R. PUTHUNAINAR ALIHITHAN ETC.

v.

P.H. PANDIAN AND ORS.

MARCH 26, 1996

[K. RAMASWAMY, S.P. BHARUCHA AND
K. S. PARIPOORNAN, JJ.]

Representation of the People Act, 1951.

Ss.77, 123(6)—Corrupt practice—Election expenses—Omission to produce correct statement of account—Election petitioner challenging election of returned candidate on ground that the latter used two vehicles in election campaign and accounted for expenses incurred only on one vehicle and if he had shown expenses incurred on the other vehicle also, the expenses would have exceeded the limit prescribed under the Act - High Court allowed the election petition and set aside the election of the returned candidate—Held, the election petitioner had established that the returned candidate had committed corrupt practice under s.123(6)—Declaration of the result of the returned candidate as void is not vitiated by any error of law warranting interference.

Doctrine of preponderance of probabilities—Explained.

Evidence Act, 1872 :

S.3—Fact proved—To draw an inference that a fact in dispute has been established, there must exist, on record some direct material facts or circumstances from which such an inference could be drawn—The probative value could be gauged from the facts and circumstances in a given case.

Burden of proof—In an election petition, when election petitioner has adduced evidence to prove that the returned candidate had committed corrupt practice, the burden shifts on the returned candidate to rebut the evidence.

Maharashtra State Board of Secondary and High Secondary Education v. *K. S. Gandhi & Ors.*, **[1991] 2 SCC 716, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 877 of 1994 Etc.

From the Judgment and Order dated 31.1.94 of the Madras High Court in E.P. No. 1 of 1991.

D.D. Thakur, Anant Palli, Ms. Purnima Bhatt, Atul Sharma, E.C. Agarwala for the Appellants.

S. Sivasubramanaim, and R. Mohan, R. Nedumaran, R.A. Perumal, V.G. Pragasam, A. Mariarputham and Ms. Aruna Mathur, for the Respondents.

The following Order of the Court was delivered :

These two appeals, one by the returned candidate whose election was set aside and the connected appeal by the unsuccessful candidate whose evidence in respect of other issues was not accepted by the High Court arise from judgment of Madras High Court made on January 31, 1994 in Election Petition No. 1 of 1991. At an election to the Tamil Nadu Legislative Assembly held on June 15, 1991 from Assembly Constituency No. 220 Cheranmahadevi Constituency, the appellant was declared to have been elected. His election was challenged by the first respondent-unsuccessful candidate. Several averments were made under Section 123 of the Representation of People Act, 1951 (for short, the 'Act') imputing corrupt practices committed by the respondent in the said election. The High Court found that the appellant had declared in his return, the election expenditure as Rs. 36, 350 wherein he had admitted that he had used the vehicle bearing registration No. TN-72 1909 and had incurred an expenditure towards the running of that vehicle during the election campaign of Rs. 15, 875. He has also admitted in his written statement that he had used another vehicle, bearing registration No. TNH- 555. He did not account for the expenditure incurred in that behalf. Had he shown the true account of expenditure, it would have been proved that he had exceeded the limit prescribed under Section 77 of the Act. Therefore, it was found that he had committed corrupt practice under Section 123(6) of the Act and his election was declared as void.

Shri D.D. Thakur, learned senior counsel appearing for the appellant, contended that the appellant had in his expenditure return specifically stated that he had used one vehicle bearing registration No. TN 72 1909. In his written statement, he had stated that he had used another vehicle. In his pleading, he had not made any admission that he had used more

than one vehicle. The High Court, therefore, was wrong in coming to the conclusion that the appellant had used two vehicles and he had not accounted for the expenditure incurred for the second vehicle. The statement must be construed as a whole. If it is so understood, there is no unequivocal admission that he used more than one vehicle. Burden is on the respondent to establish that the appellant had used more than one vehicle and the expenditure incurred was in excess of the prescribed limit of Rs. 50,000. In the absence of such a proof, the finding recorded by the High Court that he had committed corrupt practice, has not been proved beyond reasonable doubt. The doctrine of preponderance of probabilities does not apply to prove corrupt practice. The burden like a trial of the criminal case rests always on the election petitioner to prove the case beyond reasonable doubt, that all the circumstances conclusively establish that the appellant had committed corrupt practice. In this case, such a proof has not been offered by the respondent. The benefit of doubt should, herefore, be given to the appellant.

Shri S. Sivasubramaniam, learned senior counsel for the respondent, contended that after the written statement filed by the appellant, a rejoinder had been filed by the respondent in which it was specifically stated that the appellant had used the vehicle bearing registration No. TNH 555 and had incurred the expenditure of Rs. 19,870 for the use of the said vehicle. PW-9 had also stated that the said vehicle was used during the election campaign. It was not disputed that the vehicle was not used. Only the nature of the vehicle was put in cross-examination, i.e., whether it is a taxi or a tourist vehicle. The expenditure in that behalf was also not controverted. He also contended that the appellant had an opportunity to get into the box and explain the actual expenditure incurred by him. In the absence of such an explanation or production of account of expenditure coupled with his admission in the pleading and the evidence of PW-9 that he had used vehicle bearing registration No. TNH 555, the High Court rightly concluded that the respondent had proved that the appellant had used two vehicles. In the absence of any contra-evidence given by the appellant, it must be construed that the expenditure incurred was in excess of the prescribed limit. Had the appellant entered the box and given evidence , it would have been tested in cross-examination as to the actual expenditure incurred by the appellant. But he deliberately withheld the evidence. The fact that he did not mention that he used two vehicles in the expenditure statement submitted to the District Collector under the Act

clearly establishes that he had suppressed the relevant material fact. From his said conduct, it could be inferred that the appellant has incurred expenditure in excess of the limit prescribed under Section 77 of the Act.

In view of the respective contentions, the question that arises for consideration is : whether the finding of the High Court that the appellant had committed corrupt practice under Section 123 (6) of the Act is sustainable in law? Section 77 of the Act envisages that :

> "Every candidate at an en election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive."

Under sub-section (2) the account shall contain such particulars, as may be prescribed. Under sub-section (3), the total of the said expenditure shall not exceed such amount as may be prescribed. Admittedly, the prescribed expenditure is Rs. 50,000. Under sub-section (6) of Section 123, incurring or authorising of expenditure in contravention of Section 77 shall be deemed to be corrupt practice for the purpose of the Act. It is now an admitted position that in his expenditure return, the appellant had specifically mentioned that he had used one vehicle bearing registration No. TN-72 1909 and the expenditure for use of that vehicle was Rs. 15, 875. In the written statement, he has admitted that he used the vehicle bearing No. TNH-555. Admittedly, he did not mention in his election return either the use of the said vehicle or the expenditure incurred for its use. In the rejoinder affidavit the respondent has specifically pleaded that the said vehicle was used and he estimated the expenditure at Rs. 19, 870. Though an opportunity was available to the appellant to get into the witness box and explain the admission of the user of the vehicle bearing registration no. TNH-555 whether it was by way of a mistake or was by way of substitution for the vehicle bearing registration No. TN-72 1909, as sought to be projected in this Court, he did not deliberately examine himself as a witness not led any evidence in that behalf. PW-9 had specifically stated that the said vehicle was used. In the cross-examination, his attention was drawn only to the nature of the vehicle, namely, whether it is a tax or tourist vehicle. The user thereof was not questioned. Under those circumstances, it stands established that the appellant had used two vehicles. From this,

the necessary conclusion is that he did not specify in his expenditure return that he used the said vehicle and the expenditure incurred towards that vehicle. Thus he deliberately suppressed the material fact of the user of the vehicle and the expenditure incurred for its use. What expenditure he had incurred for the use of the vehicle can be inferred from proved facts. Had the appellant gone into the box and examined himself as a witness, he would have been subjected to cross-examination of his actual total expenditure. Moreover, even though notice was issued to produce his account, he deliberately withheld its production. In an election petition, it is not reasonably practicable for the election petitioner to establish by meticulous evidence as regards the actual expenditure incurred by the candidate. The said evidence is always within the exclusive knowledge and custody of the returned candidate or other person. As seen, under Section 77, it is for the candidate/election agent to maintain a regular account of the expenditure incurred in connection with the election and a statement in that behalf is required to be filed before the Collector. It is not in dispute that the respondent had issued a notice to the appellant calling upon him to produce the expenditure account which he did not produce.

Section 3 of the Evidence Act provides that fact a fact is said to be "proved" when, after considering the matters before it, the Court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstance of the particular case, to act upon the supposition that it exists; a fact is said to be "disproved" when, after considering the matter before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist; a fact is said to be "not proved" when it is neither proved nor disproved. Therefore, the Court, after considering the evidence before it, either believes the fact to exist or consider its existence so probable as a prudent man ought, under the circumstances available on the facts in the case on hand, to act upon the supposition that the existence of the fact is so probable that a Court can act upon that evidence.

In *Maharashtra State Board of Secondary and Higher Secondary Education* v. *K.S. Gandhi & Ors.*, [1991] 2 SCC 716 at 748, para 37, this Court had held that "inference from the evidence and circumstances must be carefully distinguished from conjectures of speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in

straining them a little to force them to form parts of one connected whole. There must be evidence, direct or circumstantial, to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial, from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture." Therefore, we hold that to draw an inference that a fact in dispute has been established, there must exist, on record, some direct material facts or circumstances from which such an inference could be drawn. The standard of proof required cannot be put in a strait-jacket formula. No mathematical formula can be laid on the degree of proof. The probative value could be gauged from the facts and circumstances in a given case.

An inference from the proved facts must be so probable that if the Court believes, from the proved facts, that the facts do exist, it must be held that the fact has been proved. The inference of proof of that fact could be drawn from the given objective facts, direct or circumstantial.

Under these circumstances, the necessary conclusion would be that he had also used that vehicle and its expenditure was deliberately withheld by him. He suppressed that fact in his expenditure return. From these facts, the High Court has reasonably arrived at the finding that had he produced the account, the expenditure would have been shown to be in excess of the limit prescribed under the Act. An adverse inference was drawn from the omission to produce the account that the appellant had committed corrupt practice under Section 123(6) of the Act. This conclusion, on the basis of the evidence on record, cannot be said to be vitiated by any error of law. It is true that the charge of corrupt practice under Section 123 is treated akin to a charge in a criminal trial. The trial of an election petition is like a trial in the criminal case and the burden to prove corrupt practice is on the election petitioner. The doctrine of preponderance of probabilities in a civil action is not extended for proof of corrupt practice. It is not, like a criminal trial, that the accused can always keep mum. In a criminal trial accused need not lead any defence evidence. It is an optional one. The burden of proof of charge in a criminal case is always on the prosecution.

The guilt of the accused beyond reasonable doubt should be established by the prosecution. But in an election petition when the election petitioner had adduced evidence to prove that the returned candidate had committed corrupt practice, the burden shifts on the returned candidate to rebut the evidence. After its consideration, it is for the Court to consider whether the election petitioner had proved the corrupt practice as alleged against the returned candidate. In view of the findings recorded earlier, it must be concluded that the respondent had established that the appellant had committed corrupt practice under Section 123 (6) of the Act and thereby the declaration of the result of the election of the appellant as void is not vitiated by any error of law warranting interference.

The appeal is dismissed. The connected appeal filed by the respondent-unsuccessful candidate is dismissed as not pressed.

Appeal dismissed.