hall for one hour only and they left the counting hall before the final result was declared. The learned counsel submitted that in the final result sheet (Ex. P-3), up to 6th round, the petitioner is shown to have received only 15511 votes whereas as per the announcement made after completion of the 6th round, the petitioner had received

17201 votes. Thus, the valid votes received by the petitioner up to 6th round were illegally reduced by the election officials in connivance with each other.

(24) The learned counsel further submitted that the rigging of the election result has been established from the fact that at one booth i.e. Booth No. 129, the total number of votes were 620 whereas in this booth, 642 votes were shown to have been polled. Actually, from this booth, only 393 votes were polled as is clear from Ex. P-2, which is copy of Form No. 17-C in respect of Booth No. 129. Ex. P-10, copy of Form PS 05 of Booth No. 129 and Ex. P-11. copy of Presiding Officer Diary of Booth No. 129. These documents have been proved on record by PW1—Amarjit Singh and PW7—Charanjeet Singh. The learned counsel submits that in the final result sheet from booth No. 129. The total valid votes polled have been shown as 642 out of which respondent No. 1 has secured 209 and petitioner has secured 105 votes. The learned counsel submits that these facts show that great illegalities were committed at the time of counting, and respondent No. 1 was wrongly declared as elected in spite of the fact that he has secured less votes than the petitioner.

(25) The learned counsel further referred to another irregularity committed in the final result in Form No. 20. In column of one candidate Ms. Sultan Begum (respondent No. 3), the total votes received by her from polling stations were shown to be 8368. She had also received 27 postal votes, but in the total, she is shown to have been polled 8368 votes. This fact shows that the final result sheet does not reflect the true picture and actually the same was fabricated later on, and respondent No. 1 was wrongly declared as elected by the election officials under pressure.

(26) The learned counsel further submitted that during the counting of 7th round, one Electronic Voting Machine was shown to have been polled 100% votes and on objection having been raised, the said machine was withdrawn on the pretext that the battery of the same had failed. This fact has been proved by PW 15.

(27) The learned counsel submitted that the aforesaid allegations, which have been duly proved, fall under clause (d) (iii) and (iv) of sub-section (1) of Section 100 of the Act and on the basis of these proved allegations, the election of the returned candidate is liable to be declared void.

(28) On issue No. 1 pertaining to the allegations of corrupt practice, the learned counsel submitted that respondent No. 1 committed the corrupt practice as defined in Section 123 of the Act. These allegations of corrupt practice as levelled in paras 23 to 25, have been duly established and thus the election of respondent No. 1 is liable to be declared void under clause (b) of sub-Section (1) of Section 100 of the Act.

(29) Though in para 18 of the petition, the allegations of distributing money to the prospective voters at various localities have been made, and in this regard a complaint (Ex. P6) was made to the authorities yet during the course of arguments, the learned counsel did not press the allegations made in this para. The learned counsel has pressed that respondent No. 1 has committed corrupt practice as alleged in paras 23 to 25 of the petition. He submitted that in two public meetings held on 27th January, 2002 at Old Grain Market, Dhuri and on 2nd February, 2002 at Amargarh, respondent No. 1 had made derogatory remarks against the petitioners. He had stated that the petitioner was a terrorist and was involved in many criminal cases. He had also raised a slogan "Atwad de adde nu, vote no pao gadde nu". Since the "cart" was the election symbol of the petitioner, therefore, the aforesaid slogan was raised with intent to prejudice the election result of the petitioner. The learned counsel submitted that the petitioner was neither a terrorist nor he was involved in any criminal case. In spite of that, respondent No. 1 deliberately made the false statement knowingly and believing the same to be false and wrong with intention to adversely affect the result of the election of the petitioner. Those meetings were attended by Kuldip Singh, son of Jagtar Singh, Rajpal Singh, son of Joginder Singh, Harish Kumar son of Ram Lubhaya and Manjinder Singh son of Angrez Singh. Out of these four persons, the petitioner has examined PW16—Rajpal Singh and PW19—Harish Kumar. These witnesses have proved on record that in those two meetings respondent No. 1 had called the petitioner a terrorist, who was involved in many criminal cases. They have also proved that respondent No. 1 raised the slogan "Atwad de adde nu, vote no pao gadde nu" which means that the centre of terrorism is reflected by the cart, which should not be voted for. The learned counsel submitted that because of the aforesaid false statement, reputation of the petitioner was severely hit and his election was badly affected.

(30) The learned counsel further submitted that respondent No. 1 made the derogatory remarks against the personal character of the petitioner in the interview given by him to the Sub Editor of the Punjabi Newspaper "Rojana Jagbani" which was published on 6th February, 2002 with the consent of respondent No. 1. copy of which has been produced on record as Ex. P-5. In the aforesaid news item, which is based on the interview given by respondent No. 1 the petitioner has been branded as a terrorist. In the said news item, it has been stated that the petitioner has been totally ignored by the voters of the area as he has been involved in terrorist activities. Due to the false propaganda adopted by respondent No. 1, the election prospects of the petitioner was prejudicially affected. These allegations have been clearly proved by PW 17—Kuldeep Singh, PW 5—Joginder Singh, Inspector and PW 6—Joginder Singh Sandhu, Sub-Editor. The learned counsel for the petitioner submitted that these allegations of corrupt practice clearly fall under clause (4) of Section 123 of the Act.

(31) Learned counsel submitted that by branding the petitioner as terrorist by respondent No. 1, the election prospects of the petitioner was reasonably prejudiced. The word "terrorist" (Atankwadi) has been defined in Section 2(b) of Terrorist affected areas (Special Courts) Act, 1984, as a person who indulges in wanton killing of persons or in violence or in the disruption of services or means of communications essential to the community or in damaging property with a view to putting the public or any section of the public in fear or affecting adversely the harmony between different religious, racial, language or regional groups or castes or communities; or coercing or overawing the Government established by law; or endangering the sovereignty and integrity of India. The learned counsel submitted that in view of this definition to call a person as a terrorist certainly amounts to derogatory remarks against the personal character of a person.

(32) The learned counsel further submitted that from the evidence available on the record, the petitioner has proved beyond reasonable doubt all the ingredients of the corrupt practice as defined under clause (4) of Section 123 of the Act. To bring the corrupt practice within the purview of clause (4) of Section 123 of the Act, there must be a publication by a candidate or his agent or by any other person with the consent of the candidate or his election agent; the publication

must contain statement of fact which is false and which the candidate or his agent believes to be false or does not believe to be true; the statement must be in relation to the personal character or conduct of the candidate; and it must be reasonably calculated to prejudice the prospects of the candidate's election.

(33) The learned counsel submitted that false statement of fact was published in the news item (Ex. P-5) with the consent of respondent No. 1. Learned counsel submits that even though the consent of the elected candidate may be implied, but the same shall be sufficient for the purpose of proving the consent in the alleged corrupt practice as defined in sub-section (4) of Section 123 of the Act. While referring to the decision of the Hon'ble Apex Court in **Gadakh Yashwantrao Kankarrao versus E. V. alias Balasaheb Vikhe Patil and others (1)**, learned counsel submitted that the consent of the candidate for the purposes of sub-section (4) of Section 123 of the Act when the offending statement of fact which is false is published by any other person may be proved by inference from the circumstances and not necessarily by positive evidence to that effect since positive evidence of consent may not be available. He submitted that in the instant case to say that a person is a terrorist, is a statement of fact, which pertains to the personal character of the said person. The said statement of fact was made in the instant case in the news item with the implied consent of respondent No. 1, as whatsoever was reported in the news item, was based upon the statement made by respondent No. 1. He never said, either before filing of the petition or before the Court, that he had never made any such statement before the Sub Editor. The learned counsel submitted that the sole purpose of designing the aforesaid slogan was to do character assassination of the petitioner so that his election prospects were adversely affected. In common parlance the word "attwaad" is understood by the common folk is with reference to "terrorism" or "terrorist" activities and not "extremist", which is too abstract to be followed in the given circumstances.

(34) The learned counsel further submitted that the burden of proving the ingredients of corrupt practice as defined in Section 123(4) of the Act initially lies on the election petitioner and the same would be discharged by swearing to that effect and onus would then shift to the candidate who published the statement. The

burden of proving that the candidate publishing the statement believed it to be false or did not believe it to be true though on the complaining candidate is very light and would be discharged by the complaining candidate swearing to that effect. Thereafter it would be for the candidate publishing the statement to prove otherwise. The question whether the statement was reasonably calculated to prejudice the prospects of the election of the candidate against whom it was made would generally be a matter of inference. So, the main onus on an election petitioner under Section 123(4) of the Act is to show that a statement of fact was published by a candidate or his agent or by any other person with the consent of the candidate or his election agent and also to show that that statement was false and related to his personal character or conduct. Once these facts are proved then the burden shifts on the candidate making the false statement to show what his belief was. The learned counsel for the petitioner states that in this case the petitioner has proved all these facts and in contrary respondent No. 1 has not discharged his burden. Hence, the allegations of corrupt practice have been fully established in this case.

ARGUMENTS OF THE COUNSEL FOR RESPONDENT NO. 1 :

(35) On the other hand, Shri M.S. Khaira, learned counsel for respondent No. 1 has submitted that to prove the issue regarding illegalities in counting and declaration of wrong result, the petitioner has examined PW1, PW5, PW7, PW8, PW9, PW10, PW11, PW13 and PW14, but none of these witnesses has supported the allegations levelled by the petitioner. PW8, PW9 and PW14 have clearly stated that there was no problem during the counting and the counting was absolutely fair. These witnesses have further stated that the final result was declared at 12.30 p.m. after the counting of all the rounds. These witnesses are the independent witnesses and from their examination, the petitioner was unable to abstract any material which could cast any doubt on the fairness of the counting.

(36) PW8—Gurnam Singh, who was the Returning Officer and was examined by the petitioner, did not support the case of the petitioner at all. PW12 and PW13, who were produced by the petitioner for videographing of the counting, have not supported the case of the petitioner. They have stated that they had only videographed outside the counting hall and not inside it. Learned counsel for respondent

No. 1 submitted that the evidence led by the petitioner has been rebutted by respondent No. 1 by examining RW1 and RW2. The petitioner and Jagdeep Singh had clearly stated that no illegality or irregularity was committed during the counting. The petitioner has not been able to elicit anything from their cross-examination which could in any way cast a doubt on the fairness of the counting.

(37) Learned counsel for respondent No. 1 submitted that no complaint whatsoever was made by the petitioner to the election authorities regarding the allegations of illegalities or irregularities or declaration of wrong result during the course of counting or after the declaration of result. He submitted that all the allegations made in the petition are concocted and after thought.

(38) Regarding the allegations of corrupt practice, as levelled in paras 23 to 25, learned counsel for respondent No. 1 submitted that these allegations have not been proved beyond all reasonable doubts. It has been alleged that in two public meetings, which were held on 27th January, 2002 at Dhuri and on 2nd February, 2002 at Amargarh, respondent No. 1 called the petitioner a terrorist, who was involved in many criminal cases. He also alleged to have raised a slogan "*Atwad de adde nu, vote na pao gadde nu*". These meetings were alleged to have been attended by four persons, out of which only two persons have been examined as PW16—Rajpal Singh and PW19—Harish Kumar. These witnesses have not supported the case of the petitioner at all. Rather, their statements are contradictory and untrustworthy.

(39) Learned counsel for respondent No. 1 submitted that there is no evidence on the record from which it can be established beyond reasonable doubts that the petitioner was described as a "terrorist" by respondent No. 1. He further submitted that when the petitioner filed a complaint to the Election Commissioner, Punjab on 6th February, 2002 (Annexure P-3) and to the Election Commission of India on 25th February, 2002 (Annexure P-1), he did not mention that in the public meetings held at Dhuri on 27th January, 2002 and at Amargarh on 2nd February, 2002, the petitioner was called as a terrorist involving in many criminal cases. When the petitioner examined Joginder Singh, Inspector —PW5, who had recorded the statement of Kuldeep Singh, no question was put to him as to whether Kuldeep Singh had narrated about any meeting held on 27th January, 2002 at Old Grain Market, Dhuri and respondent No. 1 having made any allegation in that meeting describing the petitioner as a terrorist

with a criminal record. These facts further show that these allegations were concocted at the time of filing of the election petition. He further submitted that no suggestion was put to respondent No. 1 regarding the public meeting alleged to have been held in Old Grain Market, Dhruvi on 27th January, 2002. Further, respondent No. 1 has produced RW3—Sukhwinder Singh Dhandra, who has stated that he had also attended the meeting held on 27th January, 2002 at Old Grain Market, Dhuri in which neither the alleged slogan was raised nor the petitioner was called as a terrorist.

(40) Regarding the allegation of publication of news item (Ex. P5), learned counsel for respondent No. 1 submitted that from the evidence led by the petitioner, this allegation has also not been proved. Neither it has been pleaded nor proved that the said news item was published with the consent of respondent No. 1. In his statement, PW6—Joginder Singh Sandhu has stated that it was heard by him that such type of slogan was being raised in the Constituency. He further stated that he did not note down the interview of respondent No. 1 in question-answer form and the news item was drafted subsequently after his departure, when a question was put to respondent No. 1 that such slogan was being raised in the Constituency, he replied that he had also heard such a slogan. Nothing else was said by him regarding the slogan. He has not stated that the above-said news item was published by him with the consent of respondent No. 1. From the statement, it is clear that respondent No. 1—Gagganjit Singh has not stated anything about the alleged slogan.

(41) There is no allegation in the petition that the newspaper "Rojana Jagbani" published the news item (Ex. P-5) with the consent of respondent No. 1. Further, none of the witnesses produced by the petitioner have also proved this fact. The Sub Editor, who got published the aforesaid news item was not the election agent of respondent No. 1. The petitioner has also not led any evidence to show that the Sub Editor was active canvasser or the agent of respondent No. 1 and he published the aforesaid news item with the consent of the returned candidate. In such situation, learned counsel for the petitioner submitted that the provisions of Section 100(1)(b) of the Act are not attracted. He further submitted that even these allegations do not attract or fall under Clause 100(1)(d)(ii) as there is no averment and proof that by publication of the alleged news item by the Sub Editor, the election result of respondent No. 1 was materially affected.

(42) Learned counsel for respondent No. 1 also submitted that from the news item (Ex. P5) and the statement of PW6—Joginder Singh Sandhu, no corrupt practice as defined in Section 123(4) of the Act has been proved.

(43) Learned counsel for respondent No. 1 further submitted that neither the petitioner has pleaded nor proved that the news item (Ex. P5) was distributed and circulated in Dhuri Assembly Constituency, and that too, with the consent of respondent No. 1 or his election agent. Neither the petitioner nor any of his witnesses have made such statement. Neither any averment has been made in this regard in the petition itself nor any suggestion was put to respondent No. 1 or any of his witnesses. Thus, the learned counsel submitted that there is no evidence at all on the record to prove that the news item (Ex. P5) was ever circulated and distributed in Dhuri Assembly Constituency.

(44) Learned counsel further submitted that the allegations contained in the news item (Ex. P5) do not contain a statement of fact relating to the personal character of the petitioner. At the most, it can be said that those allegations pertain to the election symbol of the petitioner. Learned counsel submitted that anything said about the election symbol of a candidate is not allegation of personal character of the candidate. He submitted that the petitioner was the candidate of the Panthak Morcha and "Cart" was the election symbol of the said Morcha. Even if there was some criticism of the election symbol of a political party, such kind of statement of fact cannot be said to be related to the personal character of the candidate. The petitioner himself has filed Annexure P-3 with the election petition wherein his allegation is "In this comment he has directly tried to defame our election symbol linking it with as 'WAGON OF TERRORISM.' This derogatory comment is repeatedly mentioned by him in all his public meetings and addresses' which goes to show that he himself does not consider this slogan as a comment on his personal character, rather he considers it an attack on his election symbol which can in no way be termed as corrupt practice under Section 123(4).

(45) The learned counsel further submitted that the word "Atwad" simply means the "Extremism". The petitioner himself in the petition in para 23 has stated that during the election campaign, respondent No. 1 has made derogatory remarks against the petitioner

and labelled him as an extremist. The learned counsel submitted that the "Extremist" is not a derogatory word. According to Standard Concise Dictionary, the word "Extremist" means. "Person who holds radical views in politics". He states that there is a difference between "Extremism" and "Terrorism". The word "Atankwad" does not mean terrorism. He stated that the slogan "Atwad de adde nu, vote na pao gadde nu" depicts that the party which is having extremist view should not be voted.

(46) Learned counsel stated that the news item (Ex.P5) if at all published without the express or implied consent of respondent No.1 in that situation, such allegations fall in clause (d) (ii) of sub-Section (1) of Section 100 of the Act and in that situation, the petitioner has also to prove that the result of the elected candidate has been materially effected by such corrupt practice. There is no such pleading and evidence available on the record which establishes that the result of the petitioner was materially affected by the publication of the aforesaid news item in the newspaper which was published by a third party.

ANALYSIS OF AGRUMENTS AND FINDINGS :

(47) After hearing the arguments of the learned counsel for both the parties and perusing the evidence available on the record, my issue-wise findings are as under :—

ISSUE NO. 2 REGARDING THE ILLEGALITIES AND IRREGULARITIES COMMITTED DURING THE COURSE OF COUNTING AND DECLARATION OF WRONG RESULT BY FABRICATING THE FINAL RESULT SHEET.

(48) These allegations, which have been levelled in paras 8, 20 and 21 of the election petition, fall under Section 100(1) (d) (iii) and (iv) of the Act on which the election of an elected candidate can be set aside. The allegations on this issue can be divided in three parts.

(49) Firstly, it has been alleged that various illegalities or irregularities were committed at the time of counting. Even though the petitioner had secured more votes but he was wrongly declared defeated and respondent No. 1 was wrongly declared elected. The allegation is that up to 6th round, the petitioner was leading by

securing 17201 votes whereas respondent No. 1 at that time had secured 13939 votes. An announcement was also made on the Public Address System about this, but subsequently Mr. Bhattacharya, who was the Observer, made the announcement by reducing the votes of the petitioner from 17201 to 15551. This was done by him illegally. The further allegations are that after the 6th round, no counting agent of the petitioner was allowed to sit in the counting hall and ultimately the final result was declared hurriedly in which respondent No. 1 was illegally declared elected. Further the allegation is that all this was done in presence of the Deputy Commissioner and the Senior Superintendent of Police, Sangrur by the Observer Mr. Bhattacharya in connivance with the Returning Officer and the other officials.

(50) From the evidence led by the petitioner, these allegations have not been proved. In order to prove these allegations, the petitioner has examined himself as PW15. He has stated that after the completion of the counting of each round, the result of each counting was being announced on the Public Address System. He was leading up to 6th round. At 10.30 a.m., the result of the 6th round was pronounced and he was declared to have received 17201 votes by that time whereas respondent No. 1 had received only 13939 votes. In the 6th round, he was leading by 3262 votes over respondent No. 1 but later on Mr. Bhattacharya, the election observer made another announcement in which the petitioner was told to have secured 15551 votes instead of 17201 votes. Thus, the votes polled to him were reduced by 1650 votes. When an objection was raised, the Observer ordered them to vacate the counting hall. Subsequently, he hurriedly within half-an-hour declared the final result in which respondent No. 1 was wrongly declared as elected by securing 25538 votes whereas he was shown to have secured only 23979 valid votes. PW18-Jagjit Singh also states that after 6th round, the petitioner was leading but subsequently his votes were reduced by Mr. Bhattacharya in second announcement.

(51) The aforesaid self-serving statement of the petitioner and PW18 do not inspire any confidence. The perusal of the final result sheet shows that up to 6th round, the petitioner was leading. He had secured 15511 votes whereas respondent No.1 had secured 13941 votes. It is not clear on what basis, the petitioner and PW18 are stating that on completion of 6th round, it was announced that the petitioner had secured more than 17200 votes. In his cross-examination, petitioner

(PW15) has stated that his agents were maintaining the record of counting of every round. After 6th round, the said record was handed over to him. He has also admitted that when the election petition was prepared, the said record was shown to his Advocate. He has further admitted that the said record was with him but he has not produced the said record. In my opinion, the said record was the best evidence available with the petitioner to prove that up to 6th round, he had secured more than 17200 votes. But the said record has been withheld from the Court for the reason best known to the petitioner.

(52) PW18-Jagjit Singh, who was examined by the petitioner to prove the illegalities committed during the counting, did not support the case of the petitioner at all. He has not stated in his examination-in-chief that after completion of 6th round, the petitioner secured 17201 votes. He has only stated that result of each round was being pronounced on the Public Address System and up to 6th round, the petitioner was leading. When Mr. Bhattacharya made announcement on the Public Address System by reducing the votes of the petitioner considerably, then the trouble started and the Deputy Commissioner and Senior Superintendent of Police came inside the counting hall and asked the persons present in the counting hall to vacate the same. From the statement of this witness, it cannot be proved that after the 6th round, respondent No. 1 was wrongly declared elected illegally though the petitioner had secured more votes. This witness has stated that he was not aware whether any ballot paper account was kept or not. He did not ask for any ballot paper account whereas in his examination-in-chief this witness has stated that no ballot paper account was shown to him. This witness has also stated that he was writing on a paper the result of each round as declared by the officials. He wrote down the number of votes secured by each candidate up to 6th round but he was not aware whether he had handed over the said paper to the petitioner or not. This witness has not produced any such writing when he appeared in the witness box. The testimony of this witness in my opinion does not prove the allegations made by the petitioner in para 8 of the petition.

(53) Secondly, the statement of the petitioner to the effect that after 6th round, the counting of the remaining rounds was completed hurriedly and respondent No. 1 was illegally declared elected in connivance with the Observer and the other officials though he has not secured more votes than the petitioner does not inspire any

confidence because these allegations have not been supported by the official witnesses produced by the petitioner. The petitioner has examined PW8-Gurnam Singh, who was the Returning Officer of the Dhuri Assembly Constituency. In his statement, he has stated that after counting of every round, the result was used to be announced by the Assistant Returning Officer. At the time of counting, video film was being recorded. The 6th round was completed by 11.00 a.m. Now, he could not tell who was leading up to 6th round. The final result was declared at 12.30 p.m. Mr. Bhattacharya, who remained present during the counting, left the counting hall after the pronouncement of the final result. This witness has further stated that the final result was announced by him. After the 6th round, there was no fighting and struggle inside the hall. The counting remained peaceful throughout. He did not call for the Deputy Commissioner and the Senior Superintendent of Police. The result of each and every round was separately prepared and announced. No complaint was made by Iqbal Singh-petitioner to him after the sixth round. He did not receive any complaint written or verbal after the counting. This witness does not support the allegations of the petitioner at all. Rather, he has stated that the counting was conducted smoothly without trouble and the result was pronounced on the basis of the counting of each round.

(54) The petitioner has also examined PW14-Atri Bhattacharya, who was the election observer. He has stated that he did not announce the result after any round and the same was announced by his officials. He stated that without consulting the papers, he could not say who was leading after the 4th round. May be the petitioner was leading at one stage during the course of counting. He has stated that after every round the result was prepared in his presence. He states that he did not call the Deputy Commissioner or the Superintendent of Police. However, the Deputy Commissioner and Senior Superintendent of Police came together in the counting hall and remained for half-an-hour. He further stated that orally, a complaint was made to him about the wrong announcement but no written complaint was made to him. He further stated that after the counting, no complaint, written or oral, was given to him. He has specifically denied that he had completed all the process of counting hurriedly and things were not done in accordance with law. He further stated that when the final result was pronounced, the Deputy Commissioner and Superintendent of Police were not present. He has stated that the

process of counting was completed in a legal and proper manner and the final result was declared validly. This witness has also not supported the allegation levelled by the petitioner,. There is no reason for disbelieving the testimonies of PW8 and PW14 who are the independent and official witnesses.

(55) The petitioner has also examined PW9-Shiraj Ahmed, who was working as Sub-Divisional Assistant in the office of Sub-Divisional Magistrate Dhuri. This witness has stated that after every round, the Assistant Returning Officer used to announce the result. The counting was completed earlier to the lunch break. There was no altercation during the counting. The counting was never interrupted. No person sitting on the side of Iqbal Singh petitioner was turned out of the counting hall. The testimony of this witness goes contrary to the allegation made by the petitioner. Thus, the petitioner has not led any substantial evidence to prove the alleged illegalities and irregularities committed at the time of counting and declaration of result.

(56) In his statement, the petitioner has taken the stand that after declaration of the result, he had made a complaint to the Observer. But he was unable to tell at what time and on which date the said complaint was made. With the election petition, the petitioner has annexed one complaint (Annexure P-1) made by him to the Election Commission of India on 25th February, 2002 but when he appeared in the witness box, he did not prove the said complaint. He has simply stated that he has made a complaint to the Election Commission. From the evidence available on the record i.e. Ex.P4, it appears that no such complaint was ever made by the petitioner to the Election Commission of India alleging that irregularities and illegalities were committed at the time of counting, PW8-Gurnam Singh, Returning Officer as well as PW14-Atri Bhattacharya, Election Observer have stated that they have not received any written complaint from the petitioner with regard to the alleged illegalities and irregularities committed at the time of counting. Thus, no written complaint was made by the petitioner about the alleged commission of illegalities and irregularities. In such situation, the Hon'ble Supreme Court in **M. Budda Prasad versus Simhadri Satyanarayana Rao and others**, (2) has observed that when neither the contesting candidate nor any of his counting agent

made any complaint before the Returning Officer during the course of counting or thereafter, then the various allegations regarding illegalities and irregularities alleged to have been committed during the course of counting, were taken to be made with the sole object of making a fishing enquiry. In such situation, the believing of the testimony of the official witnesses for coming to the conclusion that no illegalities and irregularities were committed during the counting, was upheld.

(57) The final result sheet further reveals that total counting was made in 12 rounds. Up to 6th round, the petitioner was leading but after 6th round, respondent No. 1 was leading and he had secured more votes than the petitioner. In the last six rounds the petitioner had secured 8433 votes whereas respondent No. 1 secured 11565 votes. Accordingly he was declared elected. Thus the petitioner has not been able to prove the allegations levelled by him in para 8 of the petition.

(58) The second allegation regarding the illegalities and irregularities committed during the course of counting has been alleged in para 20. The allegation in this para is that at one booth i.e. Booth No. 129, the total number of votes were 620 whereas in the final result sheet, from this booth, 642 votes were shown to have been polled. From the evidence available on the record i.e. Ex.P2, Ex.P3, Ex.P10 and Ex.P11, which have been proved by PW1 and PW7, it is clear that from this booth only 393 votes were polled out of which petitioner Iqbal Singh secured 78 and respondent No. 1 had secured 82 votes, whereas in the final result sheet (Ex.P3), from polling station No. 129, 642 votes are shown to have been polled out of which petitioner Iqbal Singh is shown to have been polled 105 votes whereas respondent No. 1 has been polled 209 votes. This figure shown in the final result sheet is certainly contrary to the document Annexure P-2 which was duly signed by the counting supervisor and the counting agents of different parties as well as the Returning Officer. This irregularity in the counting has been proved by the petitioner. This illegality may be a ground for setting aside the election and may fall under sub-clause (iii) and (iv) of clause (d) of sub-section (1) of Section 100 of the Act. Under this clause, the election of the returned candidate can be set aside only if the result of the election of the elected candidate has been materially affected by such irregularity. If 209 votes shown to have

been secured by respondent No. 1 from this booth in the final result sheet (Ex.P3) are excluded, even then respondent No. 1 cannot be declared defeated from the petitioner. Thus, in my opinion on the basis of this allegation, the election of respondent No. 1 cannot be declared void under Section 100 of the Act.

(59) Another illegalities which the petitioner allege in para 21 in the final result sheet are immaterial. In this regard the allegations are that in the final result sheet, one of the candidate, namely Ms. Sultan Begum, is shown to have secured 8368 votes from various polling stations. Thereafter, she had also secured 27 postal votes, but in the total, she has been shown to have secured 8368 votes. The 27 valid votes are not shown to have been counted in the total votes. Actually, this is a clerical mistake. She has secured from various polling stations only 8341 votes but in the final result by a clerical mistake, it has been shown as 8368 votes. After adding the 27 valid postal votes, she has secured 8368 votes which has been rightly shown in the final result. From this clerical mistake, no illegality or irregularity has been proved by the petitioner. Thus, on such allegation, the election of the returned candidate cannot be set aside particularly when this irregularity has no bearing or effect on the final result of the returned candidate.

(60) Thus, all the allegations levelled by the petitioner in paras No. 8, 20, and 21 regarding the illegalities and irregularities committed during the course of counting and declaration of wrong result by fabricating the final result sheet have not been fully established. Thus, issue No. 2 is decided against the petitioner and in favour of respondent No. 1.

ISSUE NO. 1 REGARDING CORRUPT PRACTICE :

(61) In paras 18, 23 to 25 of the petition, it has been alleged that respondent No. 1 has committed the corrupt practices which fall under sub-section (1) and (4) of section 123 of the Act.

(62) In para 18, it has been alleged that respondent No. 1 had distributed money to the prospective voters at various localities mentioned in this para. A complaint (Ex. P-6) was also made in this regard on 12th February, 2002 to the Observer. The statement of Kuldeep Singh, election agent of the petitioner was also recorded by

the Deputy Superintendent of Police. The allegations made by the petitioner in this para fall under the definition of "corrupt practice" as defined in sub-section (1) of Section 123 of the Act.

(63) In para 23 of the petition, it has been alleged that respondent No. 1 had committed corrupt practice by making false and derogatory remarks against the petitioner in the public meeting held on 27th January, 2002 at Old Grain Market, Dhuri. In the said meeting, he called the petitioner a terrorist, who was involved in many criminal cases. He was also alleged to have raised the slogan "Atwad de adde nu, vote na pao gadde nu". The said slogan was alleged to have been raised to defame the petitioner as a centre of terrorism, who should not be voted. The "cart" was his election symbol.

(64) In para 24 of the petition, similar allegations were made against respondent No. 1 regarding the public meeting held on 2nd February, 2002 at Amargarh.

(65) In para 25 of the petition, it has been alleged that respondent No. 1 got published a news item on the basis of his interview in which it was stated that the slogan "Atwad de adde nu, vote na pao gadde nu" was the talk of the town of Dhuri. In the said interview, respondent No. 1 had stated that the petitioner has been totally ignored by the voters of the area and he reiterated the allegations of terrorism against him. The statement of facts made against the petitioner regarding his personal character was totally false as the petitioner was never involved in any terrorist activities and no case was registered against him. The allegations of corrupt practice levelled by the petitioner in paras 23 to 25 of the petition fall under Section 123(4).

(66) It is well settled that the charge of corrupt practice is to be proved like a criminal charge and the same standard of proof as is required in a criminal case is to be applied in the testing of the evidence of corrupt practice in an election petition. The allegation of corrupt practice must be established by clinching and unimpeachable evidence. Unless there is cogent evidence to take the case beyond reasonable doubt, the election of a returned candidate cannot be set aside. The vague allegations and discrepant evidence may only create a doubt but then the charge of corrupt practice cannot be held to be proved on mere lurking suspicion or doubts. Requirement of proof of corrupt practice is higher and is confined to strict legal evidence.

(67) The commission of corrupt practice by a returned candidate or his agent is a ground for setting aside the election under Section 100 of the Act. Under Section 100(1)(b) of the Act, if the corrupt practice is committed by a returned candidate or his election agent, the election is void without any further condition being fulfilled. But, if the corrupt practice is committed by any other person other than the candidate or his election agent, it must be shown that it was committed by him with the consent of the candidate or his election agent. Under Section 100(1)(d)(ii), if the corrupt practice is committed in the interest of the returned candidate by an agent, other than his election agent, it is further to be shown that the result of the election, in so far as it concerned the returned candidate, has been materially affected. A combined reading of clauses (b) and (d)(ii) of sub-section (1) of Section 100 shows that there may be a corrupt practice committed by an agent with or without consent of the candidate or his election agent. If it is with the consent of the candidate or his election agent it will fall within the purview of sub-section (1)(b) of Section 100 as the expression any other person under section 100(1)(b) will include an agent other than election agent otherwise it will be within the ambit of sub-Section (1)(d)(ii) of the Act. In **Samant N. Balakrishna, etc., versus George Fernandez and others etc. (3)** it was held that to establish corrupt practice by an agent other than election agent, avoiding the election the consent on the part of returned candidate to the commission of corrupt practice must be proved. There is no doubt that the consent need not be directly proved. The principle of law is settled that consent may be inferred from circumstantial evidence but the circumstances must point unerringly to the conclusion and must not admit of any other explanation. Although the trial of an election petition is made in accordance with the Code of Civil Procedure, it has been laid down that a corrupt practice must be proved in the same way as a criminal charge is proved. In other words, the election petitioner must exclude every hypothesis except that of guilt on the part of the returned candidate or his election agent. A consistent course of conduct in the canvass of the candidate may raise a presumption of consent. But mere knowledge of or connivance at the corrupt practice is not enough to infer corrupt practice. Similarly the similarities of ideas or even of words cannot be pressed into service to show consent.

(68) In light of the aforesaid legal position, I will deal with the allegations of corrupt practice levelled by the petitioner in the following heads :—

ALLEGATION OF CORRUPT PRACTICE REGARDING DISTRIBUTION OF MONEY AMONGST THE VOTERS :

(69) In para 18 of the petition, it has been alleged that respondent No. 1 had indulged in corrupt practice as enshrined in Section 123(1) of the Act by distributing money to the prospective vendees at various localities including Pohlo Basti, Bajigar Basti, Ambedkar Basti, Ban Bhatti Basti and Luxmi Bagh in Dhuri. The averments of corrupt practice made in this para are totally vague. It has not been pleaded that the money was distributed by whom and at what time and to whom. PW15 in his statement has admitted that he has not mentioned the name of the person whom the money was paid by respondent No. 1. The allegation of corrupt practice must be clear and specific. Every election petition shall contain a concise statement of material facts on which the petitioner relies. In this case, the petitioner has not disclosed all the material facts regarding distribution of money by respondent No. 1 or his election agent. The pleadings are regulated by Section 83 of the Act and it makes obligatory on the election petitioner to give the requisite facts, detail and the particulars of such corrupt practice with full statement with exactness as possible. In para 18 of the petition, the allegation of corrupt practice regarding distribution of money has not been given in detail. Even this allegation has not been proved by the petitioner. Neither the petitioner nor his any other witness has stated anything about the distribution of money by respondent No. 1 to the voters. Though one complaint was made by Kuldeep Singh son of Didar Singh to the Election Commissioner on 12th February, 2002 which has been exhibited as Ex.P-6, but when the said Kuldeep Singh appeared as PW17, he did not utter a word about the distribution of money by respondent No. 1 to the voters of the localities mentioned in para 18 of the petition. Thus, the allegations regarding corrupt practice have not been properly pleaded nor proved at all by leading any cogent evidence. Hence, the allegations in para 18 of the petition have not been established at all.

ALLEGATIONS OF CORRUPT PRACTICE REGARDING TWO PUBLIC MEETINGS HELD AT DHURI AND AMARGARH :

(70) In para 23 of the election petition, it has been alleged that on 27th January, 2002, respondent No. 1 held a public meeting at Old Grain Market Dhuri. In the said meeting, he had stated that the petitioner was a terrorist and was involved in many criminal cases, therefore, he should not be polled any vote. He also raised a slogan "Atwad de adde nu, vote na pao gadde nu" which means that the centre of terrorism is reflected by the cart and it should not be voted for. The cart was the elction symbol of the petitioner. In para 24 of the election petition, it was further alleged that on 2nd February, 2002, a meeting was held at Amargarh in which also similar remarks were made by respondent No. 1 against the petitioner by calling him a terrorist. It has been alleged that these facts are totally false as the petitioner was not a terrorist and he was not involved in any criminal case. These meetings were alleged to have been attended by Rajpal Singh son of Joginder Singh. Kuldip Singh son of Jagtar Singh. Harish Kumar son of Ram Lubhaya and Manjinder Singh son of Angrez Singh, who told the petitioner about the aforesaid facts. Thus, respondent No. 1 had committed the corrupt practice as envisaged under Section 123(4) of the Act.

(71) In support of these allegations, the petitioner examined himself as PW15, Rajpal Singh son of Joginder Singh as PW16 and Harish Kumar son of Ram Lubhaya as PW19. He did not lead any documentary evidence on this point. It is specifically mentioned here that in the election petition, no averment has been made regarding the time of holding of the meeting at Dhuri and place and time for holding of the meeting at Amargarh, though the time and place are the material facts. In his statement as PW15, the petitioner has stated that respondent No. 1 has committed corrupt practice as he had spread derogatory remarks against him and labelled him as an extremist/terrorist. In the public meetings held on 27th January, 2002 at Anaz Mandi, Dhuri and on 2nd February, 2002 at Amargarh, he was called a terrorist, who was involved in many criminal cases, by respondent No. 1. He also raised a slogan time and again, "Atwad de adde nu, vote na pao gadde nu". These allegations are totally false as he was neither a terrorits nor involved in any criminal case. By that propaganda, his reputation in the eyes of voters of the area was

affected. In the cross-examination, he has admitted that he did not attend the aforesaid two meetings. The facts regarding the derogatory remarks and the aforesaid slogan were told to him by his close persons, who attending the meetings, though he did not ask those persons to attend the meeting. He has admitted that he had not mentioned the time of the meeting held at Dhuri and time and place of the meeting held at Amargarh. In my opinion, this evidence of the petitioner is hearsay. He did not attend the aforesaid meetings, therefore, his statement does not establish the aforesaid allegations.

(72) PW16 Rajpal Singh was one of the two persons as mentioned in the election petition, who attended the public meeting held on 27th January, 2002 at Old Grain Market, Dhuri. In his examination-in-chief, he has stated that he along with one Kuldip Singh son of Jagtar Singh attended the said meeting in which respondent No. 1 stated that the petitioner was a terrorist and is involved in many criminal cases. He also raised a slogan "Atwad de adde nu, vote na pao gadde nu" which means that the centre of terrorism is reflected by the cart and which should not be voted for. This witness further stated that he along with one Kuldip Singh had informed the petitioner Iqbal Singh about the said meeting and making of the derogatory remarks against him by respondent No. 1. In his corss-examination, this witness has stated that on 27th January, 2002 he came to Dhuri for the purpose of purchasing some domestic articles on a scooter. After purchase of the articles when he reached Mandi Dhuri, respondent No. 1 was addressing the public meeting. He was not in a position to tell at what time he reached at the public meeting. He has further stated that one Kuldeep Singh of village Bhadalwar was standing with him, who by chance met him, and on the same day he told the fact of holding of the said meeting to the brother of the petitioner. He has also stated that he was not the supporter of the petitioner, rather he was the supporter of one Jaswinder Singh.

(73) The statement of this witness is not trustworthy. In the examination-in-chief this witness stated that he along with Kuldeep Singh attended the public meeting whereas in cross-examination he has stated that Kuldeep Singh met him by chance. In the examination-in-chief he has stated that he along with Kuldeep Singh informed Iqbal Singh petitioner about the aforesaid meeting and the derogatory remarks made against him, but in cross- examination he has stated

that after the meeting, he along went to Amargarh to meet Iqbal Singh but he was not present there and he informed the factum of the public meeting and the speech made therein to his brother. He further admitted that subsequently he met Iqbal Singh on different occasions but he did not tell him about the derogatory remarks made by respondent No. 1 in the aforesaid public meeting. In his statement, PW15 stated that the factum of making of derogatory remarks in the public meetings was told to him by his close associates whereas PW16 in his statement has specifically stated that he was not the supporter of the petitioner but he was the supporter of another candidate, namely, Jaswinder Singh, and he never told this fact to the petitioner.

(74) Regarding the allegations pertaining to the meeting held at Amargarh, the petitioner examined PW19-Harish Kumar son of Ram Lubhaya whose statement also does not support the allegations of corrupt practice made in the election petition. This witness has only stated that there was a public meeting at Amargarh on 2nd February, 2002 held by respondent No. 1. In that meeting, respondent No. 1 made a speech that Iqbal Singh was a terrorist and was involved in many criminal cases. He had raised a slogan "Atwad de adde nu, vote na pao gadde nu". This slogan was listened by him and one Majinder Singh. The speech of respondent No. 1 prejudiced the reputation of the petitioner. In his examination-in-chief, this witness has not specifically stated that he attended the said meeting. He has also not stated that the said meeting was held at what time and at what place but in cross-examination he has stated that the said meeting was held at Bus Stand. In cross-examination, he has stated that he had heard the speech of respondent No. 1 while he was coming from his home. At that time, he was going for his personal work. He has also stated that he did not come to attend the said meeting.

(75) From such kind of statement, the allegation of corrupt practice cannot be established. The testimonies of these two witnesses are further shakened by the fact that both the witnesses have stated that the time and place of the meeting was told to the petitioner but in the election petition, the petitioner has not mentioned the time of the meeting held at Dhuri on 27th January, 2002 and time and place of the meeting held at Amargarh on 2nd February, 2002. Further, the petitioner has stated in his statement as PW15 that he made a complaint regarding corrupt practice to the Election Commission of

India of 25th February, 2002. The copy of the said complaint has been annexed as Annexure P-1 with the election petition. However, in the said complaint, the petitioner has not mentioned the factum of holding of the aforesaid two meetings and making of the derogatory remarks by respondent No. 1 in those meetings at all. When it has come in evidence of PW16 and PW19 that they have told the factum of holding of the public meetings and making of the derogatory remarks to the petitioner, in spite of this, it is strange why those facts were not mentioned in the complaint filed by the petitioner on 25th February, 2002. This fact further establishes that the allegations of making the derogatory remarks and raising the slogan in the aforesaid two meetings are after thought.

(76) Respondent No. 1 in his statement as RW1 has categorically stated that in the public meetings held at Old Grain Market, Dhuri on 27th January, 2002 and at Amargarh on 2nd February, 2002, he did not raise any slogan "Atwad de adde nu, vote na pao gadde nu" and the allegations levelled against him are false. Similarly, RW3—Sukhwinder Singh Dhandra, RW4—Nachhattar Singh and RW5—Jagjit Singh, who attended the public meetings at Old Grain Market, Dhuri and at Amargarh, have stated that the alleged slogan was not raised by respondent No. 1 and he did not call the petitioner as a terrorist. The petitioner has not been able to elicit any material from the cross-examination of these witnesses. Rather, during the cross-examination, the petitioner has changed his stand. He has attributed the slogan "Atwad de adde nu, vote na pao grade nu" to Nachhattar Singh when a suggestion was put to him that he has raised the slogan like "Atwad de adde nu, vote na pao gadde nu".

(77) Thus, from the evidence available on the record, the petitioner has failed to prove the allegations of corrupt practice alleged to have been committed by respondent No. 1 during the course of public meetings held on 27th January, 2002 at Old Grain Market, Dhuri and on 2nd February, 2002 at Amargarh.

ALLEGATIONS OF CORRUPT PRACTICE REGARDING PUBLICATION OF NEWS ITEM (EX. P5) :

(78) In para 25 of the election petition, the petitioner has averred that an interview given by respondent No. 1 appeared in the "Rojana Jagbani" newspaper of Hind Samachar group of Jalandhar,

under the head "Atwad de adde nu, vote na pao gadde nu" da nara Dhuri ch goonj reha-Gagganjit Singh Barnala. It has been stated that the said interview was given by respondent No. 1 to Joginder Singh Sandhu, Sub Editor of the said newspaper. In the said news item, it was stated that the petitioner has been totally ignored by the voters of the area and reiterated the allegations of terrorism against the petitioner which in fact were totally false and frivolous. In this regard, a complaint (Annexure P-3) was made to the Chief Election Commissioner, Punjab, with a copy to the Chief Election Commissioner, New Delhi on 6th February, 2002 but no action was taken. It has been stated that due to the said news item, great harm was caused to the petitioner by labelling him as a terrorist which ultimately affected his result. It has been stated that these allegations were totally false and respondent No. 1 himself knew that the same were false. In fact, these allegations were levelled to prejudice the minds of the voters.

(79) The aforesaid news item has been exhibited as Ex. P-5, the translated version of which reads as under :—

"Jalandhar, 5th February, (Juginder Sandhu)—"My first preference would be all round development of Dhuri which has miserably been left behind for the last 10 years, over which no attention has been paid by the last representative". This was stated yesterday by Shri Gaganjit Singh Barnala, who is contesting the election to legislative Assembly from Dhuri constituency and is son of Senior Akali Leader and Governor of Uttaranchal Shri Surjit Singh Barnala

While talking to this reporter in the office of Jagbani Shri Gaganjit Singh Barnala stated that since independent has been elected to the legislative assembly in the last two elections from this constituency, therefore, he could not get any special facility for this area from the Government of Punjab and this area remained neglected. There is no industry in this area and neither there is any big project because of which unemployment has risen sharply and educated youths are roaming unemployed. He said that this is the reason that the voters have changed their mind and they want that the candidate of Akali Dal-BJP-BSM combine should be got elected. The voters have also come

to conclusion that this time also, the Government will be formed by Akali Dal-BJP alliance as the duo of S. Parkash Singh Badal and Shri Atal Bihari Vajpayee has become famous. People of all the communities and religion like this pair.

He said that the people have ignored the other candidates of this area and are not being taken by the misleading statements of theirs. When he was asked that Panthak Morcha is also contesting from this seat and is claiming its upper hand then Shri Barnala replied that Panthak Morchas has no entity here and it is just like a drop of water in a sea. If he is having some voters in 4-5 villages then it does not mean that its candidate will win the election. He told that only one slogan is being raised in whole of the constituency that "no vote should be polled in favour of cart being a centre of terrorism (Atwad de adde nu vote na pao gadde nu). He informed that cart is the symbol of the candidate of Panthak Morcha and the voters have totally ignored this candidate. Shri Gaganjit Singh told after campaigning of BJP leader and Union Information Minister-Smt. Sushma Swaraj in the constituency in his favour, the mood of the voters has changed completely. He is getting such a favourable support from each place which he had not imagined. (Emphasis supplied)

Some film personalities are also campaigning in support of son of Shri Barnala. These include Bhisham of Mahabharata Shri Mukesh Khanna, Sharuti Ulfat and Abhimanyu Raj Singh who has played pivotal role in films like Najayaj, Divya Shakti and Baaji. Due to this effort also, a number of voters are tilting towards him.

He informed that the clean image of his father Shri Surjit Singh Barnala was also proving very helpful to him and due to that reason also, the voters have made up their minds to cast their votes in his favour.

He stated that he would leave no stone unturned for development of area. He told that General Secretary of Shiromani Akali Dal and Member Rajya Sabha

Shri Sukhbir Singh Badal and Union Minister Shri Sukhdev Singh Dhindsa have also addressed his election rallies due to which the balance has tilted in his favour completely.”

(80) In the aforesaid news item, there are no direct allegations against respondent No. 1 in which he had called the petitioner a terrorist. The only derogatory remark as pointed out by the counsel for the petitioner is that he told that only one slogan is being raised in whole of the constituency that no vote should be polled in favour of cart being a centre of terrorism (Atwad de adde nu vote na pao gadde nu). He informed that cart is the symbol of the candidate of Panthak Morcha and the voters have totally ignored this candidate”.

(81) The contention of the counsel for the petitioner was that by making the aforesaid remarks at the time of interview and by getting it published, respondent No.1 committed the corrupt practice which falls under the ambit of Section 123(4) of the Act.

(82) Now the question for consideration is whether the aforesaid news item published in the newspaper constitutes a corrupt practice committed by respondent No.1 as defined by Section 123(4) of the Act.

(83) Section 123(4) of the Act provides as under :—

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

(84) In order to make out the charge of corrupt practice as defined in sub-Section (4) of Section 123 of the Act, the election petitioner should prove that :

- (i) that the impugned statement of facts was published by a candidate or his agent or by any other person with the consent of the candidate or his agent ;

- (ii) that the statement was false and which the maker either believes to be false or does not believe to be true ;
- (ii) that the statement relates to the personal character of a candidate; and
- (iv) that the statement was reasonably calculated to prejudice the prospect of election of the other candidate.

(85) All these aforesaid ingredients should be established before an election petition can be allowed on the charge of corrupt practice. The first important ingredient of corrupt practice which falls under Section 123(4) of the Act is that the alleged false statement was published by the candidate or his agent or by any other person with the consent of the candidate or his election agent. Such corrupt practice falls under clause (b) of Section 100(1) of the Act on which the election of a candidate can be declared void. But if such false statement of facts which amounts to corrupt practice under Section 123(4) of the Act is being committed by a third person or by an agent other than the election agent of the petitioner, in the interests of the returned candidate, then such corrupt practice falls under clause (d)(ii) of Section 100(1) of the Act. In that situation, it has to be further established that commission of such practice has materially affected the result of the election of the returned candidate.

(86) Regarding the second ingredient i.e. the statement relates to the personal character of a candidate, a distinction has been drawn between the personal character of the candidate and his public and political character. The public and political character of a candidate is open to public view and public criticism and even if any false statements are made about the political views of a candidate or his public conduct or character, the same will not be covered under sub-Section (4) of Section 123 of the Act. The aforesaid distinction has been drawn between the personal and public character of the candidate. In **Inder Lal versus Lal Singh and others**, (4) it has been held that "this assumption is presumably based on the theory that the electorate being politically educated and mature, would not be deceived by a false criticism against the public or political character or any candidate. The public and political character or a candidate is open to public view and public criticism and even if any false statements are made about

(4) AIR 1962 S.C. 1156

the political views of a candidate or his public conduct or character, the electorate would be able to judge the allegations on the merits and may not be misled by any false allegations in that behalf. It is on this theory that false statements of fact affecting the public or political character of a candidate are not brought within the mischief of Section 123(4) of the Act. For establishing a corrupt practice under sub-Section (4) of Section 123 of the Act, the false statement of facts should have relation to the personal character of the candidate.

(87) In this case apart from PW-17, Kuldeep Singh, who made a complaint to the police about the news item, the petitioner has examined PW-6 Joginder Singh Sandhu, Sub-Editor of "Rojana Jagbani", Jalandhar, to prove that the aforesaid news item was published on the basis of the interview given by respondent No. 1. This witness has stated that the aforesaid news item was given by him. The news item carries the same statement which was given by respondent No. 1. In cross-examination, this witness has further stated that he did not note down the interview of respondent No. 1 in question-answer form. The news item was drafted by him after the departure of respondent No. 1. He further states that when a question was put to respondent No. 1 that the alleged slogan was being raised in the constituency, he replied that he had also heard such a slogan. Nothing else was said by him regarding the slogan. respondent No. 1 has not himself said about the slogan apart from his question. This witness further stated that he did not maintain the note of interview.

(88) From the statement of this witness, it has not been established at all that the petitioner was called as a terrorist by respondent No. 1 or he raised the slogan "Atwad de adde nu, vote na pao gadde nu". Only it has been stated that respondent No. 1 had also heard about the alleged slogan which was being raised in the constituency. In the news item, it has been only stated that respondent No. 1 told that only one slogan was being raised in whole of the constituency that "Atwad de adde nu vote na pao gadde nu". He stated that cart is the symbol of the candidate of Panthak Morcha and the voters have totally ignored its candidate.

(89) Now the question for determination is whether from the aforesaid evidence, respondent No. 1 had committed any corrupt practice as defined under Section 123(4). It is not the case of the petitioner that the aforesaid news item was published by the Sub

Editor in the newspaper with the consent of respondent No. 1 or his election agent. In the election petition, no such averment has been made, PW6—Joginder Singh Sandhu in his statement has also not stated that he got published the aforesaid news item with the consent of respondent No. 1 or his agent. A candidate in the election ordinarily has no control over the publication of a news item in the newspaper.

(90) Learned counsel for the petitioner argued that the consent of respondent No. 1 was implied in publication of the aforesaid news item in the facts and circumstances of this case as respondent No. 1 admitted the fact of giving the interview to PW6—Joginder Singh Sandhu. He has also admitted that the photo appearing in the news item (Ex. P5) was his photo in which he was sitting with film star Abhimanyu Raj Singh and PW6—Joginder Singh Sandhu. Learned counsel submitted that the sole purpose of designing the impugned slogan was to do the character assassination of the petitioner so that his election prospects are adversely affected. In this regard, reference was made to the decision of the Hon'ble Apex Court in **Gadakh Yashwantrao Kankarrao versus E.V. Balasaheb Vikhe Patil and others (supra)** wherein it has been held that the consent of the candidate for the purpose of Section 123(4) when the offending statement of fact which is false is published by any other person may be proved by inference from the circumstances and not necessarily by positive evidence to that effect since positive evidence of consent may not be available.

(91) In my opinion, from the facts and circumstances of this case, the consent of respondent No. 1 as required for committing the corrupt practice under Section 123(4) of the Act has neither been proved, nor it can be inferred from the circumstances of the case. Merely because an interview was given by respondent No. 1 and his photograph appeared in the newspaper no inference can be drawn that respondent No. 1 raised the slogan "Atwad de adde nu, vote na pao gadde nu" or he was author of the said slogan. PW5 states that when a question was put to him if such a slogan was being raised in the constituency, he replied that he had also heard such a slogan. Nothing else was said by him regarding this slogan. From this, it cannot be inferred that respondent No. 1 had made any statement of fact or he had given any implied consent for publication of that

statement of fact. In elections, generally such kind of slogan is being raised about the election symbol of the political parties. If any such slogan has been published in a news item, such publication cannot be taken as publication of false statement of fact by the returned candidate pertaining to the character of a particular candidate when on such political symbol, different candidates are contesting the general election. Merely, on the basis of the presence of respondent No. 1 at the time of interview is not sufficient to prove the consent of the returned candidate requisite for constituting the corrupt practice under Section 123(4) of the Act. In my opinion, it is dangerous to read into the grounds of Section 100(1)(b) or in the definition of corrupt practice the implied consent of the returned candidate for any act done by a correspondent of the newspaper or publication of a news item. Such implied consent may create havoc in the election as various candidates contesting the election may have no control over the publication of the news item by the different newspapers.

92. In **Manmohan Kalia versus Shri Yash and others (5)** the Hon'ble Apex Court has observed as under :—

“It is very difficult for a Court to rely on news items published on the information given by correspondents because they may not represent the true state of affairs. A news item without any further proof of what had actually happened through witness is of no value. It is at best a secondhand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible.”

93. In **Shivajirao B. Patil Kawe Kar versus Vilasrao D. Deshmukh (6)** it has been held that the charge or 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 to his being disqualified to contest an election for a certain period.

(5) AIR 1984 S.C. 1161

(6) AIR 2000 S.C. 341

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. In this case, it was further held that to prove the corrupt practice as defined under Section 123(4) of the Act on which the election can be set aside under Section 100(1)(b) on the basis of publication of false statement in the newspaper, the consent of the returned candidate for publication of such news item must be pleaded and proved. It was further held that when the Editor was not proved to be the election agent of the returned candidate, then no inference can be drawn that the Editor was the agent or acted with the consent of the returned candidate. It was held that the factum of consent of the candidate or his election agent has to be specifically pleaded and proved.

(94) It is also well settled as has been held in **Samant N. Balkrishna's case** (*supra*) that if even without giving his consent the candidate has received benefit from a false news item published in a newspaper in a manner which materially affects his election favourably, on pleading and proof of such material effect on the election the candidate's election is liable to be set aside on the ground under section 100(1)(d)(ii) unless as provided under sub-Section (2) of Section 100 of the Act he further discharges the onus placed upon him that in spite of his opposition and taking due precaution that act had been committed for which he cannot be responsible. If the petitioner does not prove a corrupt practice by the candidate or his election agent or another person with the consent of the returned candidate or his election agent but relies on a corrupt practice committed by an agent other than an election agent, he must additionally prove how the corrupt practice affected the result of the poll.

(95) In the instant case, it has not been pleaded and proved at all that by publication of the news item (Ex.P5) by the Sub Editor, the election of respondent No. 1 has been materially affected favourably. Thus, the petitioner has not established the grounds contained in sub-clause (ii) of clause (d) of Section 100(1) of the Act.

(96) There is another aspect of the matter. Section 123(4) does not cover the every statement made by the candidate, but it only covers the statement of facts which is false, which the maker of the statement believes it to be false or at least not true; it should relate to the personal character and conduct of the candidate and it should be reasonably calculated to prejudice the prospects of that candidate's election. Unless all these requirements are satisfied, the statement does not constitute corrupt practice as defined under Section 123(4) of the Act.

(97) Now the question arises whether in this news item something has been said about the personal character or conduct of the petitioner.

(98) In the news item (Ex.P5) only it has been stated that respondent No. 1 had told that only one slogan is being raised in whole of the constituency that "Atwad de adde nu vote na pao gadde nu" and he informed that cart is the symbol of the candidate of Panthak Morcha and the voters have totally ignored its candidate. In my opinion, this statement of fact does not have any relation to the personal character or conduct of the petitioner. The allegation in the news item shows that it was an attack on the election symbol of a political party and not the personal character of the candidate. The petitioner has not been labelled as a terrorist. Nothing has been said about the personal character of the petitioner. In this case, the "cart" was the election symbol of the Shiromani Akali Dal (Mann) and if something was stated in the aforesaid news item about the symbol of that party, it will not amount to a statement of fact relating to the personal character of the petitioner. Even the petitioner himself has filed a complaint (Annexure P-3) with the election petition wherein he has alleged that respondent No. 1 while raising the aforesaid slogan has directly tried to defame their election symbol linking it with as a wagon of terrorism.

(99) Further it has neither been pleaded nor proved that the newspaper containing the news item (Ex. P5) was distributed and circulated in the Dhuri Assembly Constituency much less by respondent No. 1 or some one else with his consent. Even such a suggestion was

not put to respondent No. 1 or any of his witnesses. Neither the petitioner nor any of his witnesses have made such statement when they appeared as witnesses. No witness produced by the petitioner has stated that he had read the news item before the election in the constituency. In his cross-examination, respondent No. 1 has specifically stated that it is incorrect that during the election campaign, he distributed any pamphlet containing the averment which is in Ex. P5. It is also incorrect that during the election campaign he used the word 'terrorist' for anybody including the petitioner. Thus, the prospects of a candidate can only be prejudiced amongst the voters in the constituency if it is alleged and proved that statement was printed and distributed in the constituency by respondent No. 1. The publication of the new item outside the constituency cannot be taken to prejudice the prospects of any candidate in the election.

(100) In *Azhar Hussain versus Rajiv Gandhi (7)*, it was observed that the distribution of a book containing objectionable statements in constituency by the returned candidate was neither pleaded nor proved, was held to be lacking of the material particulars for setting aside the election. The requirement of pleading and proof of such averment is essential for establishing a corrupt practice as defined under Section 123(4) of the Act.

(101) In view of the aforesaid discussion, issue No. 1 is decided against the petitioner and in favour of respondent No. 1.

ISSUE NO. 3 REGARDING MAINTAINABILITY OF THE ELECTION PETITION :

(102) Learned counsel for respondent No. 1 did not press issue No. 3 during the course of arguments. Thus, this issue is decided against respondent No. 1 and in favour of the petitioner.

(103) In view of the aforesaid discussion and findings given on various issues, the petitioner has failed to prove any grounds as alleged in the petition for setting aside the election of respondent No. 1. Hence this petition is dismissed.

R.N.R.