PRATAP SINGH A

v.

RAJINDER SINGH & ANR.

February 20, 1975

[M. H. BEG, Y. V. CHANDRACHUD AND A. C. GUPTA, JJ.]

Representation of the People Act, 1951—*s.* 123(5)—*Corrupt practice—When the Supreme Court appreciates oral evidence—Whether oral testimony could not be accepted unless corroborated in material particulars—A witness need not be proved to be a perjurer before his evidence is discarded—How a court should evaluate evidence in a case of corrupt practice.* B

The respondent, in his election petition before the High Court, alleged a number of corrupt practices hit by s. 123(4), (5) and (6) of the Representation of the People Act, 1951 against the appellant, who was the duly elected candidate to the State Assembly. The High Court allowed the petition and set aside the election. On appeal to this Court it was contended that the High Court overlooked the well established principle that the charge of corrupt practice must be treated as quasi-criminal in character which has to be proved beyond reasonable doubt. C

Allowing the appeal and remitting the case to the High Court,

HELD : (1)(a) The judgment of the High Court rests largely on appreciation of oral evidence. It could not, therefore, be easily disturbed by this Court even in first appeal on facts in election cases. [587B] D

(b) But if the High Court overlooks serious infirmities in the evidence adduced to support the case accepted by it or misreads evidence or ignores the principle that a charge of corrupt practice, in the course of an election, is a grave one which, if established, casts a serious reflection and imposes a disability upon the candidate held guilty of it, so that the Court must be satisfied beyond reasonable doubt about its veracity, this Court will not hesitate to interfere. [587C] E

In the instant case, the High Court did nothing more than to rather mechanically accept the oral and documentary evidence given to support the charge of corrupt practice. There was no consideration or discussion of a number of infirmities both in the oral and documentary evidence to support the charge. This is so because the High Court has held the view that a mere consideration of probabilities, without applying a strict standard of proof beyond reasonable doubt to a charge of corrupt practice was enough. There is no indication anywhere in the judgment that the stricter standard of proof, which is applicable to such charges, was kept in view by the High Court. [588G-H] F

Rahim Khan v. *Khurshid Ahmed & Ors.* [1974] 2 S.C.C. 660 @ 666, followed.

2(a) It is difficult to accept the contention of the appellant that oral testimony could not be accepted in an allegation of corrupt practice unless it is corroborated by other kinds of evidence in material particulars. There is no such general inflexible rule of law or practice which could justify a wholesale condemnation or rejection of a species of evidence which is legally admissible and can be acted upon under the provisions of the Evidence Act in every type of case if it is, after proper scrutiny, found to be reliable or worthy of acceptance. There is no presumption that a witness deposing on oath in the witness box, is untruthful unless he is shown to be speaking the truth. The ordinary presumption is that a witness deposing solemnly on oath before a judicial tribunal is a witness of truth unless the contrary is shown. The evidence in an election petition cannot be equated with that of an accomplice in a criminal case whose testimony has, according to a rule of practice, though not of law, to be corroborated in material particulars before it is relied upon. [589D-E & F] G H

A (b) It is not required by our law of evidence that a witness must be proved to be a perjurer before his evidence is discarded. It may be enough if his evidence appears to be quite improbable or to spring from such tainted or biased or dubious a source as to be unsafe to be acted upon without corroboration from evidence other than that of the witness himself. [589F]

(c) There are no golden rules for appraising human testimony. The extraction of what should constitute the credible foundation of judicially sound judgment is an art which nothing except sound common sense and prudence combined
B with experience can teach. [589G]

(d) In judging the evidence of a grave charge, prudence dictates that belief in its correctness should form the basis of a judicial verdict of guilt only if that belief reaches a conviction beyond reasonable doubt. [590B]

(e) In deciding whether the stricter standard of proof is satisfied in a case of alleged corrupt practice, resting upon oral evidence only, the Courts should be particularly astute and not omit to examine fairly the effect of every existing
C substantial ground which could introduce a reasonable doubt in a case. [590C]

In the instant case the appellant's contention that the motor drivers would be prepared to commit perjury at the instance of the respondent who was the defeated Minister and that because the respondent had been welcomed and garlanded by the President of the Motor Truck Drivers' Union, the evidence of motor drivers was easily available to him cannot be accepted either as a general rule in election cases, or, on the facts of this particular case. It is not reasonable to carry a suspicion to the extent of attributing to every witness
D appearing in support of the respondent's case a tendency or desire to commit perjury. The law does not discriminate against or frown upon a former Minister or view every witness produced by him with suspicion because he had been a Minister. On the other hand, it is reasonable to believe that a person who has occupied the responsible position of a Minister would be less inclined to suborn witnesses or conspire to produce perjured evidence. [590E-G]

Rahim Khan v. *Khurshid Ahmed & Ors.* [1974] 2 S.C.C. 660 @ 666, followed.

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(f) Where the examination-in-chief and cross-examination of a witness are most unsatisfactory the Tribunal is not powerless in the preformance of its duty to ascertain the truth. There is not only s. 165 of the Evidence Act which enables the Court to put any question it likes to a witness, but there are also provisions of O.XVI, r. 14 CPC. The High Court adopted a standard of proof which is not strict enough in appraising the worth of evidence produced to support a charge of corrupt practice. [592G-H]

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 808 of 1973.

From the judgment and order dated the 30th March, 1973 of the Punjab & Haryana High Court in Election Petition No. 14 of 1972.

R. K. Garg, S. C. Agarwala, V. J. Francis and *R. C. K. Kaushik,*
G for the appellant.

T. S. Krishnamurthi Iyer, K. C. Agarwala, M. M. L. Srivastava and *E. C. Agarwala,* for respondent No. 1.

A. T. M. Sampath, for respondent No. 2.

The Judgment of the Court was delivered by

H BEG, J.—Pritam Singh, the appellant before us under Section 116A of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act'), was elected at an election held on 11-3-1972 for the Haryana State Legislative Assembly, the result of which was declared

on 12-3-1972. The Respondent Balbir Singh questioned this election by means of an election petition alleging that the election was void as the appellant had committed corrupt practices hit by Section 123, sub. s.4. 5 and 6 of the Act. The petition was allowed by a learned Judge of the High Court of Punjab & Haryana, solely on the ground that the corrupt practice, provided for as follows, in Section 123(5) of the Act, was committed by the appellant:

> "123(5). The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:
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> Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purposes of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:
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> Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause".

The appellant assails the judgment of the High Court on the following main grounds with which we will deal seriatim:

1. That, the High Court erred in relying upon legally unproved entries in what is called a Pukar book or register showing both the hiring out and then payments for the use of certain trucks on 11-3-1972, the date of election, for purposes of election.

2. That, the Register itself is inadmissible in evidence under any provision of the Evidence Act.

3. That, the entries in the Pukar Register are suspicious indicating that the Register itself, or, atleast, the entries involved were not contemporaneous but fabricated after the election was over.

4. That, the High Court erred in relying upon the evidence of challans by the police on 11-3-1972 of drivers of trucks said to have been used by the appellant when the best evidence in the possession of the police relating to these challans was not forthcoming so that the challans appeared to have been manouvered for the purpose of supporting a false case.

5. That, the High Court erred in relying upon merely uncorroborated oral testimony of Motor truck drivers in accepting the respondent's case which was not really corroborated as the alleged corroborative evidence was no evidence at all in the eye of law.

A 6. That, the High Court overlooked the well established principle that the charge of a corrupt practice in the course of an election must be treated as quasi-criminal in character which has to be proved beyond reasonable doubt.

We will deal with these objections in the reverse order, starting with the last mentioned ground of attack on the High Court's judg-
B ment. The judgment rests largely on appreciation of oral evidence. It could not, therefore, be easily disturbed by us as has been repeatedly pointed out by this Court even in first appeals on facts in election cases. If the High Court overlooks serious infirmities in the evidence adduced to support the case accepted by it or misreads evidence or ignores the principle that a charge of corrupt practice, in the course of an election, is a grave one which, if established, casts a serious-
C reflection and imposes a disability upon the candidate held guilty of it, so that the Court must be satisfied beyond reasonable doubt about its veracity, this Court will not hesitate to interfere.

Learned Counsel for the appellant has relied upon the decision of this Court in *Rahim Khan* v. *Khurshid Ahmed & Ors.*,(1) where Krishna Iyer, J., speaking for this Court, said (at p. 666) :—

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> "An election once held is not to be treated in a light-hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one
E official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to act aside or declare void an election which has already been held unless clear and cogent testimony compelling the Court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed, election petitions where corrupt practices
F are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded".

In *Rahim Khan's* case (supra) our learned brother Krishna Iyer also warned us in the words of Sydney Harris (at p. 666) :

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> "Once we assuage our conscience by calling something a 'necessary evil', it begins to look more and more necessary and less and less evil".

He then proceeded to observe (at p. 666) :

> "For this very reason the Court has to be stern so as
H induce in the candidates, the parties and workers that temper and truthfulness so appropriate to the process....."

(1) 1974 2 SCC p. 660 @ P. 666.

After pointing out the difficulty of laying down any cast iron or rigid rules for testing the veracity of witnesses, this Court said (at p. 672) there :

> "We regard it as extremely unsafe, in the present climate of kilkenny-cat election competitions and partisan witnesses wearing robes of veracity, to upturn a hard won electoral victory merely because lip service to a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, unlying circumstances or unimpeachable documents to uphold grave charges of corrupt practice which might not merely cancel the election result, but extinguish many a man's public life".

In that case, this Court found the charge of a corrupt practice to be established upon oral and documentary evidence given to support it.

In the case before us, we find that the High Court accepted the evidence of Uggar Sain, P.W. 24, because, *inter alia*, it was supported by a "Pukar Register" kept by the Union of truck drivers of trucks hired in the order said to be determined by their places in the Register. It relied on this evidence despite certain serious objections to the entries in the Register showing payments for the trucks said to have been used by the appellant. The High Court, however, held that the testimony of Uggar Sain found sufficient corroboration not only from the entries in Pukar Register but also from the testimony of Khandu Ram, P.W. 25, Harish Lal, P.W. 26, Jai Gopal, P.W. 27, Chokha Namad, P.W. 28, Gurbachan Singh, P.W. 37 and Rajinder Singh, P.W. 38, each of whom had deposed that he was paid a sum of Rs. 150/- on 10-3-1972 for performing election duty for the appellant for carrying voters on 11-3-1972. The learned Judge observed about these drivers :

> "None of them is shown to be interested in the petitioner or against the returned candidate nor was the deposition of any one of them shaken in cross-examination and I do not see any good reason for discarding their sworn word. As would be seen later, they actually plied their trucks for the returned candidate on the 11th of March, 1972... a fact which clinches the matter against him".

The denial of the returned candidate were rejected by the learned Judge on the ground that these were made by a highly interested party. After having been taken through the judgment we are not satisfied that the learned Judge did anything more than to rather mechanically accept the oral and documentary evidence given to support the charge. We certainly do not find there any consideration or discussion of a number of infirmities which have been placed before us both in the oral and documentary evidence adduced to support the charge. We think that this is so because the learned Judge seems to have held the view that a mere consideration of probabilities, without applying a strict standard of proof beyond reasonable doubt to a charge of corrupt practice was enough here.

A After going through the evidence relating to the use of each truck, and repeating, rather mechanically, that this evidence on behalf of the petitioner was acceptable in each instance given, the learned Judge concluded :

> "As a result of the discussion of the evidence under this issue, I hold that the returned candidate hired and used trucks
B Nos. HRR 5155, HRR 5161, HRR 5077, HRR 5013, and HRR 597, for the free conveyance of electors to various polling stations and thus committed the corrupt practice defined in clause (5) of section 123 of the Act".

We find no indication anywhere in the judgment that the stricter standard of proof, which is applicable to such charges, was kept in
C view by the learned Judge.

The fifth ground of objection set out above seems to proceed on the erroneous assumption that oral testimony cannot be accepted when a corrupt practice is set up to assail an election unless it is corroborated by other kinds of evidence in material particulars. We are not aware of any such general inflexible rule of law or practice which could
D justify a wholesale condemnation or rejection of a species of evidence which is legally admissible and can be acted upon under the provisions of Evidence Act in every type of case if it is, after proper scrutiny found to be reliable or worthy of acceptance. There is no presumption, either in this country or anywhere else, that a witness, deposing on oath in the witness box, is untruthful unless he is shown to be, indubitably, speaking the truth. On the other hand, the ordinary presumption is
E that a witness deposing solemnly on oath before a judicial tribunal is a witness of truth unless the contrary is shown.

It is not required by our law of evidence that a witness must be proved to be a perjurer before his evidence is discarded. It may be enough if his evidence appears to be quite improbable or to spring from such tainted or biased or dubious a source as to be unsafe to be acted upon without corroboration from evidence other than that of the
F witness himself. The evidence of every witness in an election case cannot be dubbed as intrinsically suspect or defective. It cannot be equated with that of an accomplice in a criminal case whose testimony has, according to a rule of practice though not of law, to be corroborated in material particulars before it is relied upon.

This Court pointed out in *Rahim Khan's* case (supra) that there
G are no golden rules for appraising human testimony. In assessing its worth Judges can err honestly just as witness can make honestly mistaken statements under oath. The extraction of what should constitute the credible foundation of judicially sound judgment is an art which nothing except sound common sense and prudence combined with experience can teach. A sound judgment must disclose a fair attempt to "separate the grain from the chaff" as it has often been said.

H Section 3 of the Evidence Act lays down :

> "A fact is said to be proved when after considering the matters before it, the Court either believes it to exist or con-

siders its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists".

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

The circumstances under which reasonable doubt may or may not exist in a case cannot possibly be exhaustively catalogued. All that one can say is that in deciding whether the stricter standard of proof is satisfied in a case of alleged corrupt practice, resting upon oral evidence only, the Courts should be particularly astute and not omit to examine fairly the effect of every existing substantial ground which could introduce a reasonable doubt in a case. In doing so, the Court has also to beware of bare suspicion, based on popular prejudices or belief sought to be introduced merely to bias the Court against a witness or a partly of a particular type.

In the case before us, we find that the learned Counsel for the appellant has repeatedly referred to the fact that the respondent, whose election petition succeeded before the learned Judge, was a defeated former Minister of the ruling Congress party. Learned Counsel wanted us to infer that, because the respondent had been welcomed and garlanded by the President of the Motor Truck Drivers' Union of Ganaur, the evidence of motor drivers was easily available to him. In other words, we were asked to assume that the motor drivers would be prepared to commit perjury, at the instance of the President of the Motor Truck Drivers' Union, only to please a former defeated Minister. We do not think that it is reasonable to carry such a suspicion to the extent of attributing to every witness appearing in support of the respondent's case a tendency or desire to commit perjury. The law does not discriminate against or frown upon a former Minister, belonging to any party, whether in or out of power, so that it must view every witness produced by him with suspicion simply because he had been a Minister. On the other hand, we think that it would not be unreasonable to believe that a person who has occupied the responsible position of a Minister will be less inclined to suborn witnesses or conspire to produce perjured evidence just because he is defeated in an election which is not the only test of a person's worth or respectability in society. We think that a person who has held a responsible office will be acting imprudently if he spoils his public image by deliberately producing perjured evidence. We are not prepared to uphold the 5th contention of the appellant that, either as a general rule in election cases, or on the facts of this particular case, the evidence of the motor drivers must be necessarily rejected simply because it is oral testimony of drivers of trucks who had formed a Union which had once invited

A and garlanded the respondent. We, however, think that the evidence had to be more carefully scrutinized than the High Court was disposed to do it. As was pointed out in *Rahim Khan's* case (supra), evidence considered unsafe to be acted upon by a judicial Tribunal need not be necessarily false.

Turning to the 4th ground of objection, relating the prosecutions B of truck drivers by the Police for alleged offences said to have taken place on 11.3.1972, we find that the High Court accepted the allegation that the drivers were challaned on 11.3.1972 without commenting on some conflicting evidence as to the date on which the motor drivers were challaned. In reply, it has been contended that witnesses who could have given more evidence on this question were not only given up by the petitioner respondent but also by the appellant as C the date of challans was accepted or not questioned on behalf of the appellant. Our attention is invited to a Miscellaneous application No. 216-E/72 dated 19.10.1972 where learned Counsel for the appellant not merely stated that he did not want to examine either the Mohrir Constable of Police Station Ganaur or a Clerk of the office of the Superintendent of Police, Rohtak, but prayed that "the above two witnesses may kindly be informed telegraphically not to appear on D 23.10.72".

It is, therefore, argued, not without force, that the date of the challans was not seriously disputed by the appellant before the High Court so that this question should not be allowed to be argued before us. It was also contended on behalf of the respondent that there had been some tampering with the record in the Magistrate's Court which E explained the contrary evidence given by Subash Chander, P.W.11, the Ahalmad of a Magistrate's Court, showing that the challan was dated 17-3-1972. It was orally prayed that we should summon and examine, at this stage, the original record from the Court of the Magistrate concerned. However, as no argument appears to have been addressed on this question in the High Court we think that this as a matter which the High Court can and should itself examine after F summoning the record from the Magistrate's Court as we propose to send the case back to it for reconsideration after taking some further evidence.

It has been argued on behalf of the respondent that there is enough evidence of the motor truck drivers and of the voters carried as well as documentary evidence, including a log book of a driver, to show G that the truck used on behalf of the respondent were carrying voters to the election booth, and were, therefore, challaned on 11-3-1972 because carrying of passengers in truck was not permitted.

It was admitted that no entry was made in the general diary of Ganaur Police Station, according to the rules, but this, it was contended for the respondent, is not conclusive as relevant entries relating to some petty offences are often missing. These are, however, some H of the matters which the High Court can and should consider.

It appears to us that a number of points, on the worth of various items of evidence, which have been raised for the 1st time to question

the authenticity of the evidence relating to the prosecution of drivers of trucks, said to have been carrying voters for the appellant were not advanced before the High Court. We think that we ought to have the benefit of scrutiny of the whole evidence on this question by the High Court and its findings thereon. We are not prepared to proceed on the assumption that the respondent could easily get evidence fabricated as he had been a minister.

We may now deal with the first three grounds of objection, all relating to what is called the Pukar Register.

It is true that Uggar Sain, P.W. 24, who was called to prove the Pukar Register, did not actually depose in whose handwriting the entries in it were made or what could or could not be properly entered here. The trend of cross-examination, however, shows that it proceeded on the assumption that Uggar Sain, P.W. 24, was actually making entries in it. But, neither this fact was proved in the examination-in-chief nor was the course of business, according to which entries could be made in the Register, including entries of alleged payments by the respondent, proved. A number of question raised before us, throwing some suspicion on the authenticity of the entries in this Pukar Register and the dates on which they could be or were made seem to us to be entirely new. They were not suggested to P.W. 24, Uggar Sain, who might have had some explanations for these suspicious features. Nor do all these defects seem to have been mentioned in the course of arguments before the High Court. For example, the truck numbers of trucks said to have been sent to the appellant do not appear against the name of the appellant but seem inserted afterwards above the place where they would be expected to be found. The exact meaning or effect of such a feature could only have been brought out by cross-examination of Uggar Sain, P.W. 24 on behalf of the appellant.

As regards the admissibility of the Pukar Register and evidence of prosecution of the truck drivers, we are unable to accept the submission that these are inadmissible under the Evidence Act. Even though the course of business under which the Pukar Register was kept was not proved, we think that documents, such as the Pukar Register and those relating to the prosecutions of the drivers, who were said to be carrying voters on 11.3.1972, could be proved under section 11 of the Evidence Act.

We think that, in view of the importance of the evidence Uggar Sain, P.W. 24 both his examination-in-chief and his cross-examination are must unsatisfactory. We may here observe that the election Tribunal is not powerless in such cases in the performance of its duty to ascertain the truth. There is not only Section 165 of the Evidence Act which enables the Court to put any question it likes to a witness. but there are also the provisions of order XVI, Rule 14, Civil Procedure Code which lay down :

> "Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force,

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> where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document".

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We think that the ascertainment of a number of essential facts relating to the charge was neither regular nor sufficiently detailed in the case now before us. We find that the High Court proceeded on the assumption that facts which ought to have been technically proved had been sufficiently proved. It too readily accepted the evidence, both oral and documentary, without examining all the defects of it which have been sought to be placed before us. We are left with an unavoidable impression that important aspects of the case were neither satisfactorily brought out clearly by the evidence in the case nor examined by the High Court despite the voluminous evidence led by the parties and the lengthy judgment delivered by the Tribunal. We also find that the Court adopted a standard of proof which is not strict enough in appraising the worth of evidence produced to support a charge of corrupt practice. As it is not the practice of this Court to reassess evidence or to perform the duties of the Trial Court, even in election first appeals, unless no other course is left open to it, we think that this is a fit case in which we should send back the case for reconsideration by the High Court after recalling such witnesses as may be considered necessary by it, and, in particular, Uggar Sain, P.W. 24, so that at least the Pukar Register, assumed to have been duly proved, may be proved in accordance with law. We think that the objections to the proof of this document, and of entries in it do not go beyond objections to the mode of proof. The entries in it could be accepted as sufficiently reliable only after a much more rigorous examination of their maker than the parties or the Court subjected him to. We think that we should not give a finding upon the reliability of these entries before the allegedly suspicious features have been specifically put to P.W. 24, Uggar Sain, who was assumed to have made the entries without even asking him whether he did make them.

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In the result, we set aside the judgment and order of the High Court and we remand the case to it for disposal in accordance with law after adduction of such further evidence as may be necessary in the interests of justice. In view of our order remanding the case to the High Court it is unnecessary to consider the three Civil Miscel-

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laneous Petitions for urging addition grounds, for condonation of delay in filing the application for urging additional grounds, and for permission to file a certified copy of the summary register for 21-3-1972 and 22-3-1972 of the Court of Judicial Magistrate 1st Class, Sonepat. These applications are, therefore, dismissed. Parties may, however, make appropriate applications in the High Court. The costs of this litigation in the High Court as well as in this Court will abide the result. The appellant will continue to function as an elected member subject to the result of the Election Petition.

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P. B. R. *Appeal allowed*