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THE TELANGANA GAZETTE

PART - V EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 05] HYDERABAD, THURSDAY, MAY 12, 2022.

STATUTORY NOTIFICATIONS OF THE ELECTION COMMISSION OF INDIA AND OTHER ELECTION NOTIFICATIONS

–––X–––

NOTIFICATIONS BY GOVERNMENT

OFFICE OF THE CHIEF ELECTORAL OFFICER, TELANGANA

GENERAL ADMINISTRATION DEPARTMENT
(*ELECTIONS*)

NOTIFICATION OF THE ELECTION COMMISSION OF INDIA REGARDING JUDGEMENT OF THE HON'BLE HIGH COURT OF TELANGANA IN ELECTION PETITION NO. 15 OF 2019 - .

[Memo No. 172/Elecs.A/2021-3, The Chief Electoral Officer, Telangana, General Administration (Elections), Department, Dated: 10th May, 2022.]

The following notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi - 110001, Dated: 6th May, 2022, 16 Vaisakha, 1944 (Saka) is Publised.

NOTIFICATION

No. 82/TEL-LA/15/2019 - In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgement/order of the High Court of Telangana dated 11th March, 2022 in the Election Petition No. 15 of 2019.

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

FRIDAY ,THE ELEVENTH DAY OF MARCH TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE P. NAVEEN RAO

ELECTION PETITION NO: 15 OF 2019

IN THE MATTER OF ELECTION TO GOSHAMAHAL ASSEMBLY CONSTITUENCY (65)

Between:

Prem Singh Rathore, S/o Manohar Singh Rathore, Age 68 years, R/o 3-6-305/48/B, Avanthinagar, Hyderguda, Hyderabad premsrathore@yahoo.com

...PETITIONER

AND

1. T. Raja Singh, S/o Late T. Naval Singh, Aged 41 years, R/o 13-2-292/7, Aramghar Colony, Near Jali Hanuman, Dhoolpet, Hyderabad (Bharatiya Janatha Party) trajasinghlodh@gmail. com
2. M. Mukesh Goud, S/o Late M. Narsimha Goud, Aged 59 years, R/o H. No. 4-1-692, Jamnagh, Hyderabad (Indian National Congress) mmukeshgoud59@gmail.com
3. K. Sai Kumar, S/o K. Narayana, Aged 32 years, R/o H. No. 5-6-838, Darusalam road, Nampally, Hyderabad (Bahujan Samaj Party) sairi shipriya@gmail. com
4. Abhimanyu Yadav. B,, S/o Late Udaram Yaday. B., Aged 64 years, R/o H. No. 14-2-159-1, Chandavadi, Nampally, Hyderabad (Ambedkar National Congress)
5. B. Yellesh Madiga, S/o B. Kishan Madiga, Aged38 years, R/o H. No. 5-4-135/19/A, Muralidhar Bagh, JN Road, Abids, Hyderabad (Bahujan Samaj Party) yboini@yahoo.com
6. Khaja Khan, S/o Rahmath Khan, Aged 36 years, R/o H. No. 14-8-157, Chudi Bazar, Begumbazar, Hyderabad (Akhil Bharatiya Muslim League Secular) khaiakhaninda mail.@co.in
7. Ghan Shyam Das Joshi, S/o Late Hanmandas Joshi, Aged 52 years, R/o 15-8-103, Begumbazar, Hyderabad (Samajwadi Party) ghan shyamdasjoshil966Q2 mail@com
8. M.B. Chander, S/o M. Bhadraiah. Aged 62 years, R/o 8-2-293/82/F/C/54, Road no. 1, Filmnagar, Jubilee Hills Hyderabad (Shiva Sena) drmbchander@gmail.com

9. Bhajrang Singh, S/o R. Raghuveer Singh, Aged 29 years, R/o 14-10-700, Lower Dhoolpet, Hyderabad (Anarakshit Samaj Party) asp.telangana@gmail.com

10. Mir Mohd Hussain, S/o MT. Hussain, Aged 46 years, R/o 14-1-257, Seetharampet, Aghapura, Hyderabad (Aam Admi Party) mh268143@gmail.com

11. Raju Naukadwale, S/o Nokanda, Aged 60 years, R/o 5-9-54188/L, Phoolbagh, Basheerbagh, Goshamahal, Hyderabad (Republic Part of India (A)

12. M. Rajesh Chandramukhi, S/o M. Kumar, Aged 32 years, R/o 42-611/I. Aliwyn Colony, Shiva Nagar, Hyderabad Bah ujan Left Party) chandramukhichirmu@gmail.com

13. Rizwan Mohammed Bakarnnan, S/o Late Mohammed Ahmed Bakarman, Aged 43 years, R/o 13-1-173/1, Chisti Chaman, Mangalhat, Hyderabad (Majlis Bachao Tahrek) allen.aliyan@gmail.com

14. Syed Riyazuddin, S/o Syed Naddeuddin, Aged 45 years, R/o 18-7-297/4, Imliban, Yakutpura, Hyderabad (Welfare Party of India) syedriyazuddin75@gmail. corn

15. Syed Siddiq Akbar Ali, S/o Syed Ibrahim Ali, Aged 50 years, R/o 5-6-628/1/B, Aghapura, Hyderabad (Democratic Party of India) akber8198(agmail.com

16. Suresh Hasaji, S/o Late Balaram Hasaji, Aged 42 years, R/o H. No. 13-2-601/111, Purana Pool, Rahimpura, Hyderabad (National Youth Party) hasajisureshAgmail.com

17. M Krishna, S/o M. Narsitnha, Aged 42 years, R/o 13-2-269/27, Baba Balak Das Mutt, Rahimpura, Hyderabad (Independent) mirannallykrishnaol@gmail.com

18. Narender Singh Thakur, S/o Late Balaji Singh Thakur, Aged 47 years, R/o 13-6-345/1/17, Ram Singh Pura, Karwan, Hyderabad (Independent)

19. Milind Raj Singh, S/o Murali Manohar Lal, Aged 49 years, R/o 14-1-117/1, Seetarampet. Hyderabad (Independent)

20. B.V. Ramesh Babu, S/o Late B. Ram Chander Rao, Aged 59 years, R/o 15-4-554, Osman Shahi, Afzalgunj, Hyderabad (Independent) rameslmaidu1959@gmail.corn

21. Ravi Kumar Jain, S/o Ajithnath Jain, Aged 42 years R/o Flat no. 301/A, H. No. 15-5-784, Ashokbazar, Afzalgunj, Hyderabad (Independent) ravikumarjain4ugmail.com

22. Veena Singh, W/o Naresh Singh, Aged 43 years, R/o H. No. 5-5-1011, Goshamahal, Hindinagar, Hyderabad (Independent) veenasinghnvrgk@gmail. com

23. M. G. Sambasiva Siva Rao, S/o G. Pandu, Aged 37 years, R/o 13-3-1049/276, Indira Nagar, Jiyaguda, Hyderabad (Independent)

24. Soma Thrinath Rao, S/o Late Soma Ranchandar Rao, Aged 60 years, R/o 1-11-501/2/1/A, Flat no. 401, Pragathi Enclave, Bhavani Nagar, Hyderabad vasavikiranalu@gmail.com

25. The Election Commission of India, Nrivachan Bhavan, Ashoka Road, New Delhi.

26. The Chief Electoral Officer, Talangana State, Secretariat, Hyderabad

27. Returning Officer, Goshamahal Assembly constituency (65), Office 4 Floor, GHMC Parking Complex, Abids, Hyderabad

(Respondent Nos. 25, 26 & 27 are Struck Off Vide C.O.21-08-2019 in 'struck off' vide IA No.5 and 6 of 2019 in EP No.15 of 2019)

...RESPONDENTS

Election Petition Under Section 33,33 (A) , 34, 80, 80 (A), 81, 83, 84, 100 (1) (d) & 101 of Representation of People Act, 1951 and the Rules made there under Read with Rules to Regulate the trial of Election Petitions Under the RP Act issued by the High Court of Telangana at Hyderabad praying that this Hon'ble Court may be pleased to declare the election of 1st respondent in the Assembly General Election 2018 from Goshamahal Constituency (65) as null and void, (ii) Consequently to declare the petitioner as duly elected at in the Assembly Election, 2018 from Goshamahal Assembly Constituency (65) as contemplated under Section 84 read with Section 101(iii) for costs (v)

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to advance the EP.No. 15 of 2019 along with the pending interlocutory applications to today or any other day suitable to this Hon'ble Court to pass

Counsel for the Petitioner: SRI. V. RAVINDER RAO Senior Counsel for Sri M. VENKATESWARA RAO

Counsel for the Respondent No.1: SRI V. HARI HARAN Senior Counsel for SRI A. NARASIMHA RAO

Counsel for the Respondent No. 4: SMT. TARA SHARMA

Counsel for the Respondent No. 5: SRI SAMEER

Counsel for the Respondent No. 17 : SRI S. VENUGOPAL

Counsel for the Respondent No. 20 : SMT. P. BALA RANI

The Court made the following: ORDER

HONOURABLE SRI JUSTICE P.NAVEEN RAO

ELECTION PETITION No.15 of 2019

ORAL ORDER:

Heard Sri V.Ravinder Rao, learned senior counsel appearing for petitioner and Sri V.Hari Haran, learned senior counsel appearing for respondent no.1.

2. On 6.10.2018 schedule for conducting elections for the States of Chattisgarh, Madhya Pradesh, Rajasthan, Mizoram and Telangana were announced by the Election Commission of India. The election schedule is as under:

Date of issue of Gazette Notification	12.11.2018 (Monday)
Last date of Nomination	19.11.2018 (Monday)
Date for Scrutiny of Nomination	20.11.2018 (Tuesday)
Date for withdrawal of candidates	22.11.2018 (Thursday)
Date of Polling	07.12.2018 (Friday)
Date of Counting	11.12.2018 (Tuesday)
Date of completion of the election	13.12.2018 (Thursday)

3. Accordingly, Gazettee notification was published on 12.11.2018 calling for elections to the Telangana State Assembly. Petitioner was nominated by the Telangana Rastra Samithi party to contest the election to the Member of Legislative Assembly from Goshamahal Assembly Constituency Number 65. Petitioner submitted his nomination paper No.36/65/2018 on 19.11.2018. He has complied with all the required formalities including filing of affidavit in Form No.26. The first respondent was sitting Member of Legislative Assembly from Goshamahal Constituency representing Bharatiya

Janata Party. He was again nominated to contest on behalf of Bharatiya Janata Party from Goshamahal Assembly Constituency. The first respondent filed nomination papers on 12.11.2018 and again on 19.11.2018.

4. Respondents 2 to 24 have also submitted their nomination papers. On scrutiny of nomination papers, the Returning Officer of the Goshamahal Assembly Constituency, declared the petitioner and respondents 1 to 24 as validly nominated to contest the Assembly elections 2018 for Goshamahal Assembly Constituency. Petitioner further submits that on filing of nomination papers, the Returning Officer supplied books which deal with 'Dos and Don'ts' 'Hand Book for Candidates' 'Polling Agents Manual' and other election regulatory books and material to all the nominated candidates.

5. In the elections conducted on 07.12.2018 first respondent secured 61,806 votes, whereas petitioner secured 44,902 votes and as first respondent secured more votes than any other candidate contesting the elections, he was declared as elected on 13.12.2018. After the first respondent, petitioner secured more votes than other candidates who contested in the election.

6. In this Election Petition, petitioner challenges the election of first respondent alleging that he committed several omissions and commission of Model Code of Conduct, violated various provisions of the Act, 1951 and his actions/conduct would amount to indulging in

corrupt practices. He prays to declare the election of first respondent as null and void and consequently to declare the petitioner as duly elected to the Legislative Assembly Goshamahal Constituency No.65.

6.1. Petitioner avers that being sitting Member of Legislative Assembly, the first respondent was expected to know all aspects of contesting elections including 'Model Code of Conduct' which was in force from 6.10.2018. Petitioner contends that from the date of issuance of press note dated 6.10.2018, first respondent committed innumerable corrupt practices such as calling the voters by way of appeasing the electors/voters on the ground of religion and cow, cow slaughter, provocation and inducement to the electors/voters, appealed to the voters using National flag, photos and idols of religious Gods, promoting the feelings of enmity between the classes of the citizens on the ground of religion and made statements touching the personal character and conduct of the petitioner which prejudicially affected the election of the petitioner and other contestants.

6.2. It is further contended that first respondent incurred expenditure in contravention of Section 77 of Representation of People Act, (for short the Act, 1951).

6.3. In paragraph 'L', petitioner pointed out several acts of violations dividing them into six chapters, each chapter deals with particular incident of corrupt practice.

CHAPTER-I	Incidents of Corrupt Practices from 12.11.2018 i.e., the date of issuance of the Gazette Notification till 11.12.2018, the date of counting and declaring the result.
CHAPTER-II	Incidents of Corrupt Practices from 20.10.2018, the date of announcing the candidature of the 1st respondent by the Bharatiya Janata party till 12.11.2018 the date of Notification.
CHAPTER-III	Incidents of Corrupt Practices from 06.10.2018, the date of release of Press Note till 20.10.2018 the date of announcement of ticket to the 1st respondent.
CHAPTER-IV	Incidents of Disqualification.
CHAPTER-V	Expenditure submitted incorrect and suppression of expenditure
CHAPTER-VI	Omissions committed by the Official Respondents.

6.4. Chapter-IV deals with 'Concealment of Facts in the Affidavit'. Petitioner alleges that first respondent filed his nomination along with affidavit in Form no.26 (Annexure IX), he verified the affidavit and declared that the contents of the affidavit are true and correct to the best of his knowledge and belief and nothing material has been concealed. He stated that there is no case of conviction or pending case against him other than those mentioned in Item Nos.5 and 6 of the Part A and B. The said affidavit was sworn and signed on 19.11.2018. It was attested by Mr. N.J.Victor Moses, Advocate and Notary and registered as Entry No.81/18 dated 19.11.2018 in Book No.VII. Petitioner further avers that in paragraph 5 (I) (ii) (iii) of the affidavit (Form No.26) the first respondent gave details of 43 criminal cases pending against him which include cases where charge sheets were filed and cases pending at the investigation stage.

6.5. Petitioner alleges that several criminal cases pending against him were not disclosed. He refers to eight criminal cases. The list of

criminal cases which were registered against first respondent and not disclosed by the first respondent in affidavit in Form No. 26 are shown in paragraph 4. They are:

> "4.....
>
> i. Cr.No.60/2016 Dt.20-02-2016 (Annexure no.94) U/Sec 296A of IPC registered with Golconda Police Station of Hyderabad City on a complaint Dt.20-02-2016 being lodged by Mohammed Irfan Quadri and the same is under investigation. (Annexure No.70)
>
> ii. Cr.No.53 of 2017 Dt.12-05-2017 U/s.153(A) IPC registered with Mirchowk Police Station of Hyderabad city being lodged by D.Raja Reddy, SI and that the police served a notice under Sec.41 Cr.P.C. and is under investigation.
>
> iii. Cr.No.158/2018 Dt.29-03-2018, U/s.504 IPC registered with Saifabad Police Station by Smt.Mamtha Gupta.
>
> iv. Cr.No.434/2015 Dt.30-11-2015 U/s.505 (ii) IPC registered with OU Sity Police Station lodged by Sri Musaveer.
>
> v. Cr.No.116/2018 Dt.11-06-2018 U/s.153 IPC being lodged by Somechwer (PC 9770 of Falaknuma PS)
>
> vi. Cr.No.389/2010 Dt.25-11-2010 U/s.353 IPC being lodged by Naresh (PC 6674 of PS Langer House)
>
> vii. Cr.No.83/2014 Dt.17-03-2014 U/ss.3, 4, 5 of AP Prevention of disfigurement of open places and prohibition of obscene and objectionable posters and advertisement Act. & 66(gg) CP Act being lodged by R.Krishnam Raju, SI of Police.
>
> viii. Cr.No.59/2014 Dt.07-03-2014 U/ss.3, 4, 5 of APDOPPOOPA Act & Sec.66 (gg) of CP Act being lodged by Anji Reddy, SI of police."

6.6. Petitioner contends that this non disclosure amounts to suppression of true information and said suppression was consciously and deliberately made. Non-mentioning of pending cases in affidavit in Form No.26 is in violation of Section 33-A of the Act, 1951 amounting to submission of a false affidavit, amounts to corrupt practice and earns him disqualification and declaration of his selection as void.

7. In his counter affidavit, first respondent deposed as under:

7.1. The first respondent denied the allegations made in the Election Petition and calls upon the petitioner to put to strict proof of the said allegations. He contends that Election Petition suffers from non compliance of Section 81 (3) and 86 (1) of Act, 1951, Rule 94-A of the Conduct of Election Rules and seeks dismissal of the Election Petition on that ground. He further asserts that even assuming Election Petition is maintainable on the above issue, no case is made out under Sections 123 (2), 123 (3), 123(3A), 123(6), 125, 125 (A), 127(A) and section 77 of the Act. He contends that the averments in the Election Petition are based on mere assumptions and presumptions, filed without valid ground to maintain the present petition. He alleges that the videos, statements, pamphlets and other material relied in the Election Petition are doctored by the petitioner with sole intention to wrongfully vitiate the election of the first respondent and that petitioner relied on hypothetical scenario and surmises and is devoid of any valid grounds. He contends that there is no single incident to give cause of action on the basis of the alleged violations and prays to dismiss the Election Petition in limine.

7.2. From paragraph-5, he answers the contentions urged by the election petitioner. From paragraph-I onwards, having regard to the issue now confined in the Election Petition, the court is recording only the averments with reference to Chapter-IV of the Election Petition. In

paragraph-84, first respondent denies the averments made in paragraph-4 of chapter-IV. According to first respondent, he solicited information from the Public Information Officer, Office of the Assistant Director General of Police regarding the cases pending against him, which was forwarded to the Superintendent of Police, CID, Public Information Officer, Office of Director General of Police. The said officer in turn informed that no information is available with CID.

7.3. He contends that he has submitted all the information available with him regarding criminal cases pending against him true to his knowledge and that he has duly complied and adhered with requirements of Form No. 26 by disclosing all relevant details to the best of his knowledge and there was no known discrepancy or suppression of facts.

7.4. He alleges that petitioner himself had paid no heed to requirements of qualifications which every candidate needs to mandatorily be aware of and further proves his sheer desperation to take undue advantage of the legal system, despite being ignorant of laws which he is supposed to be fully aware of.

7.5. He further contends that petitioner failed to furnish any details or documents pertaining to alleged cases relied upon by him. He asserts that no notices were served on the first respondent. He asserts that failure to furnish information along with Election Petition itself calls for dismissal of the Election Petition.

7.6. First Respondent alleges that knowing fully well that he would lose the election, he in collusion with opponents of first respondent had fraudulent complaints registered against him through his henchmen and these attempts indicate a pre-plan and ill intentions of the petitioners in filing this petition to malign and prejudice the election of first respondent. He alleges that it has become habit to file political based cases against first respondent and they never stood to the knowledge of first respondent. He denies alleged suppression of cases mentioned in paragraph-4 of Chapter-IV.

7.7. The first respondent asserts that as an abundant caution, he approached Superintendent of Police (CID) vide letter No.GSML/AUG/PIO(DGP)/01, dated 5.9.2018 and sought information under Right to Information Act, 2005, which was later transferred to Public Information Officer to furnish suitable information and CID informed that no information was available with them. Respondent asserts that he made relentless efforts to seek information, yet all the efforts went in vain. After pursuing the appropriate authority for information and failing to receive the information, he prudently declared all cases which he was aware of to the best of his knowledge in Form 26.

7.8. He vehemently denies that he suppressed cases shown in paragraph-4, chapter-IV of the Election Petition and asserts that he was not aware of any of the cases outlined in that paragraph and

when he did not know about the institution of said crimes, he could not have declared the same.

8. Based on the pleadings, the following issues are settled:

1) Whether the first respondent suppressed material information about the pending criminal cases in the affidavit in Form-26 filed along with the nomination to contest election to the State Legislative Assembly from Goshamahal Assembly Constituency (No.65), thereby incurring disqualification to contest election from Goshamahal Assembly Constituency ?

2) Whether the alleged pending cases against first respondent which were not mentioned in Form No. 26, were within the knowledge of first respondent as on the date of submitting the same?

3) Whether first respondent intentionally and willfully suppressed Crime No.53 of 2017, registered on 05.02.2017 in Mirchowk Police Station despite acknowledging notice in Section 41-A of Cr.P.C., and whether by such suppression the election of first respondent from Goshamahal Assembly Constituency is liable to be declared as null and void?

4) Whether the non-disclosure of essential particulars in Form-26 filed along with the nomination form to contest the election from Goshamahal Assembly Constituency amounts to corrupt practice ?

5) Whether the first respondent appeased the voters in the name of particular religion by using social media account and other print media to win the election from Goshamahal Assembly Constituency amounting to corrupt practice ?

6) Whether Facebook account of first respondent was hacked and not handled by first respondent as on the date of alleged posts made on the said account ?

7) Whether the speeches delivered and distribution of campaign material favouring a particular religion by the first respondent during the election campaign amounted to promoting enmity between different classes on the ground of religion and the same amounts to corrupt practice ?

8) Whether the election expenditure filed by the first respondent to the Returning Officer was manipulated and did not disclose all the election expenditure thereby failing to comply with the statutory requirements and if so, whether on the said action of first respondent, can his election be declared as void ?

9) Whether election petitioner has approached this Hon'ble Court with unclean hands?

10) Whether the petitioner is entitled to be declared as duly elected to Goshamahal Assembly Constituency? and

11) To what relief ?

8.1. During the course of arguments, learned senior counsel submitted that the documents filed in I.A.No.10 of 2020 were taken on record and were marked that it includes notice under Section 41-A of Criminal Procedure Code in Crime No.60 of 2016, Golkonda Police Station, marked as Ex.P15 and prayed to amend issue No.3. Considering the said submission and the submission of learned counsel for the first respondent, the issue No.3 is recast as under:

"**Issue No.3**. Whether first respondent intentionally and willfully suppressed Crime No.53 of 2017 registered on 5.2.2017 in Mirchowk Police Station and Crime No.60 of 2016 registered on 20.02.2016 in Golkonda police station despite acknowledging notices under Section 41-A of Cr.P.C., and whether by such suppression the election of first respondent from Goshamahal Assembly Constituency is liable to be declared as null and void? "

9. By order dated 30.4.2021 in exercise of power under Rule 11-A of the Rules to regulate the Trial of Election Petitions under the Representation of People Act, 1951, Sri Mangari Rajender, District Judge (Retired), was appointed as Commissioner to examine witnesses on behalf of petitioner, first respondent and to examine the parties. Accordingly, the Commissioner recorded the evidence on behalf of petitioner, petitioner was examined as P.W.1 and on behalf of first respondent, first respondent was examined as RW.1. On behalf of petitioner, Exs.P1 to P20 were marked. On behalf of first respondent Exs.R1 and R2 were marked and also examined petitioner and first respondent. After recording of evidence by the Commissioner, the case record was forwarded to the Court.

10. As per the Chief Affidavit filed by petitioner and as stated by the learned senior counsel appearing for petitioner, petitioner is confining his challenge to the election of first respondent as Member of Legislative Assembly from Goshamahal Constituency only on the aspect of non disclosure of pending crimes in affidavit filed in

Form-26. In view of the same, issues 1 to 4 and 9 to 11 only require consideration.

11. Extensive submissions are made by learned senior counsel Sri V.Ravinder Rao appearing for petitioner and learned senior counsel Sri Hari Haran, appearing for first respondent.

12. Learned senior counsel Sri V.Ravinder Rao, opening his submissions would fairly submit that though several grounds are urged in the Election Petition, petitioner is confining his challenge to the election of first respondent to grounds urged in Chapter IV of the Election Petition on the issue of non disclosure of pending criminal cases in the affidavit in Form 26 filed along with nomination papers submitted by the first respondent.

12.1. According to learned senior counsel, in Chapter IV petitioner has listed out 8 criminal cases which were registered against the first respondent but first respondent has not disclosed pendency of those criminal cases in affidavit filed in Form-26. Thus, non disclosure would result in disqualification of the first respondent. He would submit that it is settled principle of law that whether the candidate was having the knowledge of pendency of those criminal cases and whether non disclosure was deliberate or willful or wanton has no relevance. Once it is found that crimes registered against the candidate are not disclosed in affidavit filed in Form-26, it would be an automatic disqualification. He would submit that there is no denial

of specific assertions made by the petitioner in the Election Petition except vague denial. He would further submit that when petitioner was asserting that those eight crimes are not disclosed, the reply given by the first respondent is vague. He does not deny pendency of those eight criminal cases registered against him. When he does not deny the registration of 8 crimes mentioned in Chapter-IV, it is deemed that he has accepted the allegation of non disclosure. He would further submit that petitioner secured certified copies of First Information Reports in Crime No.60/2016 registered in Golkonda Police Station (Ex.P-13); certified copy of charge-sheet in F.I.R. No.60/2016 (Ex.P-14); Certified copy of notice under Section 41(A) Cr.P.C., dated 26.4.2016 (Ex.P-15); F.I.R No.53/2017 registered in Mirchowk Police Station (Ex.P-16); certified copy of notice dated 12.5.2017 under Section 41(A) Cr.P.C in Crime No.53 of 2017 (Ex.P-17); covering letter under which notice was issued in Ex.P17 was marked as Ex.P18; F.I.R No.158/2018 registered in Saifabad Police Station (Ex.P-19); F.I.R No.434 of 2015 dated 30.11.2015 registered in Osmania University City Police Station (Ex.P-20). He therefore submits that these documents clearly demonstrate that those crimes were registered against first respondent and those crimes are not disclosed in the affidavit in Form-26. Exs.P14, P15 and P17 would show that copies of those documents were served on first respondent, therefore, first respondent cannot plead ignorance of registration of those crimes against him. It further submits that whenever a specific allegation is

made, it is for the respondent(s) to deny those allegations clearly. A vague reply to the allegations would amount to acceptance of the allegations levelled against him as held by the Hon'ble Supreme Court in ***Sushil Kumar v. Rakesh Kumar***[1].

12.2. Learned senior counsel dealing with the assertion of the first respondent that he did not have knowledge of pendency of eight criminal cases, would submit that Exs.P14, P15 and P17 contain signature of the first respondent, therefore, he cannot deny the knowledge of atleast those documents. He would submit that even though first respondent sought to deny receiving of notices as per Section 114 (e) of the Indian Evidence Act, 1872, the presumption is in favour of knowledge of pendency of those crimes as those two documents are official acts performed in discharge of statutory functioning. In view of the same, the burden is on the person disputing the validity of the documents. He would further submit that those documents contain the signature of first respondent, therefore the presumption is that those documents are served on the first respondent. Learned senior counsel has taken the Court through provisions of Sections 33A, 100 (1) (B), (D) (IV), Section 123 of the Act, 1951 to contend that the purpose and objective of dissemination of information about background of the candidate more particularly the criminal background of the candidate is necessary for the electorate to make conscious decision/ choice from any one of the contestants,

therefore all the information concerning the candidate must be disclosed. Section 33-A vests right in the electorate and non disclosure of the information offends the right of the electorate, therefore non-dissemination of information by a candidate has to be viewed as amounting to deliberate and willful suppression and misleading the electorate from taking an informed decision. Non-disclosure of relevant information is also a corrupt practice and as per Section 100 (1) (b) the Election Tribunal can declare the election of an elected candidate as void, if the corrupt practice is proved. The evidence brought on record by the petitioner conclusively proves that the first respondent has not disclosed the full information about all the criminal cases pending against him and thus indulged in corrupt practice, therefore his election has to be declared as void.

12.3. Learned senior counsel submits that having realized that he has not disclosed eight crimes in the affidavit in Form-26, he sought to take shelter under application stated to have been filed under Right to Information Act. Learned senior counsel by reading letters dated 11.9.2018 and 20.10.2018 point out that they themselves would not say that those letters relate to the request of the first respondent for furnishing the information regarding the criminal cases pending against him. Those letters could have been submitted for some other information. When *ex facie* those two documents do not reveal information of pending criminal cases, the said documents are to be ignored or discarded. He would further submit that applications

allegedly submitted by the first respondent under Exs.R1 and R2 are two different applications for different purposes, therefore, do not relate to the same information sought by the first respondent and they are placed on record only to mislead this Hon'ble Court. By pointing out reliance on application stated to have been filed by first respondent on 5.9.2018 for eliciting information under Right to Information Act, referred to in the letter dated 11.9.2018 (Ex.R1), he would submit that no credence can be given to this document as same is not marked. He would therefore submit that documents marked as Exs.R1 and R2 do not come to the aid of the first respondent regarding his defence of not having information about eight pending criminal cases. He would further submit that it is not explained by the first respondent as to how he has approached the Assistant Director General of Police, when he is not Head of City Police Commissionarate and why he has not instead approached the Commissionarate of Police.

12.4. Learned senior counsel asserts that as held by the Hon'ble Supreme Court and High Courts consistently that once a crime is registered, it is immaterial whether candidate was aware of the crime and if that crime is not disclosed in the affidavit filed in Form 26, he would automatically earn disqualification. Once it is established that all the crimes registered against the first respondent were not disclosed in affidavit in Form-26, it would amount to improper acceptance of nomination, as there was misinformation or

suppression of material information and merely because nomination was not rejected, his participation in the election and subsequent election cannot validate the illegality committed by the Election Commission of India at the stage of acceptance of nominations.

12.5. Dealing with the objection of the learned senior counsel for first respondent on discrepancy in two dates shown in the chief-affidavit dated 27.4.2021 and 28.4.2021 he would submit that first respondent cannot seek to take undue advantage and mislead the Court by emphasizing on a typographical mistake in the chief-affidavit. He would submit that the chief-affidavit was to be filed on 28.4.2021 and with that objective in mind, the date of verification was typed as 28.4.2021, though the affidavit was actually signed by the petitioner and Notary Advocate on 27.4.2021 and affidavit was also filed on 27.4.20221. Accordingly the date was corrected as 27.4.2021 on the docket but due to oversight, it was not corrected on pages 22 and 23 and learned senior counsel submits that it is purely a typographical mistake. By placing reliance on decision of Full Bench of this Court in ***Rita Pandit v. Atul Pandit***[2], he would submit that an affidavit would become part of statement made by the deponent when taken as evidence by Court if confirmed by the deponent on his appearance before the Court for cross-examination. Thus, a wrong mention of date cannot invalidate the deposition given by the petitioner.

12.6. Dealing with the objection of leaned senior counsel for first respondent with reference to filing of affidavit in Form-26 filed by first respondent along with nomination papers marked as Ex.P11, he would submit that the said document was downloaded from the official web site of Election Commission of India. To this extent petitioner has stated clearly in his chief-examination. He would further submit that Ex.P11 was marked during the cross of chief-examination. The first respondent did not oppose marking of the document and once document is admitted, it is no more open for the first respondent to raise objection on admissibility of the document. He would further submit that even the first respondent has deposed that he filed affidavit in Form-26 and in the cross examination when he was confronted with reference to Ex.P11 and asked to state whether Ex.P11 was one filed along with his nomination papers, he answered in affirmation. He would further submit that as required by Section 65-B of the Indian Evidence Act, 1872 petitioner filed affidavit giving all the details of how he has secured the document and same is placed on record. In fact, petitioner secured several such documents in electronic mode and in support of authenticity of the document as required by Section 65-B of the Indian Evidence Act, he has filed affidavit and all those affidavits are marked as Exs.P1B, P2B, P8B, P11B and P12B and that no objection was raised for marking of the said documents, therefore, it is no more open for the first respondent to raise the plea of admissibility of this document.

12.7. By pointing out the discrepancies in the depositions of first respondent extensively extracted in the written arguments filed on behalf of the petitioner, learned senior counsel would urge that it is a clear case of non disclosure of information of eight crimes mentioned in Chapter-IV of the Election Petition and thus first respondent has earned disqualification and therefore his election has to be declared as void.

12.8. In continuation of these submissions, learned senior counsel further contends that the petitioner is the candidate who secured next highest votes from the electorate and once election of candidate who secured highest votes is declared as void, the next candidate has to be declared as elected and High Court can declare the petitioner as elected by granting consequential relief sought by him. In support of this contention, learned senior counsel placed reliance on Sections 84, 98, 99 (i) (a) and (b) and Section 101 (b). He further placed reliance on the following decisions:

(1) ***Vishwanath Reddy Vs. Konappa Rudrappa Nadgouda***[3] *(paragraphs-11 to 13)*,

(2) ***Thiru John v. Returning Officer***[4] *(paragraph-59)*,

(3) ***D.K. Sharma v. Ram Sharan Yadav***[5] *(paragraphs-2 & 4)*,

(4) ***Muniraju Gowda P.M. v. Munirathna***[6] *(paragraphs 4 to 7, 12, 16,21,22)*

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[3] (AIR 1969 SC 604
[4] (1977) 3 SCC 540
[5] 1993 Supp (2) SCC 117
[6] (2020) 10 SCC 192

13. In reply, learned senior counsel Sri V.Hari Haran has taken the Court through the pleadings in Chapter-IV and chief-examination of affidavit and would contend that though petitioner urged in the pleadings alleged non disclosure of 8 crimes mentioned in paragraph-4 of the Chapter-IV of Election Petition, no proof is brought out to show that first respondent had knowledge of the eight crimes and he has deliberately and willfully not disclosed the information. He asserts that in the counter-affidavit first respondent denied in clear and categorical terms the averments made in the election petition. Learned senior counsel refers to averments in paragraph-4 and averments from paragraphs-81 to 84 and 86 (paragraph no.85 is not found). He would submit that in addition to categorical general denial in paragraph-4 about the averments made in the election petition dealing with the averments in Chapter-IV, the first respondent has clearly denied the assertion of the petitioner about non disclosure of pending crimes within the knowledge of first respondent. He would assert that in spite of best efforts made by the first respondent, he could not secure information about those eight crimes and he did not know about pendency of those crimes when he filed affidavit in Form-26. When he had no knowledge about pendency of those crimes, non-disclosure of same cannot be treated as deliberate and willful to disqualify him on that ground.

13.1. With reference to affidavit in Form-26 filed by petitioner (Ex.P11) he would submit that this is not an official or certified copy but it is a

downloaded copy filed as a document, whereas only original has to be marked, therefore, no credence can be given to the said document and placed reliance on the judgment of the Supreme Court in ***Shiv Lal v. Chet Ram***[7].

13.2. Learned senior counsel asserts that the first respondent had no knowledge about filing of charge sheet in FIR No.60/2016 (Ex.P14); notice dated 26.4.2016 under Section 41-A Cr.P.C., in FIR No.60/2016 (Ex.P15) and notice dated 12.5.2017 under Section 41-A of Cr.P.C in FIR No.53/2017 (Ex.P17). He categorically asserts that signatures in Exs.P14, P15 and P17 do not belong to first respondent and he had no knowledge about those crimes also. He would assert that without having knowledge about pendency of crimes, he could not have declared the same in the affidavit.

13.3. By referring to the documents relied upon by the petitioner and referring to questions 57 to 78 in the cross examination of first respondent, he would submit that all the documents relied upon by the petitioner are post filing of election petition and those documents cannot be relied upon to hold that the respondent has committed corrupt practices.

13.4. He would assert that there was no deliberate suppression of information available with him and non disclosure of eight crimes which were not within his knowledge does not amount to violation of

[7] 1970 (2) SCC 773

provisions of Act and therefore, he has not earned the disqualification on the grounds urged by the petitioner.

13.5. Learned senior counsel submits that the chief examination affidavit of the petitioner cannot be taken on record, there is incurable defect in the said document, the verification and date of signature of the petitioner cannot be different and those defects cannot be cured later. When it is an incurable defect, as held by Hon'ble Supreme Court in ***Regu Mahesh v. Rajendra Pratap Bhanj Dev***[8] no reliance can be placed on the said deposition.

13.6. He would submit that since petitioner has not proved the authenticity of the documents and when there is categorical denial by first respondent, burden is cast on the petitioner to prove the correctness of the documents relied upon by him and it is not correct to contend that burden shifts on the respondents merely because the documents relied upon are stated to be public documents. He would submit that the question is not with reference to nature of the documents but the question is whether those documents are served on the first respondent. First respondent asserts that those documents are not served on him and signature contained in Exs.P14 and P17 does not belong to him. When it is categorically denied, burden is on the petitioner to prove by cogent evidence that those documents were actually served on first respondent. The petitioner miserably failed to establish beyond reasonable doubt that the

[8] (2004) 1 SCC 46

documents relied upon by him were served on the first respondent. In support of his contention, learned senior counsel placed reliance on the decision of the Supreme Court in ***M. Manohar Reddy v. Union of India***[9] (paragraphs-1, 5, 6, 7, 26, 33, 44)

13.7. In summing up, he would contend as under:

(i) It is for the petitioner to establish the allegation that even though first respondent had the knowledge of any one or all the eight crimes listed out in paragraph-4 of the Chapter-IV of the Election Petition. Petitioner miserably failed to discharge his burden with clear evidence;

(ii) When there is no knowledge about pending crimes no liability can be fixed on the first respondent and non disclosure of the crimes not within the knowledge of first respondent cannot amount to deliberate and willful suppression and even otherwise cannot amount to resorting to corrupt practices.

(iii) The object of disclosure of pending criminal cases is only to inform the voter to make an effective choice by him. The first respondent has not deceived the voter, he has disclosed 43 cases which were pending against him and which were within his knowledge and that declaring 8 more cases would not have made any difference and therefore by not disclosing the 8 criminal cases relied upon by the

[9] (2013) 3 SCC 99

petitioner, he has not deceived the electors/voters, therefore, the election of the first respondent cannot be nullified on that ground.

(iv) Petitioner is casual in prosecuting the case, therefore he is not entitled to seek relief in election petition. In support of said contention, he placed reliance on decision of the Supreme Court in ***Regu Mahesh*** (supra) (paragraph-18).

14. As issues 1 to 4 are inter-related, to avoid repetition of facts, Issue Nos. 1 to 4 are taken up together.

15. To appreciate the respective submissions and to consider the issues, it is necessary to travel in time on how law has evolved. By series of directions, the Hon'ble Supreme Court, made it mandatory to disclose array of information about the contestant and his family members. Few of the decisions are noted hereunder.

15.1. ***Union of India v. Assn. for Democratic Reforms and another***[10] is a watershed on electoral reforms ushering in new norms, wherein series of directions were issued on disclosure of information by contesting candidate. In pursuance of the directions given by the Supreme Court, the Parliament made amendments to the R.P. Act, 1951 and included Section 33-A and 33-B, with effect from 28/4/2002 and consequently Rule 4-A was included in conduct of Election Rules, 1961, w.e.f 3/9/2002.

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[10] (2002) 5 SCC 294

15.2. This was followed by decision in **People's Union for Civil Liberties (PUCL) and another vs. Union of India and others**[11]. The amended Section 33-B was declared null and void and ultra vires to the Constitution as it went beyond legislative competence as the Supreme Court has already held that the voter has a fundamental right under Article 19(1)(a) to know the antecedents of the candidate. The Hon'ble Supreme Court further emphasized the relevance of disclosure of information. It is held:

> "70. Hence, in our view, right of a voter to know the biodata of a candidate is the foundation of democracy. The old dictum — let the people have the truth and the freedom to discuss it and all will go well with the Government — should prevail.
>
> 78. What emerges from the above discussion can be summarised thus:
>
> (A).....
> .....
> .....
> (D)..... ***However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.***
>
> (E) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court."
>
> (emphasis supplied)

[11] (2003) 4 SCC 399

15.3. Both these decisions by the Supreme Court are widely recognized as the bedrock of electoral reforms in India. Statutory interpretation therein onwards has been strict, implementing the maxim that the right of the voter to know the bio-data of the candidate is the foundation of democracy[12].

15.4. Then followed **Resurgence India vs. Election Commission of India and another**[13] (in paragraph-29), the Hon'ble Supreme Court summarized the directions. To the extent relevant, they read as under:

> "29.1. The voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament/Assemblies and such right to get information is universally recognised. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.
>
> 29.2. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information."

15.5. In **Kisan Shankar Kathore v. Arun Dattatray Sawant**[14] the Hon'ble apex Court held as follows:

> ***"40.*** *We have already reproduced above the relevant portions of judgments in Assn. for Democratic Reforms [Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294] and People's Union for Civil Liberties [People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399] and the guidelines issued by the Election Commission pursuant thereto. A conjoint and combined reading thereof clearly establishes that the main reason for issuing directions by this Court and guidelines by the Election Commission pursuant thereto is that the citizens have fundamental right under Article 19(1)(a) of the Constitution of India to know about the candidates contesting the elections and this is the primary reason that casts a solemn obligation on these candidates to furnish information regarding the criminal*

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[12] *Public Interest Foundation v. Union of India*, (2019) 3 SCC 224, Supreme Court gave further guidelines increasing voter awareness regarding criminal antecedents

[13] (2014) 14 SCC 189

[14] (2014) 14 SCC 162

antecedents, educational qualifications and assets held by the candidate, his spouse and dependent children. It is on that basis that not only the Election Commission has issued guidelines, but also prepared formats in which the affidavits are to be filed. As a fortiori, it follows that if the required information as per the said format in respect of the assets of the candidate, his wife and dependent children, is not given, it would amount to suppression/non-disclosure."

15.6. In **Public Interest Foundation and others v. Union of India and another[15],** the issue that fell for consideration of the Hon'ble Supreme Court was whether disqualification for membership can be laid down by the Court beyond Articles 102 (a) to (d) and the law made by the Parliament under Article 102(c). The Hon'ble Supreme Court observed,

"115. ..... The information given by a candidate must express everything that is warranted by the Election Commission as per law. Disclosure of antecedents makes the election a fair one and the exercise of the right of voting by the electorate also gets sanctified. It has to be remembered that such a right is paramount for a democracy. A voter is entitled to have an informed choice. If his right to get proper information is scuttled, in the ultimate eventuate, it may lead to destruction of democracy because he will not be an informed voter having been kept in the dark about the candidates who are accused of heinous offences. ....."

15.7. In **Krishnamoorthy Vs. Sivakumar[16],** the Hon'ble Supreme Court held that *voter has a fundamental right to know about the candidates contesting the elections as that is essential and a necessary concomitant for a free and fair election. Therefore, disclosure of criminal antecedents is a categorical imperative and non-disclosure would amount to undue influence. Concealment would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote. The requirement of disclosure,*

[15] (2019) 3 SCC 224
[16] (2015) 3 SCC 467

especially the criminal antecedents, enables a voter to have an informed and instructed choice. (paragraph-29).

15.8. By these decisions, the Hon'ble Supreme Court emphasized that the right to vote is sacrosanct and inviolable and an elector can effectively exercise this right only when he is presented with mirror images of the candidates contesting the elections to the Indian Parliament and/or the State Legislature containing array of information on all aspects of the candidates. An informed decision would make the election process more inclusive and effective, leading to realizing vibrant democratic institutions. Hon'ble Supreme Court firmly put in place the system of full disclosure on all aspects of a contestant ushering in a new era.

16. Having noted the law enunciated by the Hon'ble Supreme Court of India, now it is expedient to consider the statutory frame work on the disclosure of information by the candidates and effect of non-disclosure. Relevant provisions which have a bearing on these issues are Sections 2(1)(c)[17], 33A[18], 100[19], 123[20] and 125-A[21] of the Act, 1951 and Rule 4A and Form 26 of the Conduct of Election Rules, 1961.

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[17] **S.2. Interpretation:-** (1) In this Act, unless the context otherwise requires,-- xxxx
(c) "corrupt practice" means any of the practices specified in Section 123.

[18] **33-A. Right to information.**—(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his Nomination Paper delivered under sub-section (1) of Section 33, also furnish the information as to whether—
(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;
(ii) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in subsection (3) of Section 8 and sentenced to imprisonment for one year or more.
(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the Returning Officer the Nomination Paper under sub-section (1) of Section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).
(3) The Returning Officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the Nomination Paper is delivered.

16.1. Section 2 defines various terms/words employed in the Act. Section 2(1)(c) defines '***Corrupt Practice***' meaning as specified in Section 123 of the Act, 1951.

16.2. Section 33-A of the Act, 1951 recognizes inalienable right of a citizen to know everything of candidates contesting the elections offering to represent the citizens in the Central or State legislature. It therefore obligates the candidates to disclose all information about themselves and their family members, including the criminal record of the candidates.

16.3. Section 123 of the Act, 1951 incorporates what constitutes ***corrupt practices***. What is shown therein is illustrative and the Act intends to give wide scope to the term '***corrupt practice***'. Non disclosure of information on pending crimes by a contestant amounts to

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[19] S.**100. Grounds for declaring election to be void**.- (1) Subject to the provisions of Sub-section (2) if the High Court is of opinion-
(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
(i) by the improper acceptance or any nomination, or
(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.

[20] S.**123. Corrupt practices**.—The following shall be deemed to be corrupt practices for the purposes of this Act:—
xxx
(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person [22][with the consent of the candidate or his election agent], with the free exercise of any electoral right:
Provided that—
(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—
(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or
(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,
shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;
(*b*) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

[21] **S.125-A. Penalty for filing false affidavit, etc.** – A candidate who himself or through his prosper, with intent to be elected in an election,--
(i) fails to furnish information relating to sub-section (1) of Section 33-A; or
(ii) gives false information which he knows or has reason to believe to be false; or
(iii) conceals any information,
In his nomination paper delivered under sub-section (1)of Section 33 or in his affidavit which is required to be delivered under sub-section (2) of Section 33-A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

'***Undue influence***' scuttling the right of an elector in assessing the suitability of the candidate and is a '***corrupt practice***'. It is a ground to disqualify an elected candidate under Section 100 of the Act, 1951.

16.4. As per Section 100 of the Act, 1951, whenever it is established that the elected candidate resorted to '***corrupt practice***' to win the election, his election can be declared as void.

16.5. By way of amendment carried out on 03.09.2002, Rule 4-A was inserted in the Conduct of Elections Rules, 1961. This Rule requires filing of sworn affidavit by the candidate in Form-26 while submitting the nomination to contest the election. By amendment order dated 01.08.2012, Form-26 was amended. Amended Form-26 is in two parts. In Part-A candidate is required to furnish personal particulars, assets and liabilities, particulars of criminal cases pending at various stages, and cases where competent Court convicted of offence(s), educational qualifications and profession. Part-B requires furnishing abstract of information provided in Part-A. In other words, in Form-26 candidate is required to furnish information about the pending crimes at the stage of investigation, cases where cognizance has been taken by the Court and the cases where the candidate was convicted.

17. The legal regime requires a contestant to a seat in Legislative Assembly to furnish all the details about himself and his family. Non-disclosure of any information can result in declaring his election as void. If the candidate failed to furnish full information as required in

Form-26, it amounts to ***'unduly influencing'*** the elector and thus amounting to ***'corrupt practice'***, which, if proved, would render his election as invalid.

18. The Representation of the Peoples Act and the Rules made there under impose severe consequences on the candidate indulging in ***corrupt practice.*** His election to Indian Parliament/State Legislature can be set aside; he can be declared ineligible to contest the elections for a period of six years and can face criminal prosecution. Thus, the consequences can be both civil and criminal. Having regard to the consequences that fall on an erring candidate, in the following decisions, the Hon'ble Supreme Court held that proceedings in an Election Petition are quasi-criminal.

18.1. In **Manohar Joshi v. Damodar Tatyaba**[22], on analyzing the various provisions of the Act, it is held that where a ***'corrupt practice'*** is alleged, the trial of an election petition on such charge is of a quasi-criminal nature, and a heavy burden rests on the person alleging the corrupt practice to prove strictly all the ingredients of the charge. The Hon'ble Supreme Court held as under:

> ***".....This is as it should be, since the naming of a person as having committed a corrupt practice has a serious consequence of disqualifying him from being chosen as or from being member of any House of the Parliament or of the Legislative Assembly or Council of a State for a period up to 6 years.*** (paragraph-20)
> (emphasis supplied)

[22] (1991) 2 SCC 342

18.2. In **Jeet Mohinder Singh v. Harminder Singh Jassi**[23], the Hon'ble Supreme Court codified settled legal principles in the field of election jurisprudence. To the extent relevant to this case (paragraph-40) reads as under:

> "(*i*) **The success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law.** Though the purity of the election process has to be safeguarded and the court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves an enormous load on the public funds and administration. (See *Jagan Nath* v. *Jaswant Singh* [AIR 1954 SC 210 : 1954 SCR 892] , *Gajanan Krishnaji Bapat* v. *Dattaji Raghobaji Meghe* [(1995) 5 SCC 347] .)
>
> ***(ii) Charge of corrupt practice is quasi-criminal in character.*** If substantiated it leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career. ***A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge.*** Two consequences follow. Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. ***To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to the hilt, the standard of proof being the same as in a criminal trial.*** (See *Quamarul Islam* v. *S.K. Kanta* [1994 Supp (3) SCC 5 : AIR 1994 SC 1733] , *F.A. Sapav. Singora* [(1991) 3 SCC 375 : AIR 1991 SC 1557] , *Manohar Joshi* v. *Damodar Tatyaba* [(1991) 2 SCC 342] and *Ram Singh* v. *Col. Ram Singh* [1985 Supp SCC 611 : AIR 1986 SC 3])
>
> (emphasis supplied)

18.3. These principles are affirmed in **Baldev Singh Mann v. Surjit Singh Dhiman**[24]. In **Baldev Singh Mann,** the Hon'ble Supreme Court held:

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[23] (1999) 9 SCC 386
[24] (2009) 1 SCC 633

"21. The Court in a number of cases has held that the charge of corrupt practice is quasi-criminal in character and it has to be proved as a criminal charge and proved in the Court."

18.4. In **Abhiram Singh vs. C.D.Commachen (dead) by LRs and others**[25], Bench of seven judges of Hon'ble Supreme Court considered reference on interpretation of clause (3) of Section 123 of the Act. In the dissenting opinion *Hon'ble Justice Dr. D.Y.Chandrachud* observed that Election Petitions alleging corrupt practice have a quasi-criminal character. Where a statutory provision implicates penal consequences or consequences of a quasi-criminal character a strict construction of the words used by the Legislature must be adopted (paragraph-100). The standard of proof is hence much higher than a preponderance of probabilities which operates in civil trials. The standard of proof in an election trial veers close to that which guides a criminal trial (paragraph-101).

19. Reverting back to the instant case, the challenge to the election of first respondent centers around the declaration given by the 1st respondent in Form-26 while submitting his nomination form. Petitioner alleges that at least eight criminal cases pending against the first respondent as on the date of submission of nomination to contest the election, were not disclosed in the affidavit in Form-26 and this fact is not denied by the first respondent and therefore he has indulged in ***corrupt practice*** vitiating his election.

[25] (2017) 2 SCC 629

20. On the issue of non-disclosure of eight crimes listed in paragraph-4 of chapter-IV in the Election Petition, the submissions are three fold. First, no endeavour was made by the first respondent to secure information on how many crimes are registered against him and the stage of those cases; second, at least in two of the eight crimes he received notices under Section 41(A) of Cr.P.C., but they are not disclosed; and third, it is immaterial whether first respondent had the knowledge, as long as all crimes registered against him are not disclosed, it amounts to ***corrupt practice.*** On these three aspects, which have bearing on the issues under consideration, I shall deal in seriatum.

21. Learned senior counsel for petitioner vehemently argued that Exs.R1 and R2 do not concern seeking information on pending criminal cases and no effort was made by first respondent to know how many criminal cases were registered against him. Only to cover up his misdeed in not disclosing eight criminal cases listed in paragraph-4 of Chapter-IV in the Election Petition, he is making false statement as if efforts were made to secure information from the Police. He would submit that though the first respondent was aware that those eight criminal cases were also registered against him, he deliberately did not disclose them.

22. Though, Exs.R1 and R2 do not disclose the content of information sought by the first respondent, he asserts in two affidavits deposed on 7.8.2021 enclosing Exs.R1 and R2 respectively

that those two documents concern his application under Right to Information Act to elicit information on pending criminal cases.

23. It is relevant to note the depositions of first respondent on this aspect in his cross examination. They read as under:

"**Q37.** Is it a fact that as mentioned in para 4 Chapter IV at page 49 of the Election Petition, you approached City Crime Station, Hyderabad, and obtained the information regarding all the cases in all Police Stations under RTI and thus, you are aware of all the cases pending against you ?

Ans. I have not obtained any information from CCS. The witness adds that he approached the Director General of Police regarding the cases pending against him in the State of Telangana.
Counter was shown to the witness. Witness admits that it is the counter filed by him. He also indentifies his signature. It was prepared on his instructions.

Q38. Whether the statement in para 84 of your counter that you approached the Public Information Officer, office of Assistant Director General of Police regarding the information of cases pending against you is correct ?

Ans. It is true.

.....

Q40. It is suggested that you have not filed any application before the said PIO of Assistant Director General of Police ?

Ans. It is false.

.....

Q44. Did you approach any other authority/office other than PIO office of O/o Assistant Director General of Police for obtaining information regarding the criminal cases pending against you ?

Ans. I have not approached any other authority/office for obtaining the information.

Q45. It is suggested that you are deposing false that you have approached the O/o Assistant Director General of Police for the information of criminal cases ?

Ans. It is not true.

.....

Q48. Is it that both the documents in Ex.R.1 and R.2 relate to one and the same application you claim to have submitted under RTI for procuring the criminal cases pending against you ?

Ans. Yes.

.....

Q50. Whether you have filed the letter dated 05.09.2018 referred in Ex.R.1 and the application dated 26.09.2018 referred in Ex.R.2 in this case before this Court?
Ans. No. I have not filed.

Q51. It is suggested to you that the applications dated 05.09.2018 in Ex.R.1 and application dated 26.09.2018 referred in Ex.R.2 is not relating to application for information as claimed to have been made regarding the criminal cases pending against you ?

Ans. It is false.

Q52. It is suggested that the applications dated 05.09.2018 and 26.09.2018 were made for some other purpose not for obtaining information relating to pending criminal cases and you are falsely deposing ?

Ans. It is false."

24. From these depositions and his two affidavits in support of Exs.R1 and R2, it is apparent that first respondent asserts that he applied under the Right to Information Act to obtain information on pending criminal cases but could not get any information. Even though, first respondent was subjected to extensive cross-examination trying to nail him down on not securing information on all pending crimes, the first respondent stood firm on his assertions. There is no other evidence brought forth by the petitioner to discredit this assertion. The assertion of the first respondent that he made all endeavors to secure information about pending criminal cases is un-rebutted.

25. It is next contended by learned senior counsel that as per the information secured by the petitioner atleast in Crime No.60 of 2016 registered in Golkonda Police Station and Crime No.53 of 2017 registered in Mirchowk Police Station, as is evident from Exs.P13 to P17, the first respondent was aware that these two crimes were registered against him as he received notices and appended his signature. These crimes were within his knowledge, but he has not disclosed them.

26. (i) Ex.P13 is the certified copy of the FIR No.60 of 2016 dated 20.02.2016.

(ii) Ex.P14 is the certified copy of the charge sheet filed by Golconda Police in Crime No.60/2016, dated 20.02.2016 in the Court of XVII Additional Chief Judicial Magistrate at Hyderabad.

(iii) Ex.P15 is the certified copy of the notice U/s.41-A Cr.P.C. in Crime No.60 of 2016, dated 26.04.2016 issued by the Office of Inspector of Police, Golconda Police Station.

(iv) Ex.P16 is certified copy of the First Information Report in Crime No.53 of 2017 registered on 12.05.2017 in Mirchowk Police Station.

(v) Ex.P17 is the certified copy of the notice U/s.41-A Cr.P.C. dated 12.05.2017 issued by the O/o. Mirchowk Police Station in Crime No.53 of 2017. (Ex.P17 is marked under objection by the counsel for respondent No.1).

27. In column-11 of Ex.P14-charge sheet, it is written that *'served notice under Section 41(A) of Cr.P.C. on 27.04.2016 and obtained the acknowledgment'*, Ex.P15 is the notice under Section 41(A) of Cr.P.C., in the said crime and bears the signature, claimed by petitioner as belonging to the first respondent, in proof of service of notice on 27.04.2016, Ex.P17 also bears the signature, claimed by petitioner as belonging to the first respondent, in proof of service of notice in Crime No.53 of 2017 on 13.05.2017.

28. The two crimes covered by Exs.P13 to P 17 are part of the eight crimes petitioner heavily relied on to assert that first respondent made false declaration in affidavit in Form-26. Except in these two crimes, petitioner has not brought on record evidence to show knowledge of first respondent on six other crimes.

29. As petitioner asserts that first respondent received notices issued under Section 41(A) of Cr.P.C., in two crimes shown in Exs.P13 to P17 and, therefore, had knowledge of pendency of these two crimes, the burden is on him to prove this fact. Therefore, it is necessary to consider whether the petitioner is able to prove beyond reasonable doubt that the first respondent was aware of the two crimes shown in Exs.P13 to P17.

30. While petitioner asserts that in at least two crimes covered by Exs.P13 to P17 first respondent's signature is found in proof of acknowledgement of notices under Section 41(A) of Cr.P.C., evidencing knowledge of registration of these two crimes, the stout defence of first respondent is that he did not receive Exs.P15 and P17 notices and that signatures on these two documents do not belong to him.

31. At this stage, it is apt to note the view expressed by the Hon'ble Supreme Court, on burden of proof in Election Petitions:

31.1. In **Laxmi Narayan Nayak v. Ramratan Chaturvedi**[26]it was discussed:

> **"5.** *This Court in a catena of decisions has laid down the principles as to the nature of pleadings in election cases, the sum and substance of which being:*
>
> *(1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi [1987 Supp SCC 93] and Kona Prabhakara Rao v. M. Seshagiri Rao [(1982) 1 SCC 442] .*
>
> *(2) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue videManphul Singh v. Surinder Singh [(1973) 2 SCC 599: (1974) 1 SCR 52] , Kona Prabhakara Rao v. M. Seshagiri Rao [(1982) 1 SCC 442] and Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi [1987 Supp SCC 93].*
>
> *(3)* **The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide Jumuna Prasad Mukhariya v. Lachhi Ram [(1955) 1 SCR 608: AIR 1954 SC 686] and Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660] .**
>
> *(4)* **The evidence produced before the court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide Ram Sharan Yadav v. Thakur Muneshwar Nath Singh [(1984) 4 SCC 649] .**
>
> *(5)* ***It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents*** *vide Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660] , M. Narayana Rao v. G. Venkata Reddy [(1977) 1 SCC 771: (1977) 1 SCR 490], Lakshmi Raman Acharya v. Chandan Singh [(1977) 1 SCC 423: (1977) 2 SCR 412] and Ramji Prasad Singh v. Ram Bilas Jha [(1977) 1 SCC 260] .*
>
> *(6)* ***The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election*** *which has been concluded vide Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660], Mohan Singh v.Bhanwarlal [(1964) 5 SCR 12: AIR 1964 SC 1366] and Ramji Prasad Singh v. Ram Bilas Jha [(1977) 1 SCC 260]."*
>
> (Emphasis supplied)

[26](1990) 2 SCC 173

31.2. A Constitution Bench (5) of the Supreme Court in **Mohan Singh v. Bhanwarlal**[27] held:

> **"12.** *"Counsel for Mohan Singh challenged the finding of the High Court that Mohan Singh was instrumental in Publishing the leaflets annexures 'D' and 'E'. He urged that in the trial of an election petition approach to the evidence must be as in a criminal trial and no fact may beheld proved unless it is established beyond reasonable doubt.* ***The onus of establishing a corrupt practice is undoubtedly on the person who sets it up, and the onus is not discharge on proof of mere preponderance of probability, as in the trial of a civil suit: the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous......"***
>
> (emphasis supplied)

31.3. This was reiterated by a Constitution Bench (3) of the Supreme Court in **Manmohan Kalia v. Yash**[28]

> ***"7. It is now well-settled by several authorities of this Court that an allegation of corrupt practice must be proved as strictly as a criminal charge and the principle of preponderance of probabilities would not apply to corrupt practices envisaged by the Act because if this test is not applied a very serious prejudice would be caused to the elected candidate who may be disqualified for a period of six years from fighting any election, which will adversely affect the electoral process."***
>
> (emphasis supplied)

31.4. In **Pratap Singh v. Rajinder Singh**[29] a Constitutional Bench (3) held:

> **"14.** *Hence, it has sometimes been argued that the same standard of proof applies to all types of cases. Such a contention seems plausible.* ***But, what has to be borne in mind is that, in judging the evidence of a grave charge, prudence dictates that the belief in its correctness should form the basis of a judicial verdict of guilt only if that belief reaches a conviction beyond reasonable doubt. If prudence is the real test, it prescribes differing standards of proof in differing circumstances. Its***

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[27](1964) 5 SCR 12
[28](1984) 3 SCC 499
[29](1975) 1 SCC 535

requirements preclude any Procrustean bed of uniformly rigid rules for each type of case."

(emphasis supplied)

31.5. In **Ram Sharan Yadav v. Thakur Muneshwar Nath Singh**[30] the Supreme Court discussed standard of proof required in the case of undue influence:

> *"**2.** Several decisions of this Court have laid down various tests to determine a corrupt practice and the standard of proof required to establish such corrupt practices and it is not necessary for us to repeat the dictum laid down by this Court and the approach to be made in detail because the matter is no longer res integra but is concluded by a large number of authorities. To quote a few recent ones: Daulat Ram Chauhan v. Anand Sharma [(1984) 2 SCC 64, 73(para 18)] ,Manmohan Kalia V. Yash [(1984) 3 SCC 499, 502(para 7)] , A. Younus Kunju v.R.S. Unni [(1984) 3 SCC 346, 349] as also an earlier decision of this Court in Samant N. Balakrishna v. George Fernandez [(1969) 3 SCC 238, 248 : AIR 1969 SC 1201 : (1969) 3 SCR 603, 618-19] .*
>
> ***3. The sum and substance of these decisions is that a charge of corrupt practice has to be proved by convincing evidence and not merely by preponderance of probabilities. As the charge of a corrupt practice is in the nature of a criminal charge, it is for the party who sets up the plea of "undue influence" to prove it to the hilt beyond reasonable doubt and the manner of proof should be the same as for an offence in a criminal case. This is more so because once it is proved to the satisfaction of a court that a candidate has been guilty of "undue influence" then he is likely to be disqualified for a period of six years or such other period as the authority concerned under Section 8-A of the Act may think fit. Therefore, as the charge, if proved, entails a very heavy penalty in the form of disqualification, this Court has held that a very cautious approach must be made in order to prove the charge of undue influence levelled by the defeated candidate.*** (emphasis supplied)

32. From the precedent decisions, the law is clear as crystal on the nature of evidence required to declare an election as void. The evidence adduced in support of the pleadings should be cogent leading to an irresistible conclusion or evidence is convincing that the allegations made have been committed rendering the Court to reach to no other conclusion but to hold that the election is void. It is unsafe

[30](1984) 4 SCC 649

to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents. What has to be borne in mind is, in considering the evidence on a grave charge, prudence dictates that the belief in its correctness should form the basis of a judicial verdict of guilt only if that belief reaches a conviction beyond reasonable doubt. As the consequences in holding that elected candidate resorted to ***corrupt practice*** is severe, the onus of establishing a ***corrupt practice*** is on the person who alleges it. The onus is not discharged on proof merely by preponderance of probabilities. It must be established beyond reasonable doubt by evidence which is clear, credible, positive and unambiguous. The allegation of ***corrupt practice*** must be proved as strictly as a criminal charge. Without discharging his onus, petitioner is shifting the burden and tried to elicit information from the first respondent. He tried in vein to fire by putting the gun on the shoulder of first respondent.

33. At this stage, it is necessary to consider the relevant depositions of petitioner and the first respondent. They read as under:

"A. RELEVANT DEPOSITIONS OF PETITIONER IN THE CROSS-EXAMINATION:

Q.8 You are not the author of Exs.P13, P14, P15, P16, P17, P19 & P20?
Ans. I am not the author.

Q.9 Ex.P15 does not contain the signature of Respondent NO.1?
Ans. It is false. It contains signature of R1.

Q.10 Ex.P17 does not contain the signature of Respondent NO.1?
Ans. It is false. It contains signature of R1.

Q.11 Exs.P15 & P17 does not contain the signature of R1 and they have been created later for the purpose of this case?
Ans. False.

B. RELEVANT DEPOSITIONS OF FIRST RESPONDENT:

Q15. How many cases have you disclosed in your declaration by way of publication in the newspapers and TV channels regarding your criminal antecedents ?

Ans. According to my knowledge, 43 cases are there and the same is published in the media.

...

Q21. Whether the contents of page No.13 in Form No.XXVI affidavit (Ex.P.11) are true and correct and who prepared it ?

Ans. They are correct and they have been filled up by my Advocate.

.....

Q33. Is it a fact that you have verified, sworned and signed the affidavit (Ex.P.11) on 19.11.2018 that the contents thereof are true and correct and nothing material is concealed thereof and also stated that there are no other cases of conviction or pending as referred in item 5 and 6 of Part-A and B in my affidavit ?

Ans. Yes.

Q34. Is it a fact that in your affidavit (Ex.P.11) in item No.5 of Part-A of the said affidavit you referred that there are 43 cases pending against you till that date and that there are no cases of conviction or sentence against you till then ?

Ans. Yes.

.....

Q61. It is suggested that though you have the knowledge of all 64 criminal cases and two murder cases pending against you, you deliberately did not disclose the same in Form No.C3, Form No.XXVI (Ex.P.11) and your chief affidavit and have falsely stated that there are only 43 criminal cases ?

Ans. I have mentioned the number of cases according to my knowledge.

Q62. Is it a fact that the petitioner has stated in the Election Petition that there are eight other criminal cases, which you have not disclosed in Form No.XXVI affidavit (Ex.P.11) ?

Ans. I came to know that the petitioner has mentioned the above said fact in his petition.

.....

Q66. Is it true that you have enquired with the police regarding the eight cases referred in the Election Petition prior to filing of the counter?

Ans. Yes.

.....

Q68. Whether you have specifically denied the existence of eight cases pending against you in your counter ?

Ans. No.
The witness adds since I have no information, I have not denied.

Q69. Is it true though you know about eight criminal cases pending against you, you did not mentioned about them and have

introduced a false plea that you did not get information given under RTI Act ?

Ans. No.
The witness adds since I have disclosed 43 cases, what is the problem for me to disclose the other cases, since I have no knowledge.

.....

Q73. Whether the signature on Ex.P.17 is yours ?

Ans. No.

Q74. Ex.P.15 was given to you . Is it correct or not ?

Ans. No. It was not given to me.

Q75. After serving of the copy of Ex.P.15 by the petitiner on you in this case, have you verified with the police or with the Court.

Ans. No.

Q76. Is the address shown in Ex.P.15 belongs to you ?

Ans. I reside in the said area.

Q77. Is it true that you are the only MLA residing in that area ?

Ans. Yes.

Q78. Whether Ex.P.15 contains your signature ?

Ans. No.

Q79. Whether Ex.P.15 and P.17 have been served on you ?

Ans. They might be available in the file.

.....

Q82. Whether you have initiated action against the authorities or the person, who alleged to have fabricated your signatures on Exs.P.15 and P.17 ?

Ans. No.

Q83. Whether you have verified the correctness of Exs.P.15 and P.17 with the concerned authorities ?

Ans. No.

Q86. It is suggested that you are giving false evidence ?

Ans. False."

34. From the cross-examination of petitioner and the deposition of first respondent, it is noticed that he asserts that he had no

knowledge about the two crimes shown in Exs.P13 to P17 and that signatures on Exs.P15 and P17 do not belong to him.

35. Guided by the enunciation of law in the field of election disputes, as seen from the depositions of first respondent in his chief-examination and cross-examination, and his cross-examination of petitioner, firstly he denies knowledge of eight crimes listed in paragraph-4 of Chapter-IV of the Election Petition and secondly, stoutly denies receiving notices under Section 41(A) of Cr.P.C. in two crimes covered by Exs.P13 to P17. He asserts that signatures found on Exs.P15 and P17 do not belong to him.

36. When petitioner asserts that the first respondent had the knowledge of at least two of the eight crimes relied on by him, covered by Exs.P13 to P17 and when first respondent denies the same, the burden is heavy on him to prove that first respondent received notices under Section 41(A) of Cr.P.C., in crimes covered by Exs.P13 to P17 and that signatures found in Exs.P15 and P17 belong to him. Petitioner miserably failed in bringing forth cogent, unimpeachable and legally sustainable evidence to prove that first respondent was having the knowledge of two crimes shown in Exs.P14 and P17 and the signatures on Exs.P15 and P17 belong to him.

37. To overcome the burden of proof, learned senior counsel sought to take shelter under Sections 74, 77, 79 and 114 of Indian Evidence Act, 1872. Learned senior counsel asserted that Exs.P15 and P17

being public documents, the contents therein are presumed to be genuine and correct. It is also asserted that it is common knowledge that every accused would invariably be served the notices and copy of charge sheets, it has to be assumed that first respondent has received notices and summons in those crimes.

38. There is no quarrel with the proposition that law presumes genuineness of a public document and so also the contents. The issue in this case is not on genuineness and contents of the documents marked as Exs.P13 to P17, but issue is on whether signatures found on Exs.P15 and P17 belong to first respondent. Petitioner failed in discharging his initial burden to establish that the signatures found on those documents belong to the first respondent. No effort was made to lead evidence to show that those two notices were received by the first respondent and the signatures on Exs.P15 and P17 belong to the first respondent. To contend that first respondent knew about the two crimes referred to in Exs.P13 to P17 at the time of filing nomination, heavy reliance is placed on the signatures found on Exs.P15 and P17 notices. The first respondent is not disputing the contents of Exs.P13 to P17 but was only denying that signatures found on Exs.P15 and P17 are not his signatures. When first respondent denies that signatures found on Exs.P15 and P17 were not his, it cannot be presumed that signatures found on Exs.P15 and P17 belong to him merely because the exhibits are public documents.

39. This aspect is clearly illustrated in the decision of Hon'ble Supreme Court in ***Shiv Lal*** (supra). In that case the issue was whether the suit for redemption was filed within limitation. If date of execution of mortgage was taken, the suit was barred by limitation. Therefore, reliance was placed on a certified copy of a statement dated 22.6.1906 said to have been made in a mutation proceeding amounting to acknowledgement on that date, saving the period of limitation. The Hon'ble Supreme Court held that genuineness of signature on a public document is different from the genuineness of a public document and its contents. The Hon'ble Supreme Court held:

> "7.....Ex. P-5 is a certified copy of a statement said to have been made in a mutation proceeding. Its original has not been produced. No witness has been examined to speak to the fact that the persons who are shown to have signed the original have in fact signed the same or those persons were the mortgagors or their representatives. ***The signature on the original cannot be proved by production of a certified copy. Nor can the courts raise any presumption under Section 90 of the Evidence Act in that regard — See Harihar Prasad Singh v. Mst. of Munshi Nath Prasad [AIR 1956 SC 305 : 1956 SCR 1] . The High Court and the 1st appellate court erroneously thought that they could presume that the persons mentioned as the executants in the copy have signed the original*** on the strength of Section 44 of the Punjab Land Revenue Act and Section 114(e) of the Evidence Act. Section 44 of the Punjab Land Revenue Act deals with the presumption as regards an entry in the record of rights. Herein we are not concerned with any entry in the record of rights. ***We are concerned with the genuineness of the signature in the original of Ex. P-5 and the identification of the persons who signed it. Hence that section affords no aid. Section 114(e) of the Evidence Act says that court may presume that judicial and official acts have been regularly performed. Herein we are not concerned with the regularity of the performance of any official act. The identification of an executant or genuineness of a signature in a statement filed before an official has nothing to do with the regularity of his act unless it is shown that he had a duty to identify the person who signed it and further to take the signature in his presence. Therefore Ex. P-5 cannot serve as an acknowledgment of the mortgage.*** Hence the plaintiff claim to redeem the mortgage in respect of Item 2 of the plaint must fail."
>
> (emphasis supplied)

40. Further, it may be true that in the process of investigation into a crime, notices have to be served on the accused. Similarly, when criminal court takes cognizance of a crime, summons have to be

served on the accused. But merely based on this requirement of law and procedures, proof of service of notice cannot be presumed or assumed. It is not uncommon that an unauthorized person or unconcerned person does receive notices/registered letters and are not given to the person concerned.

41. Further, merely because, the first respondent is passive about somebody allegedly forging his signature, it cannot be presumed that he acknowledges them as his signatures. More so, when there is categorical denial.

42. The Court has no expertise to assess whether signature found on Exs.P15 and P17 belong to first respondent. In the absence of un-impeaching evidence to prove that signatures on Exs.P15 and P17 belong to first respondent, this Court cannot attribute to him the knowledge of pendency of the said two crimes and hold him guilty of indulging in ***corrupt practice***.

43. Acceptance of the contention of petitioner based on surmises, conjectures, assumptions and presumptions can lead to disastrous consequences. As noticed in summing up of precedent decisions, the allegation of ***corrupt practice*** to set aside an election has to be proved with unimpeachable, clear, positive and credible evidence, akin to evidence required to hold a person guilty of crime in a criminal case. That being so, unless it is established that the first respondent had

knowledge of certain crimes alleged to have been registered against him, he cannot be held guilty of non-disclosure of those crimes.

44. It is next contended that having regard to mandate of Hon'ble Supreme Court in several decisions and the provisions of Sections 33-A, 100 and 123, all the crimes registered against a contestant have to be disclosed in the affidavit in Form-26 and non-disclosure amounts to ***corrupt practice*** and for this purpose knowledge of registration of crimes is not required.

45. Accepting this contention is difficult in the face of Supreme Court decisions. Petitioner argues that once it is found that there is improper acceptance of the nomination *'as there was misinformation or suppression of material information'*, one can state that question of rejection in such a case was only deferred to a later date. It is stated that when court gives such a finding, which would have resulted in rejection, the effect would be the same, namely, such a candidate was not entitled to contest and the election is void- as held by the Hon'ble Apex Court in **Kisan Shankar Kathore v. Arun Dattatray Sawant** (supra).

46. It is worth noting the following paragraph of this judgment that helps contextualize the above:

> *"**43**. When the information is given by a candidate in the affidavit filed along with the Nomination Paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the*

returning officer at that time to conduct a detailed examination. Summary enquiry may not suffice. Present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. ***In such a case, when ultimately it is proved that it was a case of nondisclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted.*** *Ms. MeenakshiArora, learned senior counsel appearing for the Election Commission, rightly argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination.* ***Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date.*** *When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section 125A of the Act can be initiated and the selected candidate is criminally prosecuted and convicted, but the result of his election cannot be questioned. This cannot becountenanced.*

(emphasis supplied)

47. The Supreme Court holds that in instances where correctness of information provided in the affidavit is challenged, the Returning Officer cannot be expected to verify such allegation by holding a mini-trial and decide on the acceptance of the nomination at that stage. It is for the Court in which election petition is filed to reach such a conclusion. The court has to give such a 'finding' that there was misinformation or suppression of material information (in this case

non-disclosure) and after detailed enquiry on objections raised, if Court reaches the conclusion that there was in fact suppression of material information then the question of rejection was deferred to a later date, with the effect that the candidate was not entitled to contest. This is not a case of blanks being left in the affidavit but specifically alleged that eight cases were deliberately left out by respondent 1 despite knowledge of the same. The court has to, based on material placed, record such a finding for the election to be declared void. The assertion that non-disclosure of any and all such cases amounts to '***corrupt practice***' where the Court need not examine the evidence placed on record is a preposterous assertion that is not based in law and accepting such a contention will lead to absurd consequences. ***Corrupt practice*** can only be decided by the Court based on material placed before it.

48. As observed in detail previously, for non-disclosure amounting to ***corrupt practice***, in the case of the election of a returned candidate, the evidence has to be unimpeachable, clear and credible leaving no doubt for the Court to reach an irresistible conclusion. Considering serious consequences that follow, the evidence required is akin to a criminal trial.

49. Rule 4-A[31] of the Rules requires the candidate to file sworn-affidavit in Form-26. To the extent relevant Form-26 reads as under:

---

[31] **"Rule 4-A. Form of affidavit to be filed at the time of delivering nomination paper**:- The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the

"FORM 26

(See Rule 4-A)

Please affix your recent passport size photograph here

AFFIDAVIT TO BE FILED BY THE CANDIDATE ALONGWITH NOMINATION PAPER BEFORE THE RETURNING OFFICER FOR ELECTION TO..... (NAME OF THE HOUSE) FROM..... CONSTITUENCY (NAME OF THECONSTITUENCY)

PART A

I .....*son/daughter/wife of..... Aged ..... years, resident of ..... (mention full postal address), a candidate at the above election, do hereby solemnly affirm andstate on oath as under:-

(1) I am a candidate set up by ---------- (**name of the political party) /**am contesting as an Independent candidate.
(**strike out whichever is not applicable)

(2) My name is enrolled in..... (Name of the Constituency and the State), at Serial No.....in Part No.....

(3) and (4) xxxxx

(5) Pending criminal cases:-
(i) I declare that there is no pending criminal case against me. (Tick this alternative if there is no criminal case pending against the Candidate and write NOT APPLICABLE against alternative (ii) below)

OR

(ii) The following criminal cases are pending against me:
(If there are pending criminal cases against the candidate, then tick this alternative and score off alternative (i) above, and give details of all pending cases in the Table below)

TABLE

(a)	FIR No. with name and address of Police Station concerned			
(b)	Case No. with Nameof the Court			
(c)	Section(s) ofconcerned Acts/Codes involved (give no. of the Section, e.g. Section.....of IPC,etc.).			
(d)	Brief description ofoffence			
(e)	Whether charges have been framed (mention YES orNO)			
(f)	If answer against (e) above is YES, then give the date on which charges wereframed			
(g)	Whether any Appeal/ Application for revision has been filed against the proceedings (Mention YES orNO)			

(6) Cases of conviction.-
(i) I declare that I have not been convicted for any criminal offence. (Tick this alternative, if the candidate has not been convicted and write NOT APPLICABLE against alternative (ii) below)

OR

(ii) I have been convicted for the offences mentioned below:

---

nomination paper under sub-section (1) of Section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the First Class or a Notary in Form-26."

(If the candidate has been convicted, then tick this alternative and score off alternative (i) above, and give details in the Table below)

TABLE

(a)	Case No.			
(b)	Name of the Court			
(c)	Sections of Acts/ Codes involved (give no. of the Section, e.g. Section..... of IPC, etc.).			
(d)	Brief description ofoffence for which convicted			
(e)	Dates of orders ofconviction			
(f)	Punishment imposed			
(g)	Whether any Appealhas been filed against conviction order (Mention YES or NO)			
(h)	If answer to (g) above is YES, give details and present status of appeal			

(6-A) I have given full and up-to-date information to my political party about all pending criminal cases against me and about all cases of conviction as given in paragraphs (5) and (6).
[candidates to whom this Item is not applicable should clearly write NOT APPLICABLE IN VIEW OF ENTRIES IN 5(i) and 6(i), above]

Note:
1. Details should be entered clearly and legibly in BOLD letters.
2.Details to be given separately for each case under different columns against each item.
3.Details should be given in reverse chronological order, i.e., the latest case to be mentioned first and backwards in the order of dates for the other cases.
4.Additional sheet may be added if required.
5. Candidate is responsible for supplying all information in compliance of Hon'ble Supreme Court's judgment in W. P (C) No. 536 of 2011.

xxxxxxx

VERIFICATION

I, the deponent, above named, do hereby **verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief** and no part of it is false and nothing material has been concealed there from. I further declare that:-

(a) there is no case of conviction or pending case against me other than those mentioned in items5 and 6 of Part A and B above;

(b) I, my spouse, or my dependents do not have any asset or liability, other than those mentionedin items 7 and 8 of Part A and items 8, 9 and 10 of Part B above.

Verified at..... .this the ..... day of.....

DEPONENT"

(emphasis supplied)

50. The affidavit filed by first respondent is marked as Ex.P.11.

51. Verification appended to affidavit in Form-26 requires the candidates to declare as, ***'to the best of my knowledge and belief'***. This term literally means, according to a deponent his statement is true based on what he knows or believes to be true. Knowledge of a fact not disclosed can not be ascribed to a deponent based on surmises and conjectures.

52. From the scheme of the Act, the Rules and decisions of the Hon'ble Supreme Court, it is discernible that non-disclosure of criminal antecedents would amount to ***'corrupt practice'*** only when the declarant was aware of the crimes registered against him but does not seek to disclose them. It does not envisage an automatic disqualification/declaration of election as void the moment it is discovered that certain crimes registered against the candidate were not disclosed even if candidate was not aware of registration of crimes. Such a course will lead to disastrous consequences.

53. Thus, to hold first respondent guilty of non disclosure of all crimes registered against him, it has to be proved that he was aware of registration of those crimes with clear and unimpeachable evidence.

54. It is relevant to note that mere pendency of crimes is no bar to contest and being elected. In the case on hand, first respondent disclosed 43 crimes. Disclosing eight more crimes could not have impacted his entitlement to contest and be elected. Thus, it can not be

said that a material fact which would have impacted his entitlement to contest and being elected was suppressed by the first respondent.

55. No clear and unimpeachable evidence is produced by the petitioner to establish that first respondent did not disclose information about eight pending criminal cases in the affidavit in Form-26 even though he was aware of those crimes to hold the first respondent guilty of indulging in ***corrupt practices***.

56. In the above analysis of evidence on record, issues 1 to 4 are answered against the petitioner.

ISSUE No.9:

57. Learned senior counsel for first respondent sought to urge to reject the chief-affidavit of PW.1 by pointing out discrepancy in the date of deposition by the petitioner and contending that it is an incurable defect. According to learned senior counsel even before the chief-affidavit was signed (i.e., on 28.04.2021) it was attested by Advocate/Notary (i.e., on 21.04.2021) and the same is liable to be rejected as it is not in accord with Order XVIII Rule 4 of CPC read with Rule 35 of CRPC.

58. The said contention is stated to be rejected. Filing of chief-affidavit is made mandatory after the Amendment Act 22 of 2002 amending the Civil Procedure Code. The chief-Affidavit of a witness is taken as part of recording of evidence to save time of the Court. But,

the witness has to appear before the Court or before the Court appointed Commissioner to assert the contents of the said chief-affidavit and then only it will be treated as his evidence. Thereafter, he should offer himself for cross examination by the opposite party. Therefore, what is crucial is date of appearance of the witness and asserting the contents of the chief-affidavit. Further, learned senior counsel for petitioner explained how that discrepancy crept in.

59. It is further contended that original of Ex.P11 is not produced. Ex.P11 is the affidavit filed by first respondent in Form No.26. It is hoisted on the website of the Election Commission of India. The original copy of the affidavit shall be part of the record of Election Commission of India. At the time of marking of the document, no objection was raised by the respondent. The petitioner also filed affidavit under Section 65-B of the Evidence Act, marked as Ex.P11B. The objection cannot be sustained and is accordingly rejected.

60. A feeble contention is also urged by respondent that petitioner has not complied with requirements of Section 81 (3) and 86(1) of the Act, 1951 and Rule 94-A of the Rules. A vague averment is made without explaining how it is vitiated. On going through the record, the Court has not noticed any defect in compliance of the said provisions.

61. The decision in **Regu Mahesh** (supra) has no application to the facts in issue in this Election Petition. In the said case, Court noticed that material facts were not pleaded; unreliable and improper

averments were made; verification was not in compliance of Order VI Rules 15 of CPC; verification was vague; did not disclose source of information; petitioner was very casual in filing the Election Petition. In view of serious defects noticed on filing Election Petition, the Hon'ble Supreme Court upheld the decision of the High Court dismissing the Election Petition. It has no application to the case on hand.

62. In the facts of this case, the objection of first respondent has no merit. The issue No.9 is answered against the first respondent.

63. In view of my decision on issue Nos.1 to 4, there is no necessity to go into issue No.10.

64. In the result, for all the aforesaid reasons and conclusions, answering issue No.11, the Election Petition is dismissed without costs. Pending miscellaneous petitions if any shall stand closed.

K. SREENIVASA RAO,
Joint Registrar.

By Order,

AVINASH KUMAR,
Principal Secretary,
Election Commission of India.

VIKAS RAJ,
Chief Electoral Officer &
E.O. Principal Secretary to Government.

———*X*———

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