MANOHAR JOSHI ETC.

v.

DAMODAR TATYABA @ DADASAHEB RUPWATE AND ORS.

MARCH 11, 1991

[K.N. SINGH, KULDIP SINGH AND P.B. SAWANT, JJ.]

Representation of the People Act, 1951: Sections 99, 123(2), (3) and 3(A)—Corrupt practice—Allegations of—Person summoned should know precise charge to be met—Notice to such person to spell out precise corrupt practice and portions of documentary evidence relied upon to sustain such.

In the 1989 elections to the Lok Sabha, respondent No. 2 was declared elected from the Bombay South Central Constituency. One of the defeated candidates (respondent no. 1) filed an election petition challenging the validity of the election of respondent no. 2 *inter alia* on the ground of corrupt practices under sub-section (2), (3) and (3A) of section 123 of the Representation of the People Act, 1951.

The High Court having reached the stage in the trial when it was *prima facie* of the opinion that the charges alleged in the petition, of corrupt practices falling under sections 123(3) and 123(3A) had been proved to have been committed, it proceeded under section 99 to name the collaborators in such corrupt practices. The High Court accordingly directed issuance of notices to three persons. Aggrieved by this order, two of the person named therein approached this Court by way of two separate appeals.

Before this Court, it was contended on behalf of the appellants that (i) the consequences of naming a person on his being found guilty pursuant to such notices were grave; (ii) the proviso to sub-section (1) of section 99 of the Act enjoined upon the Court to state precisely the charges and the evidence which the person summoned was called upon to meet; and (iii) the notices to the appellants to answer allegations of corrupt practices allegedly committed by them were vague.

Allowing the appeals and directing the High Court to issue proper notices to the appellants in the light of the law, this Court,

HELD: (1) It is clear from the provisions of sub-clauses (i) and (ii) of clause (a) of sub-section (1) of section 99, that at the time of deciding

A the election petition the Court has to record a finding that a corrupt practice is proved to have been committed and that it has been committed by a particular person. The Court has not only to name the person but also the nature of the corrupt practice committed by him. [766F-G]

(2) If the person is a party to the petition, it is not necessary to B hear him separately before recording such finding. However, when he is not a party to the petition, before such serious finding is recorded against him, he must have the same opportunity as the party to the petition, to meet the allegations against him. In that respect, he stands on the same footing as the party to the petition against whom such a finding is to be recorded. He cannot be discriminated against and made to suffer any disadvantage because he is not a party to the C petition. [766H-767A]

(3) Where a corrupt practice is alleged, the trial of an election petition on such charges is of a quasi-criminal nature, and a heavy burden rests on the person alleging the corrupt practice to prove strictly D all the ingredients of the charge. 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 Parliament or of the Legislative Assembly or Council of a State for a period upto 6 years. [769B-C]

E *D.P. Mishra* v. *Kamal Narain Sharma & Ors.*, [1971] 3 S.C.R. 257 and *Rashim Khan* v. *Khurshid Ahmed & Ors.*, [1975] 1 S.C.R. 643, referred to.

(4) When the legislature requires that the election petition shall contain full particulars of each and every alleged corrupt practice F including as fuller a statement as possible of the names of the parties and the date and place of the commission of such practice, it would be contrary to the object of the said provisions to hold that when a notice is issued under Section 99 against a person who is not a party to the election petition for holding him guilty of any corrupt practice, the notice should not apprise him of the precise charge against him and give G him the full particulars thereof. [769D-E]

(5) The impugned order directing the issuance of notice is extremely vague and defective to the point of being contrary to the provisions of law. The notice is of an omnibus character. Section 123(3) does not refer to one corrupt practice but a variety of them. Yet the H notice does not specify which particular corrupt practice is sought to be

brought home to each of the appellants, and does not state which of the portions of the petition, etc. is being relied upon to sustain which of the charges and against which of the appellants. [769F-G, 770B]

[Order dated December 1, 1988 in Special Leave petition No. 13163 of 1988 and the later non-speaking order of January 23, 1989 in the matter overruled.] [771D]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. (NCE) 1044 & 1045 of 1991.

From the Judgment and Order dated 29.10.1990 of the Bombay High Court in Election Petition No. 5 of 1990.

K.K. Venugopal, Harish Salve, P.H. Parekh, Sunil Dogra, V.D. Joshi and A.M. Khanwilkar for the Appellants.

A.S. Bobde, V.A. Bobde, S.D. Mudliar, C.K. Ratnaparkhi, B.P. Pandye, and Mrs. Nirmal Chhagan for the Respondent.

The Judgment of the Court was delivered by

SAWANT, J. These two petitions arise out of a common order dated 29th October, 1990 passed by the Bombay High Court in Election Petition No. 5 of 1990 and raise a common question of law. Hence they are disposed of by this judgment.

2. Leave is granted in both the petitions.

The election petition in which the impugned order is passed was filed by a defeated candidate (Respondent No. 1) against the elected candidate (Respondent No. 2) and other contesting candidates challenging the validity of the election of respondent No. 2 to the Lok Sabha from the Bombay South Central Constituency in the election held on November 24, 1989. The election of respondent No. 2 is challenged in the petition, among other things, on the ground of corrupt practices under sub-sections (2), (3) and (3A) of Section 123 of the Representation of the People Act, 1951 (hereinafter referred to as the "Act"). It appears from the impugned order that the High Court has reached a stage in the trial of the election petition where examination-in-chief and cross-examination of about 14 witnesses has been completed and various documents have been brought on record. It is at this stage that the impugned order has been made, the operative part of which reads as follows:

"In this Election Petition, the Petitioner seeks to set aside the election of Respondent No. 1 on the ground of corrupt practice under Sections 123(3) and 123(3A) of the said Act. The Petitioner has led documentary and oral evidence. Respondent No. 1 has tendered documents but has led no oral evidence. The other Respondents have remained absent even though served. Petitioner and Respondent No. 1 have argued their respective cases. The learned Advocate General has also drawn my attention to Section 99 of the said Act which requires this Court, whilst giving a finding that corrupt practice has been proved, to name all persons who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice. This however must be after having given to such persons notice to appear and show cause why he/they should not be so named.

At this stage, I am of the *prima facie* opinion that the charges alleged in the Petition of corrupt practices under Sections 123(3) and 123(3A) of the said Act have been proved to have been committed and that Mr. Bal Thackerary, Mr. Chhagan Bhujbal and Mr. Manohar Joshi Are (to use the words of Supreme Court) collaborators in such corrupt practice.

Accordingly, I direct that notices under Section 99 of the Representation of the People Act, 1951, shall be given to Mr. Bal Thackeray, Mr. Chhagan Bhujbal and Mr. Manohar Joshi to appear before me on 3rd December, 1990, to show cause why they should not be so named in the order on the Election Petition.

Each notice shall state that the person named in the notice shall have an opportunity of cross-examining all witnesses who have given evidence against him and that he shall have a right of calling evidence and of being heard.

I direct that to all the notices shall be annexed photo copies of:

(a) the Petition, the written statement of Respondent No. 1, and the Issues.

(b) the oral depositions of the petitioners witnesses.

(c) all exhibits, except Exhibits RR, SS to YY, AAA, AAA1, AAAA, BBBB, BBBB1 and Exhibits 1 to 8.

(d) this order.

I also direct that along with all the notices shall be sent audio cassettes containing copies of Exhibits SS to YY."

Aggrieved by this order, two of the persons named therein, viz., Manohar Joshi and Chhagan Bhujbal have approached this Court by way of these two separate appeals by special leave.

3. The order is assailed on the ground that although it directs the issuance of notice to the appellants to answer allegations of corrupt practices allegedly committed by them, it is vague and does not indicate which of the corrupt practices they are alleged to have commited and which evidence on record supports them. In the absence of the specific charge/s and the evidence in support of it/them indicated in the order and the notices issued pursuant to it, the appellants are at a loss to comprehend the case that they are called upon to meet. They are thus put to a disadvantage and are gravely prejudiced. It is pointed out that the consequences of naming a person on his being found guilty pursuant to such notice are grave inasmuch as, among other things, he incurres a disqualification for contesting election under Article 103 of the Constitution read with Section 8A of the Act. It is also urged that even otherwise the notice to appear and the opportunity to show cause contemplated under the proviso to sub-section (1) of Section 99 of the Act enjoins upon the Court to state precisely the charge and the evidence which the person summoned is called upon to meet. It does not contemplate a vague notice such as the one which is issued and is directed to be issued by the impugned order.

4. For reasons more than one, we find great force in these submissions. Shri Bobde, the learned Advocate General of Maharashtra who appeared for respondent No. 1 could not seriously dispute these contentions. However, he pointed out to us an earlier order dated December 1, 1988 of this Court passed in Special Leave Petition No. 13163 of 1988 which was filed against a similar order passed by the Bombay High Court in Election Petition No. 1 of 1988. This Court by its said order had held as follows:

"We do not think that in a notice under Section 99 of the Representation of the People Act, 1951 the portions of the speeches of the petitioner are required to be specific for the purpose of sub-sections (3) and (3A) of Section 123 of the said act. The petitioner, however, will be at liberty to make an application before the court for specifying those portions which, *prima facie,* according to the court, come within the purview of sub-sections (3) or (3A) of Section 123 of the said Act. If any such application is made, the court will dispose of it in accordance with law.

The special leave petition is disposed of accordingly."

The provisions of the Act which have a cumulative bearing on the present question are contained in sections 82, 83, 97, 98, 99, 107, 123(3) and 123 (3A) of the Act.

6. Section 82 enjoins upon the election petitioner to join as respondent to the petition, in addition to other necessary parties, any candidate against whom allegations of any corrupt practice are made in the petition.

Section 83 which deals with the contents of the election petition states, among other things, as follows:

"83. Contents of petition.—(1) An election petition—

(a) .....

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) .....

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

It is clear from the reading of these two sections that even in the election petition where allegations of corrupt practices are made, full particulars of the alleged corrupt practice including as fuller a statement as possible and the names of the parties who are alleged to have committed such practice and the date and place of the commission of each such practice have to be furnished. What is further, the allegations of the corrupt practice have to be accompanied by an affidavit in support both of the allegations as well as the particulars thereof, and if there are any schedules or annexures to the petition in support of the corrupt practice, they have also to be signed by the petitioner and verified by him in the same manner as the petition. This is a mandatory requirement. The object of the said provisions is obvious. The party and it includes not only the returned candidate but all other candidates against whom the corrupt practice is alleged, must have an adequate notice of the precise allegations made against him so that he has a proper opportunity to meet them.

7. Section 97 states that when in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and the petition had been presented calling in question his election. The section requires that before the returned candidate or such other party, as aforesaid, gives such evidence, he should have, within 14 days from the date of the commencement of the trial, given notice to the High Court of his intention to do so and that notice has to be accompanied by the statement and particulars required by Section 83 in the case of an election petition and has to be signed and verified in the like manner. We have already referred to the relevant requirements of Section 83 with regard to the furnishing of the particulars of the corrupt practice.

8. Section 98 states that on the conclusion of the trial of an election petition, the High Court shall make an order (a) dismissing the election petition; or (b) declaring the election of all or any of the returned candidates to be void; or (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

Then follows Section 99 of which what is relevant for our purpose is sub-section (1) which reads as follows:

"99. Other orders to be made by the High Court.—(1) At

A the time of making an order under section 98 the High Court shall also make an order—

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—

B (i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

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(b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid.

Provided that a person who is not a party to the peti-
D tion shall not be named in the order under sub-clause (ii) of clause (a) unless—

(a) he has been given notice to appear before the High Court and to show cause why he should not be so named; and

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(b) if he appears in pursuance of the notice, he has been given an apportunity of cross-examining any witness who has already been examined by the High Court and has given evidence against him, of calling evidence in his defence and of being heard."

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It is clear from the provisions of sub-clauses (i) and (ii) of clause (a) of sub-section (1), that at the time of deciding the petition, the Court has to record a finding that a corrupt practice is proved to have been committed and that it is committed by a particular person. The Court has not only to name the person but also the nature of the
G corrupt practice committed by him. If the person is a party to the petition, it is not necessary to hear him separately before recording such finding. However, when he is not a party to the petition, before such serious finding is recorded against him, he must have the same opportunity as the party to the petition, to meet the allegations against him. In that respect, he stands on the same footing as the party to the
H petition against whom such a finding is to be recorded. He cannot be

discriminated against and made to suffer any disadvantage because he is not a party to the petition. This is the precise object which is sought to be secured by the proviso to the Section. A

9. Section 107 of the Act states that the order of the High Court under Section 98 or Section 99 shall take effect as soon as it is pronounced by the High Court subject, of course, to the stay, if any, granted by the High Court itself or in appeal by the Supreme Court. B

10. Section 123 enumerates and defines the corrupt practices for the purposes of the Act. We are concerned in the present case with the corrupt practices mentioned in sub-sections (3) and (3A) of the said section. Those sub-sections read as follows: C

> "(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or D appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:
>
> Provided that no symbol allotted under this Act to a E candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.
>
> (3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or F language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate."

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It is clear from the aforesaid sub-sections that each of them enumerates not a single corrupt practice but various distinct corrupt practices. They are as follows. Sub-section (3) speaks of the corrupt practices of—

(A) the appeal (i) to vote, or (ii) to refrain from voting for any H

person on the ground of—

(a) his religion, (b) his race, (c) his caste, (d) his community, or (e) his language;

(B) (i) of the use of, or (ii) of appeal to (a) religious symbols, (b) national symbols such as the national flag or (bb) the national emblem either for the furtherance of the prospects of the election of that candidate, or for prejudicially affecting the election of any candidate.

Likewise Sub-section (3A) consists of different corrupt practices as follows:

(i) the promotion of, or

(ii) attempt to promote feeling of enmity or hatred between different classes of the citizens of India on grounds of—

(a)religion, (b) race, (c) caste, (d) community, or (e) language either for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Hence merely by enumerating in the notice the numbers of sections, viz., 123(3) and 123(3A) as is directed to be done by the impugned order, the person summoned does not understand which of the various corrupt practices mentioned in the sections is alleged against him and what precise charge he has to meet.

11. Section 8A of the Act states that the case of every person who is found guilty of a corrupt practice by an order under section 99 shall be submitted, as soon as may be, after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period. The period of disqualification is not to exceed 6 years from the date on which the order made in relation to him under Section 99 takes effect. Sub-section (3) thereof requires the President to obtain the opinion of the Election Commission on such question and to act according to such opinion. The President exercises this power under Article 103 of the Constitution and the powers of Election Commission when such a reference is made by the President are governed by Section 146 of the Act.

12. A reading of all the aforesaid privisions together would show that the proceedings pursuant to the notice issued by the High Court under Section 99 of the Act are of a quasi-criminal nature. It has also been held so by this Court in so many words, in some of the decisions: See *D.P. Mishra* v. *Kamal Narain Sharma & Ors.*, [1971] 3 SCR 2571 and *Rashim Khan* v. *Khurshid Ahmed & Ors.*, [1975] 1 SCR 643. Where, therefore, a corrupt practice is alleged, the trail 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. 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 upto 6 years.

13. What is further, as pointed out above, when the legislature requires that the election petition shall contain full particulars of each and every alleged corrupt practice including as fuller a statement as possible of the names of the parties and the date and place of the commission of such practice, it would be contrary to the object of the said provisions to hold that when a notice is issued under Section 99 against a person who is not a party to the election petition for holding him guilty of any corrupt practice, the notice should not apprise him of the precise charge against him and give him the full particulars thereof.

14. Judged in the light of these requirements of law there is no doubt that the impugned order directing the issuance of notice as stated therein, is extremely vague and defective to the point of being contrary to the provisions of law. We have reproduced above the relevant portion of the order. The order (i) directs issuance of an omnibus notice against the appellants and one other person; (ii) states again in an omnibus manner that the Court is satisfied that the charges alleged in the petition of corrupt practices under Section 123(3) and 123(3A) of the Act have been proved to have been committed by all of them; (iii) further directs that each notice shall state that the person named in the notice shall have an opportunity of cross-examining all witnesses who have given evidence against him and that he shall have a right of calling evidence and of being heard. It then directs that to all the notices to be issued, copies of (a) the petition and the written statement, (b) oral deposition, (c) all exhibits (d) the impugned order itself and (e) audio cassettes containing copies of Exhibits SS to YY should be annexed.

15. The notices directed to be issued and which have accordingly been issued are defective in many respects. In the first instance, they do not spell out the precise corrupt practice which each of the appellants is called upon to meet. As has been pointed out above, Section 123(3) does not refer to one corrupt practice but a variety of them. Yet the notice does not specify which particulars corrupt practice is sought to be brought home to each of the appellants.

Secondly, although the copies of the petition, written statement etc. are directed to be sent along with the notices, the order does not direct the notices to state and, therefore, they do not state which of the portions of the petition, written statement, oral evidence, documentary evidence and audio cassettes is being relied upon to sustain which of the charges and against which of the appellants. As pointed out earlier, it is a pre-condition for the trial of the charges of the corrupt practices that the person called upon to face the charge should be apprised, in advance, of the precise charge or charges against him and also the precise evidence—oral or documentary, which is sought to be relied upon in support of the said charge or each of the said charges. It is obvious that the kind of notice which is directed to be issued by the impugned order is defective in all these respects and conveys nothing to the appellants. The impugned order and the notices issued pursuant to it falling short of the requirement of law are, therefore, liable to be struck down.

16. It is true that this Court in its order dated December 1, 1988 had refused to interfere with a similar order and had held that such a notice is not against the provisions of the law. It has, however, to be remembered in this connection that even while doing so, the Court had given an opportunity to the petitioner therein to make an application beore the High Court for specifying those portions of the speeches of the petitioner which *prima facie* according to the High Court came within the purview of sub-sections (3) or (3A) of Section 123. The Court had further directed that if any such application is made, the High Court should dispose it of in accordance with law. It appears that consequent upon the direction, an application was made by the petitioner for specifying the portions of the speeches which were sought to be relied upon to sustain the charges under sub-sections (3) and (3A). The High Court held that the provisions of Section 99 did not require it to analyse the evidence and specify either in the notice under the said section or at any time prior to hearing the person to whom it is issued, what portion or portions thereof seemed in its view *prima facie* to make out the case which he was called upon to answer.

This the High Court did in spite of the fact that it recorded correctly that the person to whom a notice under Section 99 is issued is entitled to be put in the same position as the elected candidate and that his position can be no better. We have pointed out earlier that in fact the vague notice which is directed to be issued by the impugned order does in fact place the person against whom the notice is issued in a worse position than not only the elected candidate but other persons who are parties to the election petition. It is with a view to see that he is not placed in a disadvantaged position as against the parties to the petition that it is necessary to apprise him also of the details of the specific charges against him in advance. We have also pointed out that the trial being of a quasi-criminal nature and the consequence of the named person being serious, he is entitled to this minimum safeguard. The view taken by the High Court was, therefore, obviously wrong. Unfortunately, the special leave petition filed even against that order of the High Court came to be dismissed *in limine* and without a speaking order. We are of the view that for the reasons which we have stated above, neither the order of December 1, 1988 nor the later non-speaking order of January 23, 1989 lays down the correct position of law and should be deemed to have been overruled by this decision. However, we make it clear that these observations will not in any way affect the validity of the decision rendered by the High Court in that election petition being Election Petition No. 1 of 1988. We further make it clear that the law laid down here will operate only prospectively, i.e., to final orders of indictment passed under Section 99 of the Act, hereafter.

17. In the view we have taken above, we should set aside the impugned order and the notices issued in each case in pursuance of the said order. However, we are of the view that it is not necessary to do so. Instead, we direct that the appellants will appear before the High Court on 25th March, 1991 and the High Court will on that day or on such other day as it may deem convenient, issue proper notices to the appellants in the light of the law laid down and then proceed to hear and dispose of the notices in accordance with law.

The appeals are allowed accordingly. In the circumstances of the case, there will be no order as to costs.

R.S.S. Appeals allowed.