GADAKH YASHWANTRAO KANKARRAO

v.

E.V. ALIAS BALASAHEB VIKHE PATIL AND ORS.

NOVEMBER 19, 1993

[J.S. VERMA, N.P. SINGH AND N. VENKATACHALA, JJ.]

Representation of the People Act, 1951—Sec. 123(4)—Corrupt Practice—Requirements of—Expression 'statement of fact'—Meaning—Onus of proof.

Appreciation of evidence—Standard of proof of a quasi-criminal charge —Proof required as in a criminal charge—Strictness of pleadings—Liberal construction not the proper approach—Election to be contested on positive vote—Purity of elections—Duty of Courts.

Offending statement of fact which is falsely published by any other person—Consent of candidate—Standard of proof.

Statements relating to payment by candidate to a political party's fund— Contribution prior to becoming a candidate whether amounts to corrupt practice u/s 123 (4)—Held, No.

Allegation of payment to a candidate for shifting to another constituency—Statement of fact proved to be false—Publication in newspaper—Whether amounts to corrupt practice—Held, yes.

Statement of a proposal to distribute bicycles to participants in a rally— Statement of likelihood of distribution of sarees, dhoties, liquor and cash in constituency—Expression of apprehension—Whether constitutes corrupt practice—Held, No.

Hiring of workers for election campaign—Not an offending statement of fact u/s 123 (4).

Statement that a candidate was likely to give money for repair of Chawdies and renovation of temples—Not a disparaging act relating to personal character or conduct.

Statement made advising voters to accept whatever was offered by a

A *candidate—Statement to cast vote uninfluenced by extraneous consideration—Whether constitute corrupt practice—Held, No.*

General Statements made by Chief Minister projecting his party's candidate as upholder of morality and honesty—Exhortation made to people to vote for his party's candidate—Cannot constitute statements of fact relating to
B *character and conduct of opposite candidate—Not a corrupt practice.*

Section 123(6)—Ceiling on expenditure—Prescription on ceiling fixed only in respect of expenditure by candidate—Expenditure incurred by party outside the net of legal sanction—Lacuna in law—Parliament to fill.

C *Section 101(b)—Election—Invalidation to election of returned candidate void for commission of corrupt practice—Candidate securing next highest number of votes—Whether can be declared elected.*

Section 116-A—Appeal—Scope of.

D *ELECTIONS—Election campaign—Trend of—Duty of political parties—Election to be contested on positive vote—Shift in election campaign in positive direction emphasised.*

For the Lok Sabha seat from Ahemdnagar Parliamentary Con-
E **stituency, the returned candidate, the appellant was declared elected against his nearest rival, the election petitioner.**

The election petitioner filed an election petition praying that the election of the appellant be declared as void and the election petitioner be declared to have been duly elected from that constituency. The validity of
F **the election was challenged on the grounds that the appellant had committed the corrupt practice u/s 123(4) of the Representation of the People Act; that the appellant had made certain false statements in his speeches relating to the personal character and conduct of the election petitioner attributing the use of corrupt methods by him, with a view to prejudice the prospects of his election which was published in the daily newspaper; that**
G **in the public meetings, the then Chief Minister of Maharashtra had made similar statements relating to the personal character of the election petitioner, in the presence of and along with the appellant; that these statements amounted to corrupt practice u/s 123(4) of the Act on account of which the appellant's election was void and the then Chief Minister was**
H **liable to be named in accordance with Section 99 of the Act.**

After the evidence was recorded and the appellant had also been examined, the High Court issued a notice u/s 99 to the then Chief Minister of Maharashtra to show cause why he should not be so named. The then Chief Minister challenged the issuance of this notice by a Special Leave Petition, but the same was dismissed requiring him to raise his objections in the first instance at the trial of the election petition in the High Court itself. He then raised his objections before the High Court but chose not to adduce any evidence or to apply for recall of any witness already examined for further cross-examination. However, he denied the commission of any such corrupt practice as did the appellant at the trial of the election petition.

The High Court allowed the election petition and declared the election of the returned candidate to be void making a further declaration that the election petitioner was duly elected. The High Court also named the then Chief Minister of Maharashtra for commission of the corrupt practice u/s 123(4) of the Act alongwith the returned candidate. It was held that the returned candidate and the Chief Minister did make supplementary statements of each other stating that the petitioner was to spend Rs. 3 crores for his election, that the had paid Rs. 50 lakhs to Janata Dal, Rs. 20 Lakhs were paid to the Janata Dal Candidate for withdrawing from one constituency and to contest from another constituency; that the petitioner was to take out rally of 5000 cycles and distribute the cycles amongst the participants, that the petitioner was to spend for repairs of Chawdies and had spent Rs. 5,000 for repair of Chawdies. It was also stated that the petitioner was to distribute sarees, dhoties, liquor amongst the workers with a view to attract them and it was advised that the voters must accept them and vote for Congress. The High Court concluded that these statements would touch upon the personal character and conduct of the petitioner.

These appeals were filed u/s 116A of the Act, against the judgment of the High Court. The returned candidate challenged declaration of his election to be void and the further declaration of the election petitioner to have been duly elected. The respondent Nos. 5 & 6 had challenged merely the further declaration of the petitioner to have been duly elected, in their appeals. The notice filed appeal against naming him for commission of the corrupt practice u/s 123(4) along with the returned candidate.

A The appellant, returned candidate alleged that he did not make any of the statements attributed to him and at any rate none of those statements amounted to the corrupt practice u/s 123 (4) of the Act. The noticee, the then Chief Minister contended that the statements attributed to him, which did not include the statement of payment of Rs. 50 lakhs to the B election fund of Janta Dal and the payment of Rs. 20 lakhs to the Janta Dal candidate for shifting to another constituency, did not satisfy the requirements of Section 123(4) and therefore, did not amount to the corrupt practice thereunder; that apart from there being no ground to declare the election of the returned candidate to be void, no ground had been made that the election petitioner to have been duly elected; that the C making of these statements attributed to him or at least the disparaging part thereof by him was not proved by any acceptable evidence and at any rate all the requirements of section 123(4) were not proved to hold that the corrupt practice was committed by the returned candidate; that the charge of commission of a corrupt practice being of a quasi-criminal D nature, the standard of proof applicable was of a criminal charge and not merely that of preponderance of probabilities of a civil case; and that the statements which were made were only to caution the electorate against possible misuse of money power. On the point relating to the manner of appreciation of evidence in such a case, the appellant submitted that every E statement reflecting on the personal character of a candidate does not amount to a corrupt practice since it does not prejudice the election in the prevailing political climate; that the existing norms do not match the earlier norms and, therefore, every reflection on a candidate's character does not necessarily prejudice his election since the electorate is not F influenced by such a statement in the pravaling electoral scene since they are not taken seriously by the voters due to the falling ethical standards; that political leaders have a duty to educate the electorate against possible malpractices which are now not uncommon during the election and making of such statements was desirable and that every allegation against a candidate of his committing a corrupt practice was not moral turpitude G adversely affecting the personal character of the candidate to constitute the corrupt practice u/s 123(4) of the Act; that every statement was not a 'statement of fact' and, therefore, a statement made about future apprehension or opinion of the maker, did not fall within the ambit of this expression and that most of the statements attributed to the returned H candidate and all the statements attributed to the then Chief Minister did

not constitute 'Statement of fact' within the meaning of this expression in Section 123(4); and that all these statements were within the permissible electoral practice, necessary for education of the electorate. A

The respondent contended that the expression 'statement of fact' had to be given a wider meaning to include even a statement relating to the state of mind of the other person about his future conduct and, therefore, all the statements attributed to the appellants fell within the meaning of this expression. B

The notice submitted that to constitute corrupt practice u/s 123(4), the consent of the returned candidate to the making of these statements by the then Chief Minister was also essential which had neither been pleaded nor proved; that the fact of candidate's presence at the time when these statements were alleged to have been made by him in the public meeting was not sufficient to prove the consent of the returned candidate requisite for constituting the corrupt practice u/s 123(4) and that the statements attributed to the notice did not constitute corrupt practice u/s 123(4) of the Act as the requirements of that provision were not satisfied. C D

Disposing of the matter, this Court

HELD : 1. The High Court's judgment declaring the election of the appellant, the returned candidate to be void for commission of corrupt practice under Section 123(4) of the Representation of the People Act is upheld and the further declaration made by the High Court that the election petitioner was duly elected is set aside. The High Court's order naming the then Chief Minister of Maharashtra under Section 99 of the Act for commission of the corrupt practice under 123(4) is also set aside. [794-F-G] E F

2. Allegations of corrupt practice are of a quasi-criminal nature and the proof that would be required in support of such allegations would be as in a criminal charge and not mere preponderance of probabilities as in a civil matter. [765-D] G

Surinder Singh v. *Hardial Singh & Ors.*, [1985] 1 SCC 91 and *Megraj Patodia* v. *R.K. Birla & Ors.*, [1971] 2 SCR 118, relied on.

Samant N. Balakrishna etc. v. *George Fernadez & Ors. etc,* [1969] 3 SCR 603; *Azhar Hussain* v. *Rajiv Gandhi,* [1986] Supp. SCC 315; *Lalit* H

A *Kishore Chaturvedi* v. *Jagdish Prasad Thada & Ors.*, [1990] Supp SCC 248; *Daulat Ram Chauhan* v. *Anand Sharma*, [1984] 2 SCC 64 and *M.J. Zakharia Sait* v. *T. M. Mohammed & Ors.*, [1990] 3 SCC 396, referred to.

3.1 The plain meaning of Section 123(4) indicates that it is not every
B statement but only 'a statement of fact' to which the provision applies, that the statement of fact should be false; that such statement should be made believing it to be false or at least not true; that it should relate to the personal character or conduct etc. of any candidate; and it should be reasonably calculated to prejudice the prospects of that candidate's election. Unless all these requirements are satisfied, the statement does not
C constitute corrupt practice under Section 123(4) of Act howsoever undesirable, morally or ethically, the making of that statement may be otherwise. [775-H, 776-A]

3.2 Every statement of fact in relation to the personal character or
D conduct of any candidate does not amount to a corrupt practice under Section 123(4) unless all the requirements of the provision are satisfied, notwithstanding the fact that such a statement may be defamatory in character. The additional requirements to constitute a corrupt practice are obviously to maintain the delicate balance between the freedom of speech
E of an individual and public interest of giving full information to the electorate of the candidates. There is no presumption of falsity of such a statement of fact for the purpose of Section 123(4) as it is under the law of defamation; and apart from proving the statement of fact to be false, it must also be shown that the maker of the statement either believed it to
F be false or did not believe it to be true. Irrespective of the quantum of evidence necessary to discharge the initial onus of leading evidence, the burden of proving these requirements on the evidence adduced remains on the person alleging commission of the corrupt practice. The object of making this provision more stringent is to emphasise the significance of freedom of speech in this sphere while prohibiting the making of such
G statements of fact relating to the personal character or conduct of any candidate which are not merely false but which are also believed to be false or not believed to be true by the maker. The grater latitude in election law is meant to serve the public purpose if the statement found to be false is made with the belief in its truth based on reasonable grounds and it is not
H intended to be a licence for making a scurrilous attack on the opponents recklessly. [766-B-C-D-E]

3.3 The primary requirements of Section 123(4) are that the statement should be a 'statement of fact' which is 'false' and which the maker either 'believes to be false' or 'does not believe to be true'. The burden of proving the satisfaction of all these requirements is no him who alleges commission of the corrupt practice. The onus of leading evidence relating to some requirements is however light in view of their nature. Once the initial onus is discharged, the onus shifts to the other side. For proving the statement of fact to be false, the initial onus is discharged and the burden shifts to the other side by assertion of its falsity on oath whereafter it is for the other side to rebut the same. Similarly, the nature of belief of the maker being primarily related to the state of mind of the maker, the initial burden is discharged by an assertion on oath to that effect. If there be any circumstances relevant for proving and justifying the belief of the maker, that also would be a matter of evidence. The maker of the statement knows best that material on which his belief was formed and, therefore, it is for him to prove the same. Whether the maker of the statement believed it to be false or did not believe it to be true, is then ordinarily a matter of inference from the facts so proved. [766-F-G-H; 767-A-B]

3.4 For constituting the corrupt practice in Section 123(4), all the requirements thereof must be satisfactorily proved. A statement of fact for the purpose of Section 123(4) can be one which is capable of proof as 'false' and which the maker either 'believed to be false' or 'did not believe to be true' at the time of making it. These further requirements of its falsity and nature of belief of the maker at the time of making the statement of fact are essential requirements without which the 'statement of fact' is not the one contemplated by Section 123(4). A 'statement of fact' can be proved to be 'false' only if it relates to an event which has happened and not to a hypothetical future possibility. Similarly, the belief of the maker about its falsity or the lack of belief in its truth relates to an existing fact and not to a hypothetical future apprehension howsoever honestly one may believe in its likelihood. Any statement made which is a conjecture of a likelihood in future, would not come within the ambit of the expression "statement of fact" used in Section 123(4). This is also supported by the fact that another requirement of Section 123(4) is that the statement of fact made should be reasonably calculated to prejudice the prospects of that candidate's election. This further requirement cannot be satisfied by merely stating a likely apprehension for the future and if the even does not happen, this requirement cannot be tested. It is a different matter if the

A statement amounts to an opinion relating to the personal character or conduct of any candidate which is based on existing or past acts of the candidate. [768-A-B-C-D-E]

Kumara Nand v. *Brijmohan Lal Sharma,* [1967] 2 SCR 127; *Nepal Chand Roy* v. *Netaji Chandra Das & Ors.,* [1971] 3 SCC 303; *T.K. Gangi* v. B *M.C. Anjaneya Reddy & Ors.,* 22 E.L.R. 261; *Guruji Shrihari Baliram Jivatode* v. *Vithalrao & Ors.,* [1969] 1 SCC 82; *Ram Chand Bhatia* v. *Hardayal,* [1986] 1 SCR 177; *Inder Lal* v. *Lal Singh,* [1962] Supp. 3 SCR 114 and *Sheopat Singh* v. *Ram Pratap,* [1965] 1 SCR 175, relied on.

C 3.5 The meaning of the expression 'statement of fact' used in Section 123(4), must be such which is apposite in the context and even if the meaning of the word "fact" be wider to include opinion about another person and apprehensions about his future conduct, that is not sufficient to so construe the expression "statement of fact" in this provision unless it fits in the context. A pragmatic test is to examine whether the meaning D given to the expression 'statement of fact' is capable of satisfying the other requirements of the provisions. It is only that meaning of this expression which is capable of satisfying the other requirements of the provision which can be its true meaning in the context. [767-F-G-H]

E Salmond on jurisprudence, 12th Edition, p.69, referred to.

4. The consent of the candidate for the purposes of Section 123(4) when the offending statement of fact which is false is published by any other person may be proved by inference from the circumstances and not necessarily by positive evidence to that effect since positive evidence of F consent may not be available. [771-F]

B.R. Rao v. *N.G. Ranga,* [1970] 3 SCC 576; *Narasingh Charan Mohanty* v. *Surendra Mohanty,* [1974] 2 SCR 39 and *Samant N. Balakrishna etc.* v. *George Fernandez & Ors. etc.,* [1969] 3 SCR 603, relied on.

G 5.1 The allegations made against the appellant was that he stated that the election petitioner had an election budget of Rs. 3 crores. The question in the present case related only to the corrupt practice specified in sub-section (4) of Section 123 and not to the corrupt practice under sub-section (6) thereof relating to the incurring or authorising of expenditure in contraven- H tion of Section 77 of the Act. Therefore the only point was whether the

statement that the election petitioner had an election budget of Rs. 3 crores was a false statement of fact. So far as the means of the candidates was concerned, both appeared to be considerably affluent. The electorate must have been well aware of their means and, therefore, this was a neutral circumstance which by itself had no significance bearing on the other statements attributed to the appellant. [776-D-E-G-H; 777-A]

5.2. The statement of the appellant alleging payment of Rs. 50 Lakhs by the election petitioner to Janata Dal election fund did not necessarily imply that this payment was for shifting its candidate to another constituency particularly when no other details were given. This statement had, therefore to be examined as the allegation of contribution to the election fund of a political party. There was no allegation that this payment was alleged to have been made at any time after the election petitioner had become a candidate at the election. It was doubt *if the mere allegation* of contribution to a political party's election fund prior to becoming a candidate can amount to the corrupt practice under Section 123(4) of the Act. [777-H; 778-A-B]

5.3 The requirement of Section 123(4) that this statement about payment of Rs. 20 lakhs by the election petitioners to the Janata Dal candidate for withdrawing from a constituency and shifting to another constituency was a statement of fact' which was 'false' was duly proved. The publication of these statements was by the appellant himself in a public meeting and in the interview given for being published in the Maharashtra Times, and therefore, the further requirement of its publication as required by Section 123(4) was also proved. This false statement of fact was in relation to the personal character or conduct of the election petitioner and it did not relate merely to his political character or conduct. The statement was reasonably calculated to prejudice the prospects of the election petitioner's elections inasmuch as it conveyed that he had bribed the Janata Dal candidate by payment of Rs. 20 Lakhs to withdraw his candidature from this constituency for his benefit. [778-F-G-H; 779-A]

5.4 The election petitioner had denied the payment of Rs. 20 lakhs and also asserted that the appellant while making the statement did not believe it to true. Even though the burden on the pleadings to prove the satisfaction of this requirement was on the election petitioner yet the initial burden of leading evidence of that fact was discharged shifting the burden of rebutting the same to the appellant. In his deposition the appellant did

A not believe in the truth of the information given to him about the payment of Rs. 20 lakhs by the election petitioner to a candidate and the latter withdrawing from the constituency for that reason. In such a situation, the appellant's admission in his cross examination that he did not believe the allegation to be true had the effect of reinforcing the petitioner's assertion to this effect instead of negativing it. It could not, therefore, be doubted B that the appellant did not believe in the truth of this allegation made against the petitioner when he said in his speech and interview that Rs. 20 lakhs had been paid by the petitioner to the Janata Dal candidate for withdrawing from this constituency and shifting to another constituency. All the requirements of Section 123(4) were satisfied and the false statement C of fact made to this effect by the appellant in respect of the personal character and conduct of the election petitioner amounted to the corrupt practice under Section 123(4) of the Act. This along was sufficient for declaring the election of appellant to be void.

[779-E-F-H; 782-A-B; 785-F-G]

D 5.5. The expression of a mere apprehension which did not come true apart from not being a 'statement of fact', did not satisfy the other requirements of Section 123(4). The statement of a proposal to take out a rally of 5000 bicycles and then distribute the bicycle to the participants related to the future and was at best merely the expression of an apprehen- E sion. No one had even suggested that such a rally was taken out at any time during the election campaign by the petitioner. It was an apprehension which did not materialise and, therefore, there was no reasonable likelihood of any impact thereof on the mind of the voters. Similar was the statement alleged to have been made of the likelihood of distribution of sarees, dhoties, liquor and cash in the constituency. No one had said that F such a distribution of any of these articles was made by the petitioner during the election campaign. Such a statement, if made, was therefore another apprehension which did not come true and, therefore, could not affect the mind of the voters. [786-B-C-D]

G 5.6. Mere hiring of worker for election campaign is not an offending statement of fact under Section 123(4). Unless the hiring of workers by payment of money resulted in exceeding the permissible maximum limit of election expenditure to constitute the corrupt practice under Section 123(6), this fact along would not constitute the corrupt practice under H Section 123(4). [786-E-F-G]

5.7. Mere repair of Chawdies or renovation of temples is not a disparaging act relating to the personal character or conduct of anyone unless the further requirements of section 123(4) are proved including the requirement of its impact on the mind of the electorate that it was reasonably calculated to prejudice the prospects of that candidate. [787-B-C] A

6.1. The statements attributed to the then Chief Minister of Maharashtra in the meetings *ex facie* did not amount to 'statements of fact' relating to the personal character or conduct of the petitioners being only the expression of his opinion based on apprehensions about the likely future conduct of the petitioner or relating only to his political character which did not fall within ambit of Section 123(4) of the R.P. Act. The statement of the Chief Minister that he had no objection to acceptance of the articles if they were distributed did not fall within the net of Section 123(4). The statement was an exhortation to the electorate to support morality and honesty to belittle and destroy the force of wealth and ego opposed to it. This was merely an exhortation of the speaker to support morality and honesty against money power and ego. These general statements made projecting his party's candidate as the upholder of morality and honesty against the forces guided by money power and ego amounted to his opinion of the kind of representation made by the two candidates irrespective of the correctness or otherwise of that opinion. The exhortation made to the people to vote for his party's candidate as the upholder of morality and honesty could not be treated as statements of fact relating to the character and conduct of the election petitioner amounting to vilification of his character or conduct. Thus, none of the statements of the Chief Minister constituted the corrupt practice under Section 123(4) of the R.P. Act. The statements wherein he said that the petitioner chose to contest from the South constituency being a famine prone region wherein the people were poor for the purpose of purchasing their self respect and that the petitioner had stated activities to win the election by efforts of interested parties by playing their game of purchasing self respect of the poor people did not come within Section 123(4). In one statement, he said that money alone could not be an important motivation in the election and there was need of ideology, policy, programme and morality. He then added that it was wrong to give up morality and leave the party when one's wish was not fulfilled and to join hands with other parties. This was in the background of the petitioner leaving the Congress (I) Party when the party ticket was not given to him and he contesting the election with the help of B C D E F G H

A other parties. The suggestion was that abandoning the party and switching of loyalty was not morally and ideologically correct. In the admitted background of the petitioner, this comment was on his political morality and character because of his leaving the Congress (I) Party on denial of ticket to him to and contesting against the Congress (I) Party's candidate. B This statement did not relate to the personal character or conduct of the petitioner but merely to his political character and morality. This did not fall within Section 123(4). [788-F-G; 789-D-G-H; 790-A-G]

Manohar Joshi v. *Damodar Talyaba & Ors.,* [1991] 2 SCC 342, referred to. C

6.2. Some of the statements, made by the Chief Minister even though not amounting to corrupt practice under the enacted law, did not measure upto the desired level of electioneering at the top echelon of political D leadership to set trend for a healthly election campaign. His suggestion to the voters to accept monies etc., if distributed by a candidate, without being influenced thereby as a means of propagating socialism exhibited a bizarre perception of socialism. It was shocking enough that appellant said so but far worse to find the Chief Minister endorse that view. Intended as sarcasm it depicted poor taste. If this be the level of election campaign at E the top, it is bound to degenerate as it descends to the lower levels. Some portions of the speeches of the Chief Minister were indeed high precept but the electorate would have benefited more by knowledge of the track record of the preachers' practice of the same. There was no such attempt. The degree of responsibility and the level of electioneering excepted of the F top leadership was wanting in these speeches. If probity in public life is to be maintained and purity of elections is not a myth or mere catch-phrase, a higher level of electioneering is expected at least at the highest level of political leadership. This shift in the election campaign has, therefore, to be in the positive direction to enable the electorate to case its positive vote instead of the negative vote by rejecting those with greater demerits. This G duty is cast more heavily on the senior leaders of all the political parties to ensure that the election campaign does not degenerate into a campaign of vilification, which may tend to promote violence during elections and lead to criminalisation of politics. The present trend of election campaign must be reversed to make the democracy more meaningful by ensuring H purity of elections. [792-C-D-E; 791-H; 792-A-B]

7.1 If purity of election is the essence of democracy and providing for invalidation of an election on the ground of commission of any corrupt practice is the object of enacting these provisions, it cannot be accepted that the election scene having degenerated over the years, appreciation of evidence for determining the commission of a corrupt practice must be made liberally because of the lower values in the arena of elections. If the rule of law has to be preserved as the essence of the democracy of which purity of elections is a necessary concomitant, it is the duty of the courts to appreciate the evidence and construe the law in a manner which would subserve this higher purpose and not even imperceptibly facilitate acceptance, much less affirmance, of the falling electoral standards. For democracy to survive, rule of law must prevail, and it is necessary that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values who win the elections on a positive vote obtained on their own merit and not by the negative vote of process of elimination based on comparative demerits of the candidates. It is also necessary that the impact of money power which has eliminated from electoral contest many men of undoubted availability and credibility for want of requisite financial support should be able to re-enter the field to make the people's choice meaningful. This can be achieved only if elections are contested on a positive vote and the comparison is between the merits and abilities of the contestants without the influence of power and pelf and not between their comparative demerits and the supports of money power. Apart from the other adverse consequences, the growing influence of money power has also the effect of promoting criminalisation of politics.

[761-F-G-H; 762-A-B-C]

7.2 The existing law does not measure upto the existing realities. The ceiling on expenditure is fixed only in respect of the expenditure incurred or authorised by the candidate himself but the expenditure incurred by the party or anyone else in his election campaign is safely outside the net of legal sanction. The spirit of the provision suffers violation through the escape route. The prescription of ceiling on expenditure by a candidate is a mere eye-wash and no practical check on election expenses for which it was enacted to attain a meaningful democracy. This lacuna in the law is, however, for the parliament to fill lest the impression is reinforced that its retention is deliberate for the convenience of everyone. If this be not feasible, it may be advisable to omit the provision to prevent the resort to

A indirect methods for its circumvention and subversion of the law, accepting without any qualm the role of money power in the elections. This provision has ceased to be even a fig leaf to hide the reality. [762-D-E-F]

7.3 Real education of the electorate contemplates informing them of the past achievements and future plans of the political party on a positive
B note and its candidate's qualifications to serve that purpose compared with those of the other political parties and their candidates and not a projection of the comparative greater demerits of the opponents. The functioning of democracy depends on the quality of the men chose of the governance of the country. This is the need which the election campaign is
C meant to serve in an election based on party lines, the qualifications of the candidates being material for this purpose. [762-H; 763-A-B]

7.4 Past experience had shown that even the illiterate section of the electorate was educated enough to remain uninfluenced by power and pelf.
D This it had shown more than once by rejecting the high and the mighty in power when it felt that they had filed to discharge their true obligation. Even if the said statements or any of them did not constitute the corrupt practice u/s. 123(4), it only meant that the existing law does not frown upon the same to visit it with any adverse consequence, but that does not mean that it is a desirable practice during the election campaign. It is one thing
E to say that a statement does not constitute corrupt practice but entirely different to suggest that it is a desirable electoral practice forming a part of the programme for education of the electorate which can only lead to a further degeneration of the wanting morality in the electoral scene, when the felt need is for curbing any such tendency to ensure purity of elections.
F [763-F-G-H; 764-A-B-C]

8. The mere fact that the election petitioner secured the next highest number of votes after the returned candidate was not sufficient to declare him elected on the conclusion that the election of the returned candidate was void for commission of a corrupt practice. To justify this relief, it must
G heve been held that but for votes obtained by the returned candidate by the corrupt practice committed u/s 123(4), the petitioner would have obtained a majority of the valid votes. The High Court proceeded on an erroneous assumption that the election of the returned candidate being void the petitioner who polled the next highest number of votes must be declared to have been duly elected. Relief granted under Section 101(b) of the R.P. Act
H was unwarranted on account of the absence of the requisite evidence to

support the grant of this further declaration in the present case. A
[794-D; 793-E; 794-E]

Konnappa Rudrappa Nadgouda **v.** *Vishwanath Reddy & Anr.,* **[1969] 2 SCR 90, relied on.**

9. The scope of an appeal under Section 116A of the Representation of the People Act is an wide as in a civil appeal, and this court has to exercise the same jurisdiction as is exercised in an appeal against the original judgment of the High Court. [765-C] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2115 of 1993. C

From the Judgment and Order dated 30-3-1993 of the Bombay High Court in Election Petition No. 2 of 1991.

WITH

CA Nos. 2116/93, 2444/93 and 1758/93. D

V.N. Ganpule, Ram Jethmalani, Raja Bhosale, Ashok H. Desai, K. Parasaran, V.R. Manohar, P.P. Rao, V.A. Bobde, Satish K. Agnihotri, Ms. Punam Kumari, Ms. Lata Krishnamurthy, Ravinder Kumar, Ms. Nandini Gore, Vasant Kotwal, S.B. Talekar, R.N. Karanjawala, P.K. Mullick, E Suruchi Agarwal, Ms. M. Karanjawala, Harsh Desai, Pallav Sisodia, K.K. Lahiri, P.N. Banerjee, K.J. John, G. Umapathy, P.R. Tiwari, A Raghunath, Ms. Pragati Shukla, S. Ganesh, A.M. Khanwilkar, Viswajit Singh, Prashant Kumar, E. Iaher, V. Dhoni, V.B. Mishra, S.B. Mhase, R.F. Nariman, Vijay Kumar, Santosh Paul, M.J. Paul and Mrs. V.D. Khanna for the appearing F parties.

Intervenor in person in C.A. No. 2115/93.

The Judgment of Court was delivered by

VERMA, J. These appeals under Section 116A of the Representation G of the People Act, 1951 (hereinafter referred to as "the R.P. Act") are against the judgment dated 30th March, 1993 in Election Petition No. 2 of 1991 *E.V. Alia Balasaheb Vikhe Patil* v. *Gadakh Yashwantrao Kankarrao & Ors.,* passed by A.A. Halbe, J. of the Bombay High Court at the Aurangabad Bench. By the impugned judgment, the election of Gadakh Yash- H

A wantrao Kankarrao as a member of the Lok Sabha from 39 Ahmednagar Parliamentary constituency held in June 1991 has been set aside for commission of the corrupt practice under Section 123(4) of the R.P. Act; and E.V. Alias Balasaheb Vikhe Patil has been declared elected. Civil Appeal No. 2115 of 1993 is by Gadakh Yashwantrao Kankarrao (Gadakh) against declaration of his election to be void and the further declaration of E.V. alias Balasaheb Vikhe Patil (Vikhe Patil) to have been duly elected. Civil Appeal No. 2116 of 1993 is by Deshmukh Bhagwan Rangnath (Respondent No. 5 in the Election Petition) against declaration of Vikhe Patil to have been duly elected. Similarly Civil Appeal No. 2444 of 1993 is by Najan Rambhau Maruti (Respondent No. 6 in the Election Petition) against declaration of Vikhe Patil to have been duly elected. Civil Appeal No. 1758 of 1993 is by Sharad Chandra Govindrao Pawar (Sharad Pawar) to whom a notice under Section 99 of the R.P. Act was issued, against naming him for commission of the corrupt practice under Section 123(4) of the R.P. Act along with the returned candidate Gadakh.

The material facts are now stated: Programme for election of a member for election of a member of the Lok Sabha from 39 Ahmednagar Parliamentary Constituency known locally as Ahmednagar South constituency was as under :

"1.	Issuance of Nomination papers	From 19th April, 91 to 26th April, 1991.
2.	Last Date of Acceptance of Nomination Papers.	26th April, 1991.
3.	Scrutiny and Publication of list of candidates	27th April, 1991
4.	Withdrawal and Publication of final list of candidates.	29th April, 1991
5.	Allotment of symbols	29th April, 1991 after 3.00 p.m.
6.	Duration of Propoganda	30th April, to 21st May, 1991.
7.	Date of polling	23rd May, 1991.
8.	Counting of votes and declaration of results."	27th May, 1991

H However, due to the assassination of Shri Rajiv Gandhi, former prime

Minister of India on 21st May, 1991, the remaining election programme was modified by fixing 12th June. 1991 as the date of polling in that constituency and 16th June, 1991 for the counting of votes and declaration of result. For the election from that constituency, the election petitioner Vikhe Patil, the returned candidate Gadakh, respondent No. 1 and respondents 2 to 10 in the election petition, were candidates. The polling took place on 12th June, 1991 and the result was declared on 16th June, 1991 wherein Gadakh was declared elected having secured 2,79,520 votes against his nearest rival Vikhe Patil who secured 2,67, 883 votes.

Vikhe Patil then filed an election petition (E.P. No. 2 of 1991) at the Aurangabad Bench of the Bombay High Court praying that the election of Gadakh be declared as void and the election petitioner Vikhe Patil be declared to have been duly elected from that constituency. Challenge to the validity of the election of Gadakh was made by Vikhe Patil on the ground that Gadakh had committed the corrupt practice under sub-section (4) of Section 123 of the R.P. Act. This ground was based on the allegation that Gadakh had made certain false statements in his speeches relating to the personal character and conduct of Vikhe Patil attributing the use of corrupt methods by him, with a view to prejudice the prospects of Vikhe Patil's election, in meetings held by him at Sonai on 30th April, 1991, Ahmednagar on 2nd May, 1991, Newasa on 3rd May, 1991 and in an interview given to a journalist on 10th May, 1991 which was published in the daily newspaper "Maharashtra Times" on 13th May, 1991. It was also alleged by Vikhe Patil that in the public meeting held at Newasa on 3rd May, 1991 and at Srigonda on 11th May, 1991, Sharad Pawar, the then Chief Minister of Maharashtra had made similar statements relating to the personal character of Vikhe Patil, in the presence of and along with Gadakh. It was alleged by Vikhe Patil that these statements relating to the personal character of Vikhe Patil made by Gadakh and Sharad Pawar amounted to corrupt practice under Section 123(4) of the R.P. Act on account of which Gadakh's election was void and Sharad Pawar was liable to be named in accordance with Section 99 of the R.P. Act. After the evidence was recorded at the trial and Gadakh had also been examined on commission on account of his illness, the High Court Issued a notice under Section 99 of the R.P. Act to Sharad Pawar to show cause why he should not be so named.

Sharad Pawar challenged the issuance of this notice under Section

A 99 of the R.P. Act to him by a special leave petition filed in this Court, but the same was dismissed requiring sharad Pawar to raise his objections to the notice in the first instance at the trial of the election petition in the High court itself. Sharad Pawar then raised his objections before the High Court but chose not to adduce any evidence or to apply for recall of any B witness already examined for further cross-examination. Sharad Pawar denied the commission of any such corrupt practice as did Gadakh at the trial of the election petition.

The High Court at the end of the trial allowed the election petition and declared the election of Gadakh to be void making a further declara- C tion that Vikhe Patil was duly elected. The High Court also named Sharad Pawar for commission of the corrupt practice under Section 123(4) of the Act along with the returned candidate Gadakh. The conclusions of the High Court on the basis of which these reliefs have been granted are summerised in paragraphs 223 and 224 of the impugned judgment, which are as under :— D

"From the discussion in the foregoing paragraphs, it has to be concluded that the respondent No. 1 and Sharad Pawar did made supplementary statements of each other. Those statements can be enumerated as below :—

E

(1) Petitioner was to spend Rs. 3 crores for his election;

(2) Petitioner had paid Rs. 50 Lakhs to Janata Dal;

(3) Petitioner had paid Rs. 20 Lakhs to Janata Dal candidate for F withdrawing from Nagar constituency and to contest from Beed constituency.

(4) Petitioner was to take out rally of 5000 cycles and distribute the cycles amongst the participants;

G (5) Petitioner was to spend for repairs of Chawdies and had sent Rs. 5,000 for repair of Chawadi at Ganganagar, Tq. Newasa;

(6) Petitioner was to distribute sarees, dhoties, liquor amongst the workers obviously with a view to attract them.

H (7) Voters must accept them and vote for congress.

These are the statements made by the respondent No. 1 and Sharad Pawar in various meetings. The foregoing discussion has clearly indicated as to what was spoken by either of them at different meetings. That portion would be again reconsidered at the end but suffice it to say that they would certainly touch upon the personal character and conduct of the petitioners."

It is these conclusions and reliefs granted on by basis which are challenged by the returned candidate Gadakh and the notice Sharad Pawar, while respondent No. 5 Deshmukh Bhagwan Rangnath and respondent No. 6 Najan Rambhau Maruti have challenged merely the further declaration of Vikhe Patil to have been duly elected, in their appeals.

At this stage, a gist of the alleged false statements relating to the personal character of Vikhe Patil attributed to Gadakh and Sharad Pawar may be mentioned while the details thereof would be stated later at the time of considering each of them separately. It has been alleged by Vikhe Patil that Gadakh attributed to him the resort of corrupt methods for winning the election in his statements by stating the Vikhe Patil had a huge election budget of Rs. 3 crores; that Vikhe Patil had paid Rs. 50 lakhs to the election fund of Janata Dal; that Rs. 20 lakhs were by him to the Janata Dal candidate B.G. Kolse Patil to shift to another constituency; that he was to distribute 5000 bicycles to the participants in a bicycle rally to be taken out for him; that he had offered to the workers in the election campaign Rs. 25,000 at the village level and Rs. 50,000 at the taluka level; that he was to give money for repairs of Chawdies and temples in the constituency; and he was to distribute sarees, dhoties, liquor and cash to the voters for purchasing their votes. It was also alleged that Gadakh exhorted the voters in the constituency to accept these things from Vikhe Patil but to vote for Gadakh. Against Sharad Pawar, it was alleged that in the public meetings he addressed at Newasa and Srigonda, he made similar statements in the presence of Gadakh, except the statement attributed to Gadakh alone of payment by Vikhe Patil to the Janata Dal election fund and the Janata Dal candidate. It may be noticed at this stage that combined findings against Gadakh and Sharad Pawar have been recorded by the High Court in paragraphs 223 and 224 of the judgment in respect of all the alleged statements including those relating to payments to the Janata Dal and the Janata Dal candidate even though there is no pleading or proof of such statements being made by Sharad Pawar. The application made by the

A returned candidate Gadakh for recrimination alleging that the election of Vikhe Patil would have been void if he had been the returned candidate, was also dismissed by the High Court. Civil Appeal No. 2445 of 1993 as well as Special Leave Petition (Civil) No. 9210 of 1993 filed by Gadakh against dismissal of his application for recrimination have already been dismissed by us as not pressed.

B

The operative order made by the High Court is as under :—

"(i) The Election Petition is allowed.

C (ii) The election of the respondent No. 1 Gadakh Yashwantrao Kankarrao from 39 Ahmednagar Parliamentary constituency is hereby declared as null and void as the respondent Gadakh Yashwantrao Kankarrao is proved to have committed corrupt practices under section 123(4) of the Representation of People Act.

D

(iii) The notice against Sharadchandra Govindrao Pawar is made absolute under Section 99 of the Representation of People Act and Sharadchandra Govindrao Pawar is named as a person who has been proved to be guilty of corrupt practices under Section 123(4) of the Representation of People Act. The respondent No. 1 shall pay the costs of Rs. 30,000 to the petitioner and likewise respondent No, 6 shall pay the costs of Rs. 5,000 to the petitioner.

E

(iv) Registrar to take action under section 103 of the Representation of People Act and forward the copy of the notice under section 99 of the Representation of People Act and the judgment and order in this Election Petition to the Election Commissioner and also to the Speaker or the Chairman of the House of Parliament or the State Legislature, as may be found necessary.

F

G

(v) The petitioner E.V. @ Balasaheb Vikhe Patil is declared as a candidate duly elected from the above parliamentary constituency.

H (vi) Petitioner be refunded his security deposit."

In these matters, Shri Ashok Desai appeared for Gadakh; Shri K. Parasaran for Sharad Pawar; Shri V.N. Ghanpule for Deshmukh Bhagwan Rangnath (respondent No.5 in the election petition); and Shri Ram Jethmalani for Najan, Rambhau Maruti (respondent No. 6 in the election petition). In substance, the contention of Shri Ashok Desai was that Gadakh did not make any of the statements attributed to him and at any rate none of those statements amounts to the corrupt practice under Section 123(4) of the R.P. Act. Shri K. Parasaran contended that the statements attributed to Sharad pawar, which do not include the statement of payment of Rs. 50 lakhs to the election fund of Janata Dal and the payment of Rs. 20 lakhs to the Janata Dal candidate B.G. Kolse Patil for shifting to another constituency, do not satisfy the requirements of Section 123(4) and, therefore, do not amount to the corrupt practice thereunder. Shri Desai further contended that apart from there being no ground to declare the election of Gadakh to be void, no ground had been made out to declare Vikhe Patil to have been duly elected. Shri Ghanpule appearing for Deshmukh Bhagwan Rangnath adopted the arguments of Shri Ashok Desai to contend that Vikhe Patil could not be declared elected. Shri Ram Jethmalani appearing for Najan Rambhau Maruti, Apart from challenging the declaration of Vikhe Patil to have been duly elected, supported the submissions of Shri Ashok Desai and Shri Parasaran to contend that a corrupt practice under Section 123(4) was committed either by Gadakh or Sharad Pawar

A B C D E

The statements attributed to Gadakh and Sharad Pawar as constituting the corrupt practice under Section 123(4) of the R.P. Act are alleged in the election petition to have been made in four meetings and one interview to a journalist given by Gadakh. Before giving the 'particulars of these allegations, the particulars of these meetings and interview may be given. It may be mentioned that Gadakh was the candidate of the Congress (I) Party at the election and Sharad Pawar belonging to the same Party was the Chief Minister of Maharashtra at that time. The first meeting was held on 30th April, 1991 at Sonai at which Gadakh had addressed the Congress Party workers. The second meeting of the District Congress Committee was addressed by Gadakh at Ahmednagar on 2nd May, 1991. The third was a public meeting at Newasa on 3rd May, 1991 addressed by Gadakh as well as Sharad Pawar. The fourth was also a public meeting at Srigonda on 11th May, 1991 which was addressed by Sharad Pawar after he held introduced and welcomed by Gadakh. The speeches by Gadakh and

F G H

A Sharad Pawar at these meetings were also published in the newspaper. Apart from these meetings, an interview was given by Gadakh on 10th May, 1991 to a Journalist Girish Kulkarni and that interview was published in the "Maharashtra Times" of the 13th May, 1991.

B The averments in the election petition relating to the statements attributed to Gadakh and Pawar alleged to constitute the corrupt practice under Section 123(4) are mixed up but the relevant portions in the election petition are as under :

C "On 30th April, 1991, the first respondent had addressed a meeting at village Sonai.....

..... Further he made a statement that the Petitioner had paid 20 lakhs of rupees for the candidate who was selected by Janata Dal Party for the Ahmednagar constituency to contest the election D from Beed constituency. Respondent No. 1 further alleged that the Petitioner was going to spend Rs. 3 crores for Petitioner's election. Respondent No. 1 also alleged that Petitioner has declared rate of Rs. 25,000 for defecting worker of village level and Rs. 50,000 for worker of Tahsil. ..... The petitioner states that the statements mady by the first respondent that petitioner paid Rs. 20 E lakhs to the candidate of Janata Dal to withdraw from Ahmednagar Parliamentary constituency is false is known to first respondent as false and such a statement is relating to personal character and conduct of the petitioner the statement is false and also related to the candidate. This Statement was made by the first respondent F believing it to be false. The said statement was made to prejudice prospects of the Petitioner in the election. The statement of first respondent that the petitioner had paid Rs. 50 lakhs to the Janata Dal Party is also false and this statement of the first respondent that petitioner has declared rate of Rs. 25,000 per defection worker of village level and 50,000 per worker of tahsil level is equally false. G The first respondent know and believe that it was false statement. The petitioner was indulging into an act of bribery for inducing Janata Dal candidate to withdraw from election. This statement relates to the personal character of petitioner. .....

H (para 9)

..... The petitioner states that the first respondent made a statement in the meeting dated 2nd May 1991, that in order to take the support of Janata Dal, the petitioner had paid Rs. 50 lakhs to the election fund of (Janata Dal) .....

(para 10)

The Petitioner states that in the meeting addressed by the first respondent in the office of the District Congress Committee, Ahmednagar, on 2.5.1991, as stated in para No. 10. and further the first respondent made a statement that a sum of Rs. 5000 had been sent on behalf of Petitioner for constructing Chawdi at Ganganager area of Newasa tahsil. The respondent No. 1 further stated that the Petitioner was going to have bicycle rally of 5000 strong, and those bicycles would be given permanently to the participants in the said rally. ..... The Petitioner states that no bicycle rally was held. The Petitioner had not purchased any bicycle not handed over any bicycle to anybody. The statement made by the first respondent was false. The statement indicates that the Petitioner was going to spend large sum of money to bribe voters, and even distribute 5000 bicycles. .....

(Para 11)

The Petitioner states that an Election meeting was held at Newasa Bajartal on 3.5.1991, at 10.30 a.m. for the inauguration of propoganda. The said meeting was addressed among others by the first respondent and the then Chief Minister of Maharashtra Shri Sharad Pawar. In the said meeting, the first respondent repeated that 5000 bicycles ..... distributed, money is also being sent for repairing of Chawdi. Temples and cash was being distributed on behalf of the Petitioner. Shri Sharad Pawar made a reference to this statement in the presence of the first Respondent and Shri Sharad Pawar also made statement that Vikhe is under false impression that the poor men from famine affected area of South Nagar District can be purchased. Poor persons do not go here or there for money. Don't take test of self respect of those (poor men). Institutions have been erected by taking advantage of party. Voter can't be purchased by that money. Shri Pawar advised the voters that if the wealth is being distributed take the wealth but vote for Congress. Statement were repeated to the effect that the

A Petitioner was distributing bicycles and pairs of dhoties, and sarees, among voters in the constituency. .....

The Petitioner states that these statements were false. The first respondent and Shri Sharad Pawar were knowing that these statements were false. Shri sharad Pawar Knew well that these statements reflected on the personal character of the Petitioner. The petitioner was being painted by the first respondent and Shri Sharad Pawar, that the petitioner would do anything to get elected by use of his money.

C (para 12)

The Petitioner states that the first respondent gave an interview to Shri Girish Kulkarni representative of Maharashtra Times. The said interview has been published in the Maharashtra Times dated 13th May, 1991. ..... In the said interview it was put up to 1st respondent that first respondent had been accusing the Petitioner of indulging in corrupt practices, on what basis such accusations were made. 1st respondent replied stating that according to his own information the Petitioner had paid Rs. 50 lakhs to the election fund of Janata Dal for getting its support and Rs. 20 lakhs to Shri B.G. Kolse Patil to make him not to contest the election from 39, Ahmednagar parliamentary constituency but to contest from Beed constituency. First respondent had further stated that the Petitioner had collected Rs. 3 crores from various places to fight out this election as it is a fight for political existence of Vikhe Patil. It was further stated that he would be distributing cycles, liquor bottles, dhoties, sarees and cash amount among the workers then only he will be elected and arrangements have been made. It was further stated by Respondent No. 1 that the Petitioner had been trying to win over the political workers by financial inducements. ..... The Petitioner states that the above statement is false. The Petitioner had not paid Rs. 50 lakhs or nor any amount to Janata Dal Election Fund, nor paid Rs. 20 lakhs to Shri B.G. Kolse Patil. Petitioner had not distributed bicycles, liquor bottles, dhoties, sarees, cash amounts among the voters. Petitioner had not attempted to induce the workers of other party with financial support. The first respondent knew that the above statement was

false. The first respondent believed it it be false. ..... A

(para 13)

The Petitioner states that the first respondent was also present in the election meeting on 11th May 1991, at Srigonda at 8.30 p.m. B in Ahmednagar constituency. The said meeting was addressed by the then Chief Minister Shri Sharad Pawar. ..... The Petitioner states that the then Chief Minister Shri Sharad Pawar making the reference to above fact relating to Petitioner, made the following statements. "Who is contesting this election against us. On one side there is Rajiv Gandhi and this his candidate trying to save the C country. On the other side are the ranged people trying to secure voters in the name of religion and some other candidates and on the third side there is someone who went in adoption some where because it was not possible for him to wait when the party told him to wait for some time. And the third candidate who is con- D testing the election with their support had left his party and came here thinking that this is a soft (electorate). I am not worried about the Bhartiya Janata Party candidate in this constituency because he is going to loose. He too is aware of this. The question is different while what to do about this adoptive candidate who was raised by the Congress made a member of Parliament for five E times, and office bearer of the Zilla Parishad. On one occasion when he was asked to wait a little, he grew impatient and began searching. He filled up (nomination) forms in Kipergaon and in Nagar. He adopted a stand of interest parties while to rebell in South constituency. But while performing that role he saw that he could not get an opportunity in the north. So the idea entered his F mind that this South constituency being a famine prone region and the people there being poor he could pocket them. So he started activating in this path with a view to take over Maharashtra from here and win the election by the efforts of interested parties by playing game of purchasing your self respect. We must face it and G defeat such activity. That is the task to be done in this election. At some time or other you will have to tell (them) that money alone cannot be in important motivation in this election. What is needed is ideology, policy, programme and morality. It is wrong to give up morality, when one is wish is not fulfilled to leave the party program and colleagues when a favourable decision is not taken and to join H

A hand with other parties once the 'koom koom" (sacredred powder indicating natrimony) is applied, its sanctity must be maintained. But we did not know, that the koom koom was being applied in the name of one person and the eyes were looking at somebody else ..... Then the possibility cannot be ruled out that attention will be drawn to all such question; like what benefit we will get, B which leaders are coming to South (constituency) will be village chawdi be built, will the temple be renovated will the motorbike be available for riding, will bicycles at least be available for ridding. It is not in your and my interest to accept the same. It will not behove our self respect, but it must be accepted. I say that the C reason for this (acceptance) is that whatever comes, will be coming out of the resources of society. If the process of distribution has begun, it is very good in the interest of establishing socialism in this away. Take the same for free and use it against them. If we can do this sincerely, then I am sure that all these people shall realize that the people of South (constituency), are poor but their D attitude is different. .....

The Petitioner state that in the speech, Shri Pawar have not taken the name of petitioner, but have made references to the petitioner stating his political career and naming the petitioner as third candidate going in adoption. ..... E

The Petitioner states that the statement made by Shri Sharad Pawar stated above were innuendo. The petitioner states that the statement above quoted was false. The said statement was made in the presence of first respondent. The first respondent never F objected to these statements. ..... The Petitioner stated the first respondent and Shri Sharad Pawar believed this statements to be false. The Petitioner states that the said false statements made by Shri Sharad Pawar with the calculation to prejudice petitioner's prospects of election. .....

G

(para 16)

The Petitioner submits that the statements made by the first respondent himself and statements made by Shri Sharad Pawar in the presence of the first respondent amount to corrupt practice H under section 123(4) of the Representation of People Act 1951.

These statements are even published in the widely circulated news papers which are produced at Exhibit A to K. The statements amounted to an allegation that the Petitioner was ready to buy the voters by offering bribes, t them. The Petitioner states that bribing itself is a corrupt practice and it it is said against a candidate that he practises the corrupt practice of buying the votes by means of bribery and clearly and unequivocally constitutes an attack on the private character. The Petitioner states that the statements of the first respondent and Shri Sharad Pawar as reported above were totally false. He believed that the statements were false and the statements were made calculated to prejudice the election prospects of the Petitioner.

(para 17)"

Recording of the evidence at the trial of the election petition was concluded on 4th September 1992 when the statement of Gadakh was recorded on commission. The High Court an order on 18th September, 1992 directing Issuance of a notice to Sharad Power under Section 99 of the R.P. Act pursuant to which the notice was actually issued on 3rd October, 1992 together with the ennexures as directed in the order itself. This notice was served on Sharad Pawar on 12th October, 1992. As earlier stated, Sharad Pawar preferred a special leave petition in this Court against issuance of the notice and that special leave petition was dismissed requiring Sharad Pawar to raise all his objections to the notice in the first instance before the High Court leaving those questions questions open for consideration after the final decision of the High Court, if necessary. In view of the High Court's order naming Sharad Pawar under Section 99 of the R.P. Act. the question now arises for side on the his pleas. In the notice issued to Sharad Pawar under Section 99, the statements attribution to him in the meeting at Newasa on 3rd May, 1991 and at Srigonda on 11th May, 1991 were quoted. At this stage. It is necessary to quote only those portions from the extracts given in the notice which have been relied on by Shri P.P. Rao on behalf of vikhe Patil to support the allegation of corrupt practice against sharad Pawar. The relevant portions are as under :

At Newasa on 3rd May, 1991

"Filed the nomination in South instead of North. These people guessed that it is a poor region. Scarcity area, suffers from water

problems. People are engaged on Employment Guarantee Schemes. The people are having problems always. A good circumstance to win over easily. But they do know what is underneath. A black granite of Sahyadri is there. Any hammering would be not without danger. It would hurt the head. .....

that Shri Balasaheb has taken a stand to test the self respect of the commonman. He should be warned in clear terms that you have grown big because of Congress. Congress makes you known to every body. Your institutions have grown because of the support coming from the congress Government at the State and the Centre. Today you left Congress. Left Your family name. Parental name you have cast off and I warn that, you will realise your true place and nature. Possessed with the illusion that you will be able to purchase the poor man of the south with the help of the resources at your disposal. You have come here every person of this part is a man possessing self respect. He would rather remain without food and be a peril but he would never sell his vote with anybody's money. Balasaheb would come to realise after the election of 23rd at the time of counting of votes scheduled on 26th. .....

They will distribute bicycles, distribute dhoties and sarees. He told you to accept them. I do not have any objection. .....

Balasaheb has become one of them. And in celebration of that occasion, if the wealth is being distributed into this constituency, there should be no hesitation in getting benefited. Complete the renovations, if a bicycle is coming, let it be accepted. The symbol should be always in our hands. We should not worry ourselves about everything. May be there should be generous attitude behind the distribution of wealth in the shape of decentralisation. Let us welcome it. Let them do at the place and so far diverting the votes on the strength of money, let it be clear to whole of Maharashtra that voters cannot be bought. .....

Efforts are being made, to corrupt the people, attempts being made to put on the pressure. There will be an attempt to distribution and notwithstanding anything done as above. .....

And side by side, it this district, here is a fight between morality and honesty from one side and money resources and a tendency

guided by ego to the other side. I am sure that in this fight, the morality and honesty would triumph. Though to that side, we see a mountain of wealth, but we also see that there is an infinite sea of common poor public. They are backing Yashwantrao and Shankarrao. With the help of this common man's support, the voters of this constituency of the district have become able to belittle and destroy this mountain of wealth."

At Srigonda on 11th May, 1991

"So the idea entered his mind that this South constituency being a famine prone region and the people there being poor he could pocket them. So he started activities in these parts with a view to take over Maharashtra from here and win the election by efforts of interested parties by playing their game of purchasing your self respect. .....

At some time or other you will have to tell (them) that money alone cannot be an important motivation in this election. What is needed is ideology, policy, programme and morality. It is wrong to give up morality when one's wish is not fulfilled, to leave the party, programme and colleagues, when favourable decision is not taken and to join hands with other parties. Once the 'kumkum' (sacred red powder indicating matrimony' is applied its sanctity must be maintained. But we did not know that the "kumkum" was being applied in the name of one person and the eyes were looking at some body else. .....

Then the possibility cannot be ruled out that attention will be drawn to all such questions like "what benefit we will get which leaders are coming to the south (constituency) will the village Chawdi be built, will the temple be renovated, will motorbikes be available for riding, will bicycles at least be available for riding?" It is not your and my interest to accept the same. It will not behove ourself respect, but it must be accepted. I say that the reason for this (acceptance) is that whatever comes will be coming out of the resources of society. If the process of distribution of social wealth has begun, it is very good in the interest of establishing socialism in this way. Take the same for free and use it against them. .....

A A decision is to be taken whether one should act on principle or disloyally whether one is to act according to morality or immorality according to humanity or in the arrogance of money and power."

The submission of Shri Ashok Desai was that the making of these B statements or at least the disparaging thereof by Gadakh is not proved by any acceptable evidence and at any rate all the requirements of Section123(4) are not proved to hold that the corrupt practice was committed by Gadakh. Shri Parasaran contended that the statements attributed to Sharad Pawar have not been duly proved and, therefore, the question of any rebuttal by Sharad Pawar does not arise; and even if the alleged C statements are proved to have been made by Sharad Pawar, all the requirements of Section 123(4) have not been made out to justify naming him under Section 99 of the Act. Shri Ram Jethmalani supported the submissions of Shri Ashok Desai and Shri Parasaran. It was submitted by these learned counsel that the charge of commission of a corrupt practice being D of a quasi-criminal nature, the standard of proof applicable is of a criminal charge and not merely that of preponderance of probabilities of a civil case. It was further submitted that the statements which were made by Gadakh and Sharad Pawar were only to caution the electorate against possible misuse of money power and to exhort them to succumb to any such pressure or temptation. They submitted that this was done on account of E the reasonable apprehension arising from the rumours afloat in the area of the likelihood of such tactics being adopted by Vikhe Patil who was a person of considerable financial means. They submitted that such exhortation with a view to educate the electorate cautioning them against possible misuse of money and adoption of unfair tactics does not amount to the F corrupt practice under Section 123(4) of the R.P. Act.

BACKGROUND OF POLITICAL CLIMATE

Before adverting to the particular statements alleged to have been by Gadakh and Sharad Pawar which are alleged to constitute the corrupt G practice under Section 123(4), it would be appropriate to deal with one submission made by Shri Ashok Desai and followed up by Shri Ram Jethmalani with greater vigour relating to the manner of appreciation of evidence in such a case. Shri Desai submitted that even though it may not be quite proper to make statements reflecting on the personal character of H a candidate, yet every such statement does not amount to a corrupt practice

since it does not prejudice the election in the prevailing political climate. Shri Desai submitted that the existing norms do not match the earlier norms and, therefore, every reflection on a candidate's character does not necessarily prejudice his election since the electorate is not influenced by such a statement in the prevailing electoral scene. Shri Ram Jethmalani went further and submitted that political leaders have a duty to educate the electorate against possible malpractices which are now not uncommon during the elections and making of such statements is desirable. Shri Ram Jethmalani also submitted that every allegation against a candidate of his committing a corrupt practice is not moral turpitude adversely affecting the personal character of the candidate to constitute the corrupt practice under Section 123(4) of the R.P. Act.

In the present case, the large question posed by Shri Ram Jethmalani does not arise for consideration and, therefore, we need not express herein any concluded opinion thereon. We may only observe that the proposition enunciated by Shri Ram Jethmalani is too wide for acceptance even in the existing political climate adverted to by the learned counsel unless the election law leads to that inevitable conclusion exposing a hiatus in the legislative effort to achieve the avowed object of purity of elections. We would also like to observe that the suggestion of a liberal construction of the election law relating to corrupt practices by appreciation of evidence in the manner suggested in the existing political climate wherein mud-slinging' is common place, does not commend to us as the proper approach envisaged by the election law. If purity of election is the essence of democracy and providing for invalidation of an election on the ground of commission of any corrupt practice is the object of enacting these provisions, it cannot be accepted that the election scene having degenerated over the years, appreciation of evidence for determining the commission of a corrupt practice must be made liberally because of the lower values in the arena of elections. If the rule of law has to be preserved as the essence of the democracy of which purity of elections is a necessary concomitant, it is the duty of the courts to appreciate the evidence and construe the law in a manner which would subserve this higher purpose and not even imperceptibly facilitate acceptance, much less affirmance, of the falling electoral standards. For democracy to survive, rule of law must prevail, and it is necessary that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values who win the

A elections on a positive vote obtained on their own merit and not by the negative vote of process of elimination based on comparative demerits of the candidates. It is also necessary that the impact of money power which has eliminated from electoral contest many men of undoubted ability and credibility for want of requisite financial support should be able to re-enter the field to make the people's choice meaningful. This can be achieved only B election are contested on a positive vote and the comparison of between the merits and abilities of the contestants without the influence of power and pelf and not between their comparative demerits and the support of money power. Apart from the other adverse consequences, the growing influence of money power has also the effect of promoting criminalisation C of politics.

The increasing electoral malpractices, of which some like booth-capturing have led even to amendment of the election law, make availability of evidence difficult and this cannot be ignored while applying the standard of proof of a quasi-criminal charge for the proof of a corrupt practice. The D existing law does not measure upto the exiting realities. The ceiling on expenditure is fixed only in respect of the expenditure incurred or authorised by the candidate himself but the expenditure incurred by the party or anyone else in his election campaign is safely outside the net of legal sanction. The spirit of he provision suffers violation through the E escape route. The prescription of ceiling on expenditure by a candidate is a mere eye-wash and no practical check on election expenses for which it was enacted to attain a meaningful democracy. This lacuna in the law is, however, for the Parliament to fill lest the impression is reinforced that the retention is deliberate for the convenience of everyone. It this be not feasible, it may be advisable to omit the provision to prevent the resort to F indirect methods for its circumvention and subversion of the law, accepting without any qualm the role of money power in the elections. This provision has ceased to be even a fig leaf to hide the reality.

We are constrained to make these observation on account of the repeated reference made at the hearing to the growing malpractices during G elections, even though it was made for the purpose of persuading us not to attach any significance to statements relating to the personal character of conduct of a candidate since they are not taken seriously by the voters due to the falling ethical standard.

H Real education of the electorate contemplates informing them of the

past achievements and future plans of the political party on a positive note and its candidate's qualifications to serve that purpose compared with those of the other political parties and their candidates and not a projection of the comparative greater demerits of the opponents. This is with a view to emphasise that the functioning of the democracy depends on the quality of the men chosen for the governance of the country. This is the need which the election campaign is meant to serve in an election based on party lines, the qualifications of the candidates being material for this purpose.

The duty at the top echelons of leadership at the state and national level of all political parties is to set the trend for giving the needed information to the electorate by adopting desirable standards so that it percolates to the lower levels and provides a congenial atmosphere for a free and fair poll. A contrary trend of speeches by the top leaders tends to degenerate the election campaign as it descends to the lower levels and at times promotes even violence leading to criminalisation of politics. The growth of this unhealthy trend is a cause for serious concern for the proper functioning of the democracy and it is the duty of the top leaders of all political parties to reverse this trend to enable movement of the functioning democracy in the proper direction.

The lament of Gadakh and Sharad Pawar of despair against the financial might of Vikhe Patil was indeed farcical and sounds comical in view of their own considerable resources including the power of the ruling party and the active support of the Chief Minister of the State. We cannot accept that the alleged offending portions of the speeches of Gadakh and Sharad Pawar were educative of the electorate even if they do not constitute the corrupt practice under Section 123(4) of the R.P. Act. To suggest that the electorate needs to be warned against the purchase of votes by anyone is to insult their intelligence. Past experience has shown that even the illiterate section of the electorate is educated enough to remain uninfluenced by power and pelf. This it has shown more than once by rejecting the high and the mighty in power when it felt that they had failed to discharge their true obligation.

We must also add that even if we come to the conclusion that these statements or any of them do not constitute the corrupt practice under Section 123(4), it only means that the existing law does not frown upon the same to visit it with any adverse consequence, but that does not mean that it is a desirable practice during the election campaign. It is one thing to

say that a statement does not constitute corrupt practice but entirely different to suggest that it is a desirable electoral practice forming a part of the programme of education of the electorate.

We emphasise this fact on account of the vehemence with which Shri Ram Jethmalani canvassed for acceptance the view that all these statements are within the permissible electoral practice, necessary for education of the electorate. We are unable to subscribe to this view which can only lead to a further degeneration of the waning morality in the electoral scene, when the felt need is for curbing any such tendency to ensure purity of elections.

The question therefore, is : Whether in the law as it exists, all or any of the statements proved to have been made by Gadakh or Sharad Pawar constitute the corrupt practice under Section 123(4) of the R.P. Act?

CORRUPT PRACTICE UNDER SECTION 123(4) OF THE R.P. ACT

Several authorities were cited to emphasise the strictness of pleadings in election petitions and the pleadings necessary to raise a triable issue of the corrupt practice under Section 123(4). It is not necessary to deal with all the authorities cited since in the present case even assuming there is no such defect in the election petition, many statements attributed to Gadakh and all the statements attributed to Sharad Pawar do not constitute the corrupt practice under Section 123(4) of the R.P. Act. The cases on which particular emphasis was laid by Shri Ashok Desai on behalf of Gadakh are alone referred briefly. In *Samant N. Balakrishna etc.* v. *George Fernandez and Ors. etc.*, [1969] 3 SCR 603, it was held that the facts which constitute the corrupt practice must be stated and the facts must be correlated to one of the heads of the corrupt practice; and that an election petition without the material facts relating to a corrupt practice is no election petition at all. In *Azhar Hussain* v. *Rajiv Gandhi,* [1986] Supp SCC 315, it was held that a petition is liable to be summarily dismissed in case of petitioner's failure to furnish any of the material facts and particulars which are essential for disclosing a cause of action relating to a charge of corrupt practice. In *Lalit Kishore Chaturvedi* v. *Jagdish Prasad Thada and Others,* [1990] Supp SCC 248, the pl ading in election petition was found to be deficient but even on facts the corrupt practice alleged was found to be not proved. Similarly, in *Daulat Ram Chauhan* v. *Anand Sharma,* [1984] 2 SCC 64, the requirement of pleading of a corrupt practice alleged was

2 SCC 64, the requirement of pleading of a corrupt practice alleged was emphasised. A

In *M.J. Zakharia Sait* v. *T.M. Mohammed and Others,* [1990] 3 SCC 396, it was held that when the corrupt practice alleged is based on a innuendo in the false statement published, then the innuendo meaning must be specifically pleaded and proved. Accordingly, the attempt made by Shri P.P. Rao at the hearing to suggest that the statement made the Vikhe patil had an election budget of Rs. 3 crores meant that he had that much amount of ill-gotten money, cannot be taken note of since such an innuendo is neither pleaded nor proved. B

The scope of an appeal under Section 116A of the Representation of the People Act is as wide in a civil appeal. This court has to dispose of the appeal by exercising the same jurisdiction as is exercised in an appeal against the original judgment of the High Court. It is well settled that allegations of corrupt practice are of a quasi-criminal nature and the proof that would be required in support of such allegations would be as in a criminal charge and not mere preponderance of probabilities as in a civil matter. *(See Surinder Singh* v. *Hardial Singh and Others,* [1985] 1 SCC 91.) C D

In *Megraj Patodia* v. *R.K. Birla and Others,* [1971] 2 SCR 118, it was held that many times corrupt practices may be not be established by direct evidence and the same may have to be inferred from the proved facts and circumstances, but the circumstances proved must reasonably establish that the alleged corrupt practice was committed by the returned candidate. It was also emphasised that preponderance of probabilities is not sufficient proof in such a matter. E

The requirements of Section 123(4) of the R.P. Act may now be considered. The provision is as under :– F

> "123. Corrupt practices. The following shall be deemed to be corrupt practices for the purposes of this Act :–
>
> xxxx xxxx xxxx G
>
> (4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false for does not believe to be true, in relation to the personal H

A character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

B It is clear that every statement of fact in relation to the personal character or conduct of any candidate does not amount to a corrupt practice under Section 123(4) unless all the requirements of the provision are satisfied, notwithstanding the fact that such a statement may be defamatory in character. The additional requirements to constitute a corrupt practice are obviously to maintain the delicate balance between the C freedom of speech of an individual and public interest of giving full information to the electorate of the candidates. There is no presumption of falsity of such a statement of fact for the purpose of Section 123(4) as it is under the law of defamation; and apart from proving the statement of fact to be falses, it must also be shown that the maker of the statement either believed it to be false or did not believe it to be true. Irrespective D of the quantum of evidence necessary to discharge the initial onus of leading evidence, the burden of proving these requirements on the evidence adduced remains on the person alleging commission of the corrupt practice. The object of making this provision more stringent is to emphasise the significance of freedom of speech in this sphere while E prohibiting the making of such statements of fact relating to the personal character or conduct of any candidate which are not merely false but which are also believed to be false or not believed to be true by the maker. The greater latitude in election law is meant to serve the public purpose if the statement found to be false is made with the belief in its truth based on F reasonable grounds and it is not intended to be a licence for making a scurrilous attack on the opponents recklessly.

The primary requirements of Section 123(4) are that the statement should be a 'statement of fact' which is 'false', and which the maker either G 'believes to be false' or 'does not believe to be true'. If these requirements are not satisfied, the further inquiry to ascertain the satisfaction of the remaining requirements of Section 123(4) serves no useful purpose. No doubt, the burden of proving the satisfaction of all these requirements is on him who alleges commission of the corrupt practice. The onus of leading evidence relating to some requirements is however light in view of their H nature. Once the initial onus is discharged, the onus shifts to the other side.

For proving the statement of fact to be 'false' the initial onus is discharged and the burden shifts to the other side by assertion of its falsity on oath whereafter it is for the other side to rebut the same. Similarly, the nature of belief of the maker being primarily related to the state of mind of the maker, the initial burden is discharged by an assertion on oath to that effect. If there be any circumstances relevant for proving and justifying the belief of the maker, that also would be a matter of evidence. The maker of the statement knows best the material on which his belief was formed and, therefore, it is for him to prove the same. Whether the maker of the statement believed it to be false or did not believe it to be true, is then ordinarily a matter of inference from the facts so proved.

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The meaning of the expression "statement of fact" was a point of considerable debate at the Bar. The true meaning of this expression is of significance because several statements attributed to Gadakh and Sharad Pawar relate to apprehensions about Vikhe Patil's likely future conduct and not to his acts done in the past or at the time of making the statements. It was contended by Shri Ashok Desai for Gadakh and Shri K. Parasaran for Sharad Pawar that every statements is not a 'statement of fact' and , therefore, a statement made about future apprehension or opinion of the maker, does not fall within the ambit of this expression. It was urged by them most of the statements attributed to Gadakh and all the statements attributed to Sharad Pawar do not constitute 'statement of fact' within the meaning of this expression in Section 123(4). Shri P.P. Rao, on the other hand, contended that the expression "statement of fact" has to be given a wider meaning to include even a statement relating to the state of mind of the other person about his future conduct and, therefore, all the statements attributed to Gadakh and Sharad Pawar fall within the meaning of this expression.

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There can be no dispute that the meaning of the expression "statement of fact" used in section 123(4), must be such which is apposite in the context and even if the meaning of the word "fact" be wider to include opinion about another person and apprehensions about his future conduct, that is not sufficient to so construe the expression "statement of fact" in this provision unless it fits in the context. A pragmatic test is to examine whether the meaning given to the expression "statement of fact" is capable of satisfying the other requirements of the provision. It is only that meaning of this expression which is capable of satisfying the other requirements of the provision which can be its true meaning in the context.

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A For constituting the corrupt practice in Section 123(4), all the requirements thereof must be satisfactorily proved. A 'statement of fact' for the purpose of Section 123(4) can be one which is capable of proof as 'false' and which the maker either 'believed to be false' or did not believe to be true' at the time of making it. These further requirements of its falsity and nature of belief of the maker at the time of making the statement of B fact are essential requirements without which the 'statement of fact' is not the one contemplated by Section 123(4). It needs no elaboration to say that a 'statement of fact' can be proved to be 'false' only if it relates to an event which has happened and not to a hypothetical future possibility. Similarly, the belief of the maker about its falsity or the lack of belief in its truth C relates to an existing fact and not to a hypothetical future apprehension howsoever honestly one may believe in its likelihood. It is clear that any statement made which is a conjuncture of a likelihood in future, would not come within the ambit of the expression "statement of fact" used in Section 123(4). This is also supported by the fact that another requirement of Section 123(4) is that the statement of fact made should be 'reasonably D calculated to prejudice the prospects of that candidate's election. This further requirement cannot be satisfied by merely stating a likely apprehension for the future and if the event does not happen, this requirement cannot be tested. It is a different matter if the statement amounts to an opinion relating to the personal character or conduct of any candidate which is based on existing or past acts of the candidate. In other words, if E the statement made is that a candidate is a 'murderer', that would imply that he had committed a murder and that amounts to a 'statement of fact' for the purpose of Section 123(4).

The view we have taken finds support from the meaning of 'fact' in F the realm of jurisprudence. Relevant extracts from textbooks are as under:

> "There is yet a third meaning of the expression "question or matter of fact" in which it is contrasted with a question or matter of opinion. *A question of fact is one capable of being answered by way of demonstration - a question of opinion is one that cannot be* G *so answered. The answer to it is a matter of speculation which cannot be proved by any available evidence to be right or wrong.* The past history of a company's business' is a matter of fact; but its prospects of successful business in the future is a matter of opinion. ....."

H (Salmond on Jurisprudence, 12th Edition, at page 69)

"Secondly, fact *and opinion are frequently contrasted.* Whether a company has been prosperous in the past is a matter of fact, whether it will fulfil the expectations aroused by its prospectus is a matter of opinion. ....."

(A Textbook of Jurisprudence by George Whitecross Paton, 4th Edition, at page 207)

(emphasis supplied)

In Stroud's Judicial Dictionary, 4th Edition, the meaning of the expression "false statement of fact in relation to the personal character or conduct" of a candidate at a parliamentary election is given as "of fact, as distinguished from a false statement of opinion".

The meaning of the expression "statement of fact" in Section 123(4) of the R.P. Act has to be understood in this manner.

In *Kumara Nand* v. *Brijmohan Lal Sharma,* [1967] 2 SCR 127, it was reiterated that the onus is on the election petitioner to prove commission of the corrupt practice under Section 123(4), but the onus on him to prove that the statement is false is very light and can he discharged by the complaining candidate swearing to that effect; and once that is done the burden shifts to the candidate making the false statement of fact to show what his belief was, Wanchoo, J. (as he then was) speaking for the court, stated thus :

"..... But though the onus is on the election petitioner to show all these things, the main things that the election petitioner has to prove are that such a publication was made of a statement of fact and that that statement is false and is with respect to the personal character or conduct of the election petitioner. The burden of proving that the candidate publishing the statement believed it to be false or did not believe it to be true though on the complaining candidate is very light and would be discharged by the complaining candidate swearing to that effect. Thereafter it would be for the candidate publishing the statement to prove otherwise. The question whether the statement was reasonably calculated to prejudice the prospects of the election of the candidate against whom it was made would generally be a matter of inference. So the main onus

A on an election petitioner under s. 123(4) is to show that a statement of fact was published by a candidate or his agent or by any other person with the consent of the candidate or his election agent and also to show that that statement was false and related to his personal character or conduct. *Once that is proved and the complaining candidate has sworn as above indicated, the burden shifts* B *to the candidate making the false statement of fact to show what his belief was. The further question as to prejudice to the prospects of election is generally a matter of inference to be arrived at by the tribunal on the facts and circumstances of each case.*"

C (at page 136)
(emphasis supplied)

This decision summarises the extent of onus on the election petitioner and the manner in which it is discharged indicating that some of the requirements of Section 123(4) are matters of inference. This is the gist of the law D on the point and is reiterated in the subsequent decisions of this Court; *Nepal Chandra Roy* v. *Netai Chandra Das and others,* [1971] 3 SCC 303.

In *T.K. Gangi Reddy* v. *M.C. Anjaneya Reddy and others,* 22 E.L.R. 261, the same position with regard to the manner in which the burden can E be discharged by the election petitioner was stated and it was indicated that if on shifting of the burden to the respondent he fails to establish either that the petitioner did in fact commit the alleged act or to give any other circumstances which made him *bona fide* believe that he was so guilty, the court is entitled to say that the burden of proving the necessary facts has F been discharged by the petitioner.

In *Guruji Shrihari Baliram Jivatode* v. *Vithalrao and others,* [1969] 1 SCC 82, while considering the meaning of the expression "personal character or conduct", it was indicated that the allegations must reflect on the moral or mental qualities of the candidate relating to his personal character G or conduct and not merely to his political personality. In *Ram Chand Bhatia* v. *Hardayal,* [1986] 1 SCR 177, the distinction between the personal character or conduct of the candidate and his public or political character and conduct was explained and it was indicated that a statement relating to public or political character and conduct of the candidate is not a H corrupt practice under section (123(4).

Both sides referred to *Inder Lal* v. *Lal Singh,* [1962] Supp, 3 SCR 114. In that case, the allegation made against the candidate was that he was 'purchaser of the opponents of the Congress by means of money'. This was held to constitute the corrupt practice under Section 123(4) since the statement was construed to mean that the candidate buys 'by his offering bribes the votes of the opponents of the Congress'. It was held that bribery is itself a corrupt practice and if it is said against a candidate that he practices the corrupt practice of buying the votes of the opponents of the Congress by means of bribery, that clearly and unequivocally affects his private character. Shri P.P. Rao strenuously urged that this allegation was construed as a 'statement of fact' for the purposes of Section 123(4) in *Inder Lal,* even though of a general nature. It is clear that the allegation related to the personal character of the candidate based on the fact, not mere speculation about the future, of purchasing votes by bribery and it was not simply a statement of the maker's opinion of the candidate. It was also made clear that having regard to the moral turpitude involved in the offering of the bribe, the statement in question affected his private character as well and not merely the political character of the candidate. Thus the emphasis was on the allegation relating to the personal character of bribing the voters which cannot form part of the political character since the act of bribery has a personal element.

In *Sheopat Singh* v. *Ram Pratap,* [1965] 1 SCR 175, it was held that any criticism of a person's political or public activities and policies is outside Section 123(4). It was further held that the word "calculated" means designed : It denotes more than mere likelihood and imports a design to affect voters.

The consent of the candidate for the purposes of Section 123(4) when the offending statement of fact which is false is published by any other person may be proved by inference from the circumstances and not necessarily by positive evidence to that effect since positive evidence of consent may not be available. *See B.R. Rao* v. *N.G. Ranga,* [1970] 3 SCC 576, *Narasingh Charan Mohanty* v. *Surendra Mohanty,* [1974] 2 SCR 39, and *Samant N. Balakrishna etc.* v. *George Fernandez and Ors. etc.,* [1969] 3 SCR 603.

The question, therefore, is : Whether the declaration of Gadakh's election to be void is sustainable and so also the naming of Sharad Pawar

A under Section 99 of the R.P. Act ?

ALLEGATIONS OF CORRUPT PRACTICE UNDER SECTION 123(4) OF THE R.P. ACT

The gist of the several statements atributed to Gadakh and Sharad
B Pawar which are alleged to constitute the corrupt practice under Section 123(4) of the R.P. Act are now enumerated for the sake of convenience before each of them is taken up for consideration. The requirements of Section 123(4) have been already indicated.

C *Re. : Gadakh Yashwantrao Kankarrao*

(1) He Sated that Vikhe Patil has an election budget of Rs. 3 crores.

This was stated by Gadakh in the meeting at Sonai on 30th April, 1991 and in the interview given to Girish Kulkarni on 10th May, 1991 which
D was published in the Maharashtra Times of 13th May, 1991.

(2) A sum of Rs. 50 lakhs was paid by Vikhe Patil to the Janata Dal election fund for the support of that party.

This was stated by Gadakh in the mattings at Sonai on 30th April,
E 1991 and Ahmednagar on 2nd May, 1991 and in the interview given to Girish Kulkarni on 10th May, 1991 which was published in the Maharashtra Time of 13th May, 1991.

(3) A sum of Rs. 20 lakhs was paid by Vikhe Patil to the Janata Dal candidate B.G. Kolse Patil for shifting to another constituency.
F

This was said by Gadakh in the meeting at Sonai on 30th April, 1991 and the interview given to Girish Kulkarni on 10th May, 1991 which was published in the Maharashtra Times of 13th May, 1991.

G (4) A rally of 5000 bicycles was to be taken out by Vikhe Patil and the participants were to be given those bicycles.

This was stated by Gadakh in the meetings at Ahmednagar on 2nd May, 1991 and Newasa on 3rd May, 1991 and in the interview given to Girish Kulkarni on 10th May, 1991 published in the Maharashtra Times of
H 13th May, 1991.

(5) Vikhe Patil had offered payment of Rs. 25.000 to each worker at the village level and Rs. 50.000 at the taluka level. A

This was said by Gadakh in the meeting at Sonai on 30th April, 1991.

(6) Money was being given by Vikhe Patil for repair of Chawdies and temples in the constituency. B

This was said by Gadakh in the meetings at Ahmednagar on 2nd May, 1991 and Newasa on 3rd May, 1991.

(7) Vikhe Patil was going to distribute sarees, dhoties, liquor and cash in the constituency. C

This was said in the meeting at Newasa on 3rd May, 1991 and in the interview given to Girish Kulkarni on 19th May, 1991 which was published in the Maharashtra Times of 13th May, 1991.

D

(8) In his speech, Gadakh had advised the voters to accept these articles from Vikhe Patil to vote for Gadakh only.

Re. : Sharad Pawar

The gist of the statements attributed to Sharad Pawar according to the notice given to him under Section 99 of the R.P. Act, is as follows :– E

(A) *At Newasa on 3rd May, 1991*

(1) Vikhe Patil had filed the nomination from the South instead of North constituency because the people of this constituency are poor having problems due to which Vikhe Patil thinks to win over easily, but he does not know the inner strength of the poor peoples. F

(2) Possessed with the illusion that Vikhe Patil will be able to purchase the poor people of the South with the help of the resources at his disposal, but every person of this part is a man possessing self respect who will remain without food and be in peril but he would never sell his vote. G

(3) They will distribute bicycle, distribute dhoties and sarees. He (Gadakh) told you to accept them. I do not have any objection. H

A (4) If the wealth being distributed in the constituency, there should be no hesitation in getting benefited and the things given should be accepted, but let it be clear to whole of Maharashtra that voters cannot be bought.

B (5) Efforts are being made to corrupt the people and put pressure on them and there will be an attempt to distribute.

(6) There is a fight between morality and honesty from one side the money resources and the tendency guided by ego on the other side but I am sure that in this fight the morality and honesty would C triumph. With the help of common man's support, the voters of the constituency have become able to belittle and destroy the mountain of wealth.

(B) *At Srigonda on 11th May, 1991*

D (1) The idea entered his (Vikhe Patil) mind that the South constituency being a famine prone region and the people there being poor he could pocket them.

(2) We will have to tell them that money alone cannot be an E important motivation in this election. It is wrong to give up morality when one's wish is not fulfilled, to leave the party, programme and colleagues, when favourable decision if not taken and to join hands with the other parties. Once the 'kumkum' is applied, its sanctity must be maintained. But we did not know that the 'kumkum' was being applied in the name of one person and the eyes were looking F at somebody else.

(3) The possibility cannot be ruled out that questions may arise whether chawdies will be built, temples renovated and motorbikes or bicycles at least be made available for riding. It will not behove our respect to accept the same but if the process of distribution G has begun it is good for establishing socialism in this way and so take the same and use it against them.

(4) A decision must be taken to choose between principle or disloyalty, the morality or immorality, humanity or arrogance of H money and power.

It may be noted that in respect of the statements attributed to Gadakh, the alleged offending portions being denied by him, it is also to be considered whether the making of those statements has been proved. On the other hand, Sharad Pawar has chosen not to adduce any evidence or pray for recall of any witness for cross-examination and, therefore, the statements attributed to him being pleaded and proved by the election petitioner, the only question is whether they constitute the corrupt practice under Section 123(4) of the R.P. Act. It is also significant that all the statements alleged to have been made by Gadakh as enumerated earlier are not attributed to Sharad Pawar, Particularly those relating to Vikhe Patil's election budget of three crore rupees, payment by him of Rs. 50 lakhs to the Janata Dal election fund and Rs. 20 lakhs to the Janata Dal candidate B.G. Kolse Patil. On behalf of Sharad Pawar, it was also contended by Shri Parasaran that to constitute the corrupt practice under Section 123(4), the consent of the returned candidate Gadakh to the making of these statements by Sharad Pawar was also essential which had neither been pleaded nor proved. It was submitted that the fact of Gadakh's presence at the time when these statements are alleged to have been made by Sharad Pawar in the public meetings is not sufficient to prove the consent of the returned candidate requisite for constituting the corrupt practice under Section 123(4).

To enable proper appreciation of the question whether all or any of the aforesaid statements attributed to Gadakh and Sharad Pawar constitute the corrupt practice under Section 123(4), it is necessary at this stage to briefly restate the requirements of this Section.

The essential requirements of the corrupt practice under Section 123(4) are : (1) publication by the candidate or his election agent or by any other person with the consent of the candidate or his election agent; (2) of any 'statement of fact' which is 'false'; (3) which he either 'believes to the false' or does not believe to be true ; (4) in relation to the personal character or conduct' of any candidate or in relation to the candidature or withdrawal of the candidate; and (5) being a statement 'reasonably calculated to prejudice the prospects of that candidate's election. The plain meaning of the Section indicates that it is not every statement but only 'a statement of fact' to which the provision applies; that the statement of fact should be false; that such statement should be made believing it to be false or at least not true; that it should relate to the personal character or

A conduct etc. of any candidate; and it should be reasonably calculated to prejudice the prospects of that candidate's election. Unless all these requirements are satisfied, the statement does not constitute the corrupt practice under Section 123(4) of the R.P. Act howsoever undesirable, morally or ethically, the making of that statement may be otherwise. This is too well settled by a catena of decisions of this Court, some of which have been referred. Accordingly, it is this test which must be satisfied to hold that the statements attributed to Gadakh or Sharad Pawar constitute the corrupt practice.

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R. : Gadakh

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Vikhe Patil's Election Budget of Rs. 3 Crores

One of the allegations made against Gadakh is that he stated that Vikhe Patil had an election budget of Rs. 3 crores. The question in the present case relates only to the corrupt practice specified in sub-section (4) of Section 123 and not to the corrupt practice under sub-Section (6) thereof relating to the incurring o uthorising of expenditure in contravention of Section 77 of R.P. Act. This being so, the only question is whether the statement that Vikhe Patil had an election budget of Rs. 3 crores was a false statement of fact the kind envisaged by sub- section (4) of Section 1 since the allegation is not of incurring or authorising that expenditure but only of availability of that amount. A feeble attempt was made by Shri P.P. Rao to argue that the innuendo in that statement was that Vikhe Patil had rupees three crores of ill-gotten money which he could utilise for purchasing the voters and other electoral malpractices. In the first place, there is not even a hint of such an innuendo in the election petition or the evidence adduced in a sport thereof. This further suggestion has therefore to be ignored as indicated earlier. Faced with this difficulty, Shri Rao modified his argument to contend that even if this statement by itself did not constitute the corrupt practice under Section 123(4), it was a relevant fact to indicate the means or capacity of Vikhe Patil to probablise the other statements alleging the possibility of adopting malpractices to win the election. So far as the means of the candidates is concerned, it is sufficient to say that both Vikhe Patil and Gadakh appear to be considerably affluent being sugar barons of that area. The electorate must have been well aware of the their means and, therefore, this is a neutral circumstance which by itself has no significant bearing no the other statements attributed to

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Gadakh. No further consideration of this statement attributed to Gadakh is necessary even assuming he had said so. A

Payment by Vikhe Patil of Rs. 50 Lakhs to Janata Dal and Rs. 20 Lakhs to B.G. Kolse Patil

Two statements attributed to Gadakh relate to the payment by Vikhe Patil of Rs. 50 lakhs to the Janata Dal election fund and Rs. 20 lakhs to the Janata Dal candidate B.G. Kolse Patil. Gadakh is alleged to have said that Vikhe Patil had paid Rs. 50 lakhs to the Janata Dal election fund for getting the support of that party and Rs. 20 lakhs to the Janata Dal candidate for withdrawing his nomination from this constituency and shifting to another constituency. These statements are alleged to have been made by Gadakh more than once. However, it is sufficient if such a statement is proved to have been made even once and it satisfies all the requirements of Section 123(4). The particulars of these statements have been given earlier. B C D

The statement alleging payment of Rs. 50 lakhs to the Janata Dal election fund is alleged to have been made in the meeting at Sonai on 30th April, 1991 and Ahmednagar on 2nd May, 1991 as well as in the interview given by Gadakh on 10th May, 1991 to Girish Kulkarni (P.W. 11) which was published in the Maharashtra Times of 13th May 1991. The statement by Gadakh of payment of Rs. 20 lakhs to the Janata Dal candidate B.G. Kolse Patil for withdrawing from this constituency and shifting to another constituency is alleged to have been made in the meeting at Sonai on 30th April, 1991 and in the interview given by him to Girish Kulkarni on 10th May, 1991 which was published in the Maharashtra Time of 13th May, 1991. Form the evidence adduced, the making of both these statements is amply proved and we agree with the finding of the High Court to this effect on this point. Shri Ashok Desai took us through the entire evidence on the point and strenuously urged that these statements are not duly proved but we are unable to accept this contention. From the evidence adduced we have no doubt that these statement were made by Gadakh as alleged by Vikhe Patil. Admitted contemporaneous news reports and the conduct of Gadakh after knowing their contents further reassures us that these statements were made by Gadakh. Accordingly, we are referring only to some significant evidence on the point. E F G

The statement of Gadakh alleging payment of Rs. 50 lakhs by Vikhe H

A Patil to Janata Dal election fund does not necessarily imply that this payment to Janata Dal was for shifting its candidate to another constituency particularly when no other details were given. There is not such clear pleading in the election petition to that effect. This statement has, therefore to be exar. ied as the allegation of contribution to the election fund
B of a political party. There is no allegation that this payment was alleged to have been made it any time after Vikhe Patil had become a candidate at the election. In these circumstances, it is doubtful if the mere allegation of contribution to a political party's election fund prior to becoming a candidate can amount to the corrupt practice under Section 123(4) of the R.P. Act.

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The position, however, is different with regard to the allegation of payment of Rs. 20 lakhs to the Janata Dal candidate B.G. Kolse Patil for withdrawing from this constituency and shifting to another constituency. Vikhe Patil has denied on oath the making of any of these payments by
D him. Each of these statements is undoubtedly a 'statement of fact' which is also proved to be false since there is no attempt made by Gadakh to prove it to be true by rebuttal of the testimony of Vikhe Patil on this point. Obviously Vikhe Patil was not required to examined B.G. Kolse patil after his own denial on oath. No attempt has been made by Gadakh to even suggest that the allegation is true.

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The question, therefore, is : Whether the statement of Gadakh alleging payment of Rs. 20 lakhs by Vikhe Patil to the Janata Dal candidate B.G. Kolse Patil for this purpose, proved to be false, amounts to the corrupt practice under Section 123(4) of the R.P. Act?

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As already held, the requirement of Section 123(4) that this statement of Gadakh about payment of Rs. 20 lakhs by Vikhe Patil to the Janata Dal candidate B.G. Kolse Patil for this purpose was a 'statement of fact' which was 'false' is duly proved. The publication of these statements was
G by Gadakh himself in a public meeting and in the interview given to Girish Kulkarni for being published in the Maharashtra Times and, therefore, the further requirement of its publication as required by Section 123(4) is also proved. It cannot be doubted that this false statement of fact was in relation to the personal character or conduct of Vikhe Patil and it did not relate merely to his political character or conduct so that this requirement of
H Section 123(4) is also satisfied. It must also be held that the statement was

reasonably calculated to prejudice the prospects of Vikhe Patil's elections inasmuch as it conveyed that Vikhe Patil had bribed B.G. Kolse Patil, the Janata Dal candidate by payment of Rs. 20 lakhs to withdraw his candidature from this constituency for his benefit. In fact the fulfilment of none of these requirements of Section 123(4) was seriously disputed by Shri Ashok Desai if the making of such a statement by Gadakh is found proved, as we have already held. The serious dispute by Shri Ashok Desai in this respect was only to the fulfilment of the remaining requirement of Section 123(4) that Gadakh had made this false statement of fact believing it to be false or not believing it to be true. Shri Ashok Desai very strenuously and ably, even through unsuccessfully, argued that a strong rumour to this effect was then afloat which together with the circumstances in which B.G. Kolse Patil, the Janata Dal candidate withdrew from that constituency, lent credence to the rumour creating a reasonable belief in the mind of Gadakh that the same was true. Shri Ashok Desai submitted that in these circumstances, Gadakh had reasonable belief in the truth of the statement attributed to him and, therefore, this requirement of Section 123(4) was not satisfied on account of which the corrupt practice under Section 123(4) is not proved. We are unable to accept this contention.

Vikhe Patil had denied the payment of Rs. 20 lakhs to B.G. Kolse Patil and also asserted that Gadakh while making the statement did not believe it to be true. This is all that could be done by Vikhe Patil to prove the belief of Gadakh at the time of making the statement since that related to the state of mind of Gadakh which he knew best. Even though the burden on the pleadings to prove the satisfaction of this requirement was throughout on Vikhe Patil, the election petitioner, yet the initial burden of leading evidence of that fact on Vikhe Patil was clearly discharged in this manner shifting the burden rebutting the same to Gadakh. The evidence of Gadakh has, therefore, to be now examined to see if the burden so shifted to Gadakh had been discharged by his evidence. It is significant that in the deposition of Gadakh, there are statements on this point which provide the best indication of his belief about the truth or falsity of the allegation made. In our opinion, the admission made by Gadakh in his deposition is decisive on the point.

In his deposition, Gadakh has spoken about his belief in the examination-in-chief, cross-examination and re-examination and the relevant extracts of his deposition, as given in Vol. V of the paperbooks, are as under:

A *Examination-in-Chief*

"..... On hearing the information, I was satisfied and got sured that the information given to me by the workers must be correct otherwise the Janata Dal candidate would not have withdrawn and gone to other constituency for election. ....."

B

(para 31)

Cross-Examination

"Q. When information was given to you by Congress workers C which they had got from the workers of the petitioner that Rs. 20 lacs were paid to Shri B.G. Kolse Patil by the petitioner for withdrawing from South 'A'nagar constituency and contesting election from Beed constituency, did you think that his information was grave matter?

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(This question was explained by commissioner to the witness and he was required to restrict his reply to the extent of what was being asked)

Ans. Since Janata Dal had asked Shri B.G. Kolse Patil to contest E election from Beed constituency, the information conveyed to me was not a grave matter.

I did not believe the information given to me by the workers that Shri B.G. Kolse Patil was going to withdraw from South 'A' nagar constituency having accepted Rs. 20 lacs from the F *petitioner*....."

(para 222)
(emphasis supplied)

G *Re-examination*

"Q. In paras. 21 and 31 of your Chief-exam. you have stated that information given by congress worker before starting of the meeting at Sonai on 30.4.1991 that petitioner Balasaheb Vikhe Patil paid Rs. 20 lacs to Shri B.G. Kolse Patil to withdraw H from South 'A'nagar constituency and that statement was

believed by you, whereas in para 222 of your cross-exam. at page no. 215 you have stated the you did not believe the information given to you that Shri B.G. Kolse Patil going to withdraw from South constituency A'nagar having accepted Rs. 20 lacs from the petitioner. What exactly did you want to say in this regard?

(Shri S.B. Mhase, Adv. for the petitioner objected asking this question, on the ground that there is no ambiguity in both these questions in the chief as well as cross-examination and the purpose for asking this question is to wipe out the admission given by the witness under stress of cross-exam. and therefore, it should not be allowed. Moreover, this question is not permissible in re-examination. This objection shall be decided by the High Court)

Ans. It is true that I believed the say of the congress workers before starting of the Sonai meeting that petitioner paid Rs. 20 lacs to Shri B.G. Kolshe Patil for withdrawing from South A'nagar constituency but then when I gave admission in cross-examination as stated above in the question I believed it more, and it was to the effect that Janata Dal asked Shri B.G. Kolshe Patil to withdraw from South A'nagar constituency and to contest election from beed constituency"

(para 258)

It is clear from the above extracts that Gadakh admitted unequivocally in his cross-examination in para 222 of his deposition that he did not believe the information given to him by the workers that B.G. Kolse Patil was going to withdraw from Sough Ahmednagar constituency having accepted Rs. 20 lakhs from the petitioner. In other words, he did not believe in the truth of the information given to him about the payment of Rs. 20 lakhs by Vikhe Patil to B.G. Kolse Patil and the latter withdrawing from this constituency for that reason. This admission about the kind of belief he had about the truth of this allegation made by Gadakh in his cross-examination is notwithstanding a different statement in the examination-in-chief and an attempt to resile from that admission in the re-examination. His statement in re-examination after being pointed out clearly the admission made in the cross-examination that he did not believe the allegation

A of payment of Rs. 20 lakhs by Vikhe Patil to B.G. Kolse Patil to be true, does not have the effect of either withdrawing that admission or showing it to be made erroneously. In such a situation, Gadakh's admission in his cross-examination that he did not believe the allegation to be true has the effect of reinforcing Vikhe Patil's assertion to this effect instead of negativ-
B ing it.

Shri Ashok Desai advanced an ingenious argument to avoid the logical adverse effect of this admission made by Gadakh in his cross-examination. We have no doubt that nothing better could have been done in this situation. Shri Desai submitted that the belief about the allegation not
C being true stated by Gadakh in his cross-examination related to his belief prior to 29th April, 1991 on which date B.G. Kolse Patil actually withdrew his candidature from the South Ahmednagar constituency and not the belief which he entertained later when he made the statement at Sonai on 30th April, 1991 and also subsequently. Shri Desai submitted that the
D admission merely means that when he was given such an information by his workers, he did not believe in the likelihood of B.G. Kolse Patil withdrawing from the South Ahmednagar constituency which could be only prior to his actual withdrawal on 29th April, 1991. The obvious fallacy in the argument is that the admission has to be read in the context of the earlier question and the speeches made by him to this effect which were
E all subsequent to withdrawal of B.G. Kolse Patil from South Ahmednagar constituency on 29th April, 1991. He was never questioned about his belief on this aspect prior to the making of these statements or prior to the actual withdrawal by B.G. Kolse Patil. It is also significant that the explanation offered by Shri Desai in his arguments is not the explanation given by
F Gadakh even though he was re-examined pointedly with reference to this admission. It is sufficient to say that the explanation offered by Shri Desai cannot be accepted when even Gadakh does not say so and Gadakh's belief at the time of making the statements subsequent to withdrawal of B.G. Kolse Patil was the only fact in issue.

G The dispute relating to the statement attributed to Gadakh alleging payment of Rs. 20 lakhs by Vikhe Patil to B.G. Kolse Patil for withdrawing from the South Ahmednagar constituency and shifting to another constituency is in a limited area. Gadakh says that this was the rumour afloat and his own workers had been repeatedly telling him so pointing out the
H workers of Vikhe Patil as the source of their information. It is significant

that Gadakh has not examined any of his workers who according to him gave this information nor has he named any worker of Vikhe Patil as the source of this information. No circumstance justifying belief in the truth of the allegation has been relied on by Gadakh. There is also no dispute that in the interview which he gave to Girish Kulkarni (P.W. 11), a specific question to this effect was put to him. The news-item reporting Gadakh's interview in the Maharashtra Times is Exh. 90 (at page 116 to 122 of Vol. II). This news-item had appeared in the Maharashtra Times of 13th May, 1991 wherein Gadakh was reported to have said as under :

> "..... According to my reliable information Shri Vikhe Patil had paid Rs. 50 lakhs to the election fund of the party and Rs. 20 lakhs in order that Shri B. G. Kolse Patil should contest the election from Beed instead of Nagar."

The so-called "reliable information" mentioned by Gadakh has not been disclosed by specifying the name of anyone supposed to have given the information or by examining him. It is also of significance that Gadakh alleges having sent a letter dated 16th May, 1991 under certificate of posting to the Maharashtra Times Office disputing correctness of the news-item (Exh.90). The receipt of that letter by the addressee is denied and the likelihood of its despatch by Gadakh is extremely doubtful since it was not sent by registered post and a certificate of posting being easy to obtain is not reliable. Expense being immaterial in that election for both sides, It is extremely unlikely that Gadakh would send such a letter under certificate of posting and not by registered post. In view of the narrow controversy on this point, the criticisms levelled against the testimony of Girish Kulkarni is of no practical significance and his version about the interview to the extent it was reported in the news-item (Exh.90) must be accepted as duly proved. The only significant question on this point is whether Gadakh did not believe this allegation to be true when he made it so that this further requirement to constitute the corrupt practice under Section 123(4) is made out.

Gadakh's version that he send the letter dated 16th May, 1991 (Exh.Q) under certificate of posting is unbelievable. A certificate of posting is easy to procure and does not inspire confidence. Moreover, the circumstances belie his version. With his considerable means and past experience of elections, he would have sent such a letter by registered post

A to ensure its delivery and create cogent evidence of its despatch. Moreover, he would not merely send such a letter but have his denial published in newspapers because of its significance during elections. We have no doubt that Gadakh's conduct belies his belated denial at the trial.

B There is, however, another aspect of such a stand taken by Gadakh. Some features are rendered beyond doubt on this point. Gadakh must take the consequence of the contents of the letter which he claims to have sent on 16th May, 1991, even though we have rejected his claim of sending such a letter. This letter appears to have been brought into existence later when Gadakh was faced with the consequence of his interview. Admittedly, C Gadakh had known prior to 16th May, 1991 the contents of the news-item (Exh. 90) published in the Maharashtra Times attributing to him the statement alleging payment of Rs. 20 lakhs by Vikhe Patil to B.G. Kolse Patil but he did not choose to contradict the same by a denial through the Press or in any other authentic manner. Silence of Gadakh at that time D reinforces authenticity and the correctness of the news-item (Exh. 90). Another significant feature is that the contents of the letter dated 16th May, 1991 indicate at least his doubt in the correctness of the allegation against Vikhe Patil When he said-"it would not be proper on my part to subscribe to those unless I had evidence to that effect. " This supports the conclusion that Gadakh did not believe in the truth of that allegation. Absence of a E clear denial by Gadakh even therein much less through the Press at that time, in these circumstances, reassures us about the correct reporting of the interview published in the news-item (Exh.90) in Maharashtra Times of 13th May, 1991 in addition to its proof by other evidence supported by conduct of Gadakh himself. The making of the statement of fact alleging F payment of Rs. 20 lakhs by Vikhe Patil to. B.G. Kolse Patil, its falsity and the want of belief in its truth by Gadakh are proved beyond any doubt.

Shri Desai also submitted that there were strong reasons for Gadakh to believe in the truth of this allegation. These factors according to Shri Desai are; (1) Vikhe Patil was an important Congressman who was the G likely party candidate earlier having won the Congress (I) Party ticket five times since 1971 from the adjacent Kopergaon (North Ahmednagar constituency); (2) Vikhe Patil was an extremely influential and affluent person; (3) Vikhe Patil had filed his nominations from both, that is, North and South Ahmednagar constituencies; (4) Smt. Mrinal Gore, President of the H State Janata Dal had said on 28th April, 1991 that their party would not

support Vikhe Patil and B.G. Kolse Patil had already filed his nominations from both, that is, South Ahmednagar and Beed constituencies; and (5) On 29th April, 1991, B.G. Kolse Patil withdrew his candidature from South Ahmednagar constituency while Vikhe Patil withdrew from Kopergaon (North Ahmednagar Constituency) and Janata Dal declared its support for Vikhe Patil. Shri Desai submitted that these were strong circumstances for Gadakh to reasonably believe in the truth of the rumour that B.G. Kolse Patil had withdrawn from this constituency (South Ahmednagar) on payment of Rs. 20 lakhs by Vikhe Patil to B.G. Kolse Patil. In our opinion, these factors are not necessarily consistent with the truth of the allegation of payment of money by Vikhe Patil to B.G. Kolse Patil inasmuch as they are equally consistent with B.G. Kolse Patil preferring to contest from the other constituency on a full assessment of his prospects in the election from of the South Ahmednagar constituency against Vikhe Patil who even according to Gadakh was a very strong and influential candidate. The mere fact that Smt. Mrinal Gore had spoken against the likelihood of withdrawal of B.G. Kolse Patil from South Ahmednagar is not by itself significant since action of politicians contrary to their earlier declaration in such matters is not uncommon. Moreover, in view of the direct evidence in the form of admission by Gadakh of the kind of belief he entertained at the time of making the statement, these circumstances are in-consequential when Gadakh himself does not say so. The direct evidence of Gadakh himself about the kind of belief he entertained at that time is decisive of the matter and conclusive against him on this point.

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It cannot, therefore, be doubted that Gadakh did not believe in the truth of this allegation made against Vikhe Patil when he said in his speech and interview that Rs. 20 lakhs had been paid by Vikhe Patil to the Janata Dal candidate B.G. Kolse Patil for withdrawing from this constituency and shifting to another constituency. It follows that all the requirements of Section 123(4) are satisfied and the false statement of fact made to this effect by Gadakh in respect of the personal character and conduct of Vikhe Patil amounts to the corrupt practice under Section 123(4) of the R.P. Act. This alone is sufficient for declaring the election of Gadakh to be void. The High Court's conclusion to this effect is, therefore, sustainable only for this reason alone.

F G

Remaining Allegations

We shall now take up for consideration the remaining statements H

A which do not require any elaborate discussion since the very first close look at them reveals that they cannot constitute the corrupt practice under Section 123(4). In respect of the statements of this category, we also do not consider it necessary to examine the remaining arguments advanced from both sides since no further consideration of the same appears necessary.

B

The statement of a proposal to take out a rally of 5000 bicycles and then distribute the bicycles to the participants obviously related to the future and was at best merely the expression of an apprehension. No one has even suggested that such a rally was taken out at any time during the C election campaign by Vikhe Patil. That means that it was at best an apprehension which did not materialise and, therefore, there was no reasonable likelihood of any impact thereof on the mind of the voters. Similar is the statement alleged to have been made of the likelihood of distribution of sarees, dhoties, liquor and cash in the constituency. No one has said that such a distribution of any of these articles was made by Vikhe D Patil during the election campaign. Such a statement, if made, was therefore another apprehension which did not come true and, therefore, could not affect the mind of the voters. This being so, the expression of a mere apprehension which did not come true apart from not being a 'statement of fact', does not satisfy the other requirements of section 123(4).

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The vague statement of offer by Vikhe Patil of payment to the workers at the rate of Rs. 25,000 at the village level and Rs. 50,000 at the taluka level being unrelated to the maximum permissible limit of election expense is not material for the purposes of Section 123(4) of R.P. Act. The only allegation in the statement is of hiring the workers to work for Vikhe F Patil in the election campaign by payment of money and the mere hiring of workers for election campaign is not an offending statement of fact under Section 123(4). Any further consideration of this aspect may have been necessary only if the corrupt practice alleged was that under sub-section (6) and not merely under sub-section (4) of Section 123 of the R.P. Act. Unless the hiring of workers by payment of money resulted in exceed- G ing the permissible maximum limit of election expenditure to constitute the corrupt practice under Section 123(6), this fact alone would not constitute the corrupt practice under Section 123(4) since the mere hiring of workers during election campaign is not a corrupt practice.

H Another statement attributed to Gadakh is that Vikhe Patil was likely

to give money for the repair of Chawdies and renovation of temples. This too is a vague general statement without the details which could not be taken seriously by any one. No attempt has been made in the evidence by either side to prove the truth of falsity of this statement. Assuming such a statement was made which was also false, there is no evidence to prove the impact of such a vague statement. Mere repair of chawdies or renovation of temples is not a disparaging act relating to the personal character or conduct of anyone unless the further requirements of Section 123(4) are proved including the requirement of its impact on the mind of the electorate that it was reasonably calculated to prejudice the prospects of that candidate. We do not find any satisfactory evidence for this purpose and, therefore, no serious notice need be taken of such a statement even it it was made by Gadakh.

Another statement attributed to Gadakh is that he advised the voters to accept whatever was offered by Vikhe Patil but to vote for Gadakh. Merely saying that if some benefit was offered by a candidate, it should be accepted by the voters without being influenced thereby in the choice of the candidate, cannot be a statement reasonably calculated to prejudice the prospects of that candidate since the suggestion in the statement is to cast the vote uninfluenced by any extraneous consideration. This statement also, even if made by Gadakh, does not constitute the corrupt practice under Section 123(4) of the R.P. Act. It is difficult to appreciate how the High Court overlooked this clear position in law and reached the conclusion that each of these statements constitutes the corrupt practice under Section 123(4).

Re. : Sharad Pawar

In respect of the statements, attributed to Sharad Pawar which have led to naming him under Section 99 of the R.P. Act by the High Court, the submission of Shri K. Parasaran, learned counsel for Sharad Pawar, is twofold. He contended that the notice under Section 99 is invalid as there was no occasion for issuance of that notice on the material present. His other submission was that assuming the alleged statements to have been made by Sharad Pawar, none of them constitutes the corrupt practice under Section 123(4) of the R.P. Act as the requirements of that provision are not satisfied. Shri Parasaran contended that none of those statements is a 'statement of fact' as required by Section 123(4) being merely the

A expression of certain apprehensions amounting at best to opinion and exhorting the electorate to beware of such attempts, if any, by Vikhe Patil to win over the electorate. According to Shri Parasaran, the thrust of the speeches of Sharad Pawar at Newasa and Srigonda was that the electorate should uphold the cause of morality instead of voting for Vikhe Patil who had exhibited lack of political morality by abandoning the Congress (I) Party when the party ticket was not given to him after he had the benefit of representing the party in the Lok Sabha for five terms. Shri Parasaran contended that the rumours being afloat of the likelihood of such tactics to be adopted by Vikhe Patil to win the election, Sharad Pawar merely warned the electorate to be not misled by the same. It was also contended by Shri Parasaran that Sharad Pawar did not even mention the payment of any money by Vikhe Patil to the Janata Dal election fund or to the Janata Dal candidate B.G. Kolse Patil which are the allegations made against Gadakh, in spite of shifting of the Janata Dal candidate B.G. Kolse Patil to another constituency after a categorical statement to the contrary was made till the last minute by the Janata Dal Leader Smt. Mrinal Gore and rumours being afloat to that effect. Shri Parasaran in all fairness did not dispute that Sharad Pawar was given the requisite opportunity to lead evidence and to cross-examine the witnesses examined in support of the election petition, but added that this was unnecessary since the statements made by Sharad Pawar ex facie do not constitute corrupt practice under Section 123(4). Shri Parasaran also contended that the requisite consent of the returned candidate Gadakh was not pleaded regarding Sharad Pawar's statement at Newasa and it had also not been proved regarding Sharad Pawar's statements made both at Newasa and Srigonda. This is an additional submission to contend that the requirements of Section 123(4) are not satisfied.

In our opinion, the statements attributed to Sharad Pawar in the meetings held at Newasa and Srigonda ex facie do not amount to 'statements of fact' relating to the personal character or conduct of Vikhe Patil being only the expression of his opinion based on apprehensions about the likely future conduct of Vikhe Patil or relating only to Vikhe Patil's political character which do not fall within the ambit of Section 123(4) of the R.P. Act. For this reason, the remaining submissions of Shri Parasaran do not require consideration. We shall now deal with the statements attributed to Sharad Pawar specified in the notice under Section 99, which alone require consideration. These have been extracted and enumerated earlier.

The statements made in the meeting at Newasa were these : In the first statement made by Sharad Pawar, he said that Vikhe Patil had filed his nomination from the South constituency instead of the North because it was a poor region and a scarcity area thinking that it was a good circumstance to win easily. It is difficult to appreciate how this statement can relate to the personal character or conduct of Vikhe Patil envisaged by Section 123(4). The second statement was that Vikhe Patil suffered from the illusion that the poor people of South could be purchased with his resources but those people were men possessed of self respect who could not be purchased with anybody's money. The indication was that any such illusion or impression of Vikhe Patil was incorrect and was meant for Vikhe Patil and not the voters. This statement also is not of the kind envisaged by Section 123(4). This statement also is, therefore, of no significance in the present context. The third statement refers to the speech of Gadakh wherein he said : "They will distribute bicycles, distribute dhoties and sarees"; and then adds : "I do not have any objection". The statement of Sharad Pawar therein was that he had no objection to acceptance of the articles if they were distributed. For the reason given while dealing with Gadakh's statement to this effect, Sharad Pawar's statement that he had no objection to acceptance of the same, does not fall within the net of Section 123(4). The fourth statement again refers to the likelihood in future of distribution of articles and wealth and proceeds to add : "Let them do to it at the place and so far diverting the votes on the strength of money, let it be clear to whole of Maharashtra that voters cannot be bought." The emphasis in this statement is on the fact that voters cannot be bought even if such a distribution was made by any candidate and not that any such distribution was being made by the candidate Vikhe Patil. This too does not fall within Section 123(4). The fifth statement also is a general statement to the same effect of the likelihood of corrupting the people and putting pressure on them with the further caution to guard against any such attempt. The sixth and the last statement made at Newasa is an exhortation to the electorate to support morality and honesty to belittle and destroy the force of wealth and ego opposed to it. This was merely an exhortation of the speaker to support morality and honesty against money power and ego. These general statements made by Sharad Pawar at Newasa projecting his party's candidate as the upholder of morality and honesty against the forces guided by money power and ego amounted to his opinion of the kind of representation made by the two candidates irrespective of the

A B C D E F G H

A correctness or otherwise of that opinion. The exhortation made to the people to vote for his party's candidate as the upholder of morality and honesty cannot be treated as statements of fact relating to the character and conduct of Vikhe Patil amounting to vilification of his character or conduct. Thus, none of the statements of Sharad Pawar at Newasa con-
B stitutes the corrupt practice under Section 123(4) of the R.P. Act.

In the meeting at Srigonda, Sharad Pawar is alleged to have made four statements to which objection is taken by Vikhe Patil. The first statement is similar to the first and second statements made at Newasa wherein he said that Vikhe Patil chose to contest from the South Con-
C stituency being a famine prone region wherein the people were poor for the purpose of purchasing their self respect. He then added that Vikhe Patil had started activities to win the election by efforts of interested parties by playing their game of purchasing self respect of the poor people. For the reasons already given, this statement does not come within Section
D 123(4). In the second statement, Sharad Pawar said that money alone cannot be an important motivation in the election and there was need of ideology, policy, programme and morality. He then added that it is wrong to give up morality and leave the party when one's wish is not fulfilled and to join hands with other parties. He added that once the "kumkum" is applied its sanctity must be maintained and there should not be any flirting
E with a person other than he to whom the "kumkum" is applied. This was in the background of Vikhe Patil leaving the Congress (I) Party when the party ticket was not given to him and he contesting the election with the help of other parties. The suggestion was that abandoning the party and switching of loyalty was not morally and ideologically correct. In the
F admitted background of Vikhe Patil, this comment was on his political morality and character because of his leaving the Congress (I) Party on denial of ticket to him and contesting against the Congress (I) Party's candidate. This statement did not relate to the personal character or conduct of Vikhe Patil but merely to his political character and morality. This does not fall within Section 123(4). The third statement is a repetition
G of the apprehensions for the future of the likelihood of distribution of the benefits in the constituency coupled with the exhortation that if such a thing has begun or is to happen in future, the same may be accepted without being influenced thereby in the choice of the candidate. For the reasons already given, this too does not come within Section 123(4). The fourth and
H the last statement at Srigonda made by Sharad Pawar was again an

exhortation to act on principle, morality and humanity shunning disloyalty and arrogance of money and power. This is indeed high idealism better practiced than preached. This cannot obviously come within Section 123(4). A

These being the only statements attributed to Sharad Pawar, we have no doubt that none of them constitutes the corrupt practice under Section 123(4) of the R.P. Act and, therefore, accepting that these statements were made by Sharad Pawar since there is no attempt by Sharad Pawar to dispute any of them, it must be he that none of them is a 'statement of fact' relating to the personal character and conduct of Vikhe Patil of the kind envisaged by Section 123(4). The question of examining whether the remaining requirements of Section 123(4) including the consent of Gadakh and the reasonable likelihood of its impact on the mind of the electorate are satisfied, does not arise for consideration. B C

In the present case, it is unnecessary to deal with the arguments from both sides pertaining to the decision in *Manohar Joshi* v. *Damodar Tatyaba and Others,* [1991] 2 SCC 342, since without going into the arguments relating to the defects in the notice under Section 99 of the R.P. Act issued to Sharad Pawar, we have reached the conclusion that the statements attributed to him of which he was given the notice, do not constitute the corrupt practice under Section 123(4). D E

We may, however, observe that the conclusion that these statements do not constitute the corrupt practice under Section 123(4) should not be construed as our opinion that the making of such statements during the election campaign is desirable or that they are necessary for education of the electorate. This caution is necessary in view of the attempt made by Shri Ram Jathmalani to widen the scope by contending that the same a justified electoral practice for education of the electorate. In our view, the electorate by now is we educated about the justified means desirable during the election campaign and it looks forward to knowing the positive programmes of the candidates together with their comparative merits instead of being left to compare their demerits and choose from amongst them the one with the lease demerits. The shift in the election campaign has, therefore, to be in a positive direction to enable the electorate to cast its positive vote instead of the negative vote by rejecting those with greater demerits. This duty is cast more heavily on the senior leaders of all the F G H

A political parties to ensure that the election campaign does not degenerate into a campaign of vilification, which may tend to promote violence during elections and lead to criminalisation of politics. These are hard realities of the present trend of election campaign and this trend must be reversed to make the democracy more meaningful by ensuring purity of elections which can be achieved only by a shift in the trend towards the right direction.
B

Judging by these standards, we are constrained to observe that some of the statements made by Sharad Pawar, the Chief Minister of Maharashtra, even though not amounting to corrupt practice under the enacted law, do not measure upto the desired level of electioneering at the
C top echelon of political leadership to set the trend for a healthy election campaign. His suggestion to the voters to accept monies etc., if distributed by a candidate, without being influenced thereby as a means of propagating socialism exhibits a bazarre perception of socialism. It is shocking enough that Gadakh said so but far worse to find the Chief Minister endorse that
D view. Intended as sarcasm it depicts poor taste. If this be the level of election campaign at the top, it is bound to degenerate as it descends to the lower levels. Some portions of the speeches of Sharad Pawar were indeed high precept but the electorate would have benefited more by knowledge of the track record of the preachers' practice of the same. There
E was no such attempt. The degree of responsibility and the level of electioneering expected of the top leadership was wanting in these speeches. If probity in public life is to be maintained and purity of elections is not a myth or mere catch-phrase, a higher level of electioneering is expected at least at the highest level of political leadership.

F It is with this note of caution we say that all the statements attributed to Sharad Pawar and many attributed to Gadakh do not constitute the alleged corrupt practice under Section 123(4) of the R.P. Act. Accordingly, the notice issued under Section 99 to Sharad Pawar should have been discharged by the High Court instead of Sharad Pawar being named for
G commission of any such corrupt practice.

FURTHER RELIEF UNDER SECTION 101(b) OF THE R.P. ACT

The further relief granted by the High Court of declaring Vikhe Patil to have been duly elected after declaring the election of Gadakh to be void
H is clearly unsustainable. This further relief declaring Vikhe Patil to have

been duly elected has been granted under Section 101 of the R.P. Act which reads as under:— A

> "101. Grounds for which a candidate other than the returned candidate may be declared to have been elected. If any person who has lodged a petition has, in addition to calling in question the election of the re-turned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion :— B
>
> (a) that in fact the petitioner or such other candidate received a majority of the valid votes; or C
>
> (b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes, the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, D to have been duly elected."

Obviously it is clause (b) of Section 101 under which the further relief in the present case can be justified. To justify this further relief, it must be held that but for the votes obtained by Gadakh by the corrupt practice committed under Section 123(4) of the R.P. Act, Vikhe Patil would have E obtained a majority of the valid votes. The High Court has taken the view that the election of Gadakh being void Vikhe Patil who polled the next highest number of votes must be declared to have been duly elected. There is no discernible cogent reason in the High Court's judgment to support this conclusion. F

In *Konappa Rudrappa Nadoouda* v. *Vishwanath Reddy & Anr.*, [1969] 2 SCR 70. the Constitution Bench pointed out the cases falling under Section 101 (b) in which this further declaration can be made. It was held therein as under :— G

> "..... We are again unable to see any logic in the assumption that votes cast in favour of a person who is regarded by the Returning Officer as validly nominated, but who is in truth disqualified, could still be treated as valid votes, for the purpose of determining whether a fresh election should be held. When there H

A are only two contesting candidates, and one of them is under a statutory disqualification, votes cast in favour of the disqualified candidate may be regarded as thrown away, irrespective of whether the voters who voted for him were aware of the disqualification. *This is not to say that where there are more than two candidates in the field for a single seat, and one alone is disqualified, on proof of disqualification all the votes cast in his favour will be discarded and the candidate securing the next highest number of votes will be declared elected. In such a case, question of notice to the voters may assume significance, for the voters may not, if aware of the disqualification have voted for the disqualified candidate.*"

(pages 95-96)
(emphasis supplied)

The law applicable being as above, the mere fact that Vikhe Patil secured the next highest number of votes after Gadakh is not sufficient to declare him elected on the conclusion that Gadakh's election is void for commission of a corrupt practice. The High Court proceeded on an erroneous assumption to grant this further relief under Section 101(b) of the R.P. Act declaring Vikhe Patil to have been duly elected. Shri P.P. Rao, with his usual fairness, in our view rightly, did not seriously support the grant of this further relief declaring Vikhe Patil to have been duly elected, on account of the absence of the requisite evidence to support the grant of this further declaration in the present case. No further consideration of this point is, therefore, necessary.

CONCLUSION

The result is that the High Court's judgment declaring the election of Gadakh to be void for commission of the corrupt practice under Section 123(4) of the R.P. Act is upheld on the ground indicated by us; the further declaration made by the High Court that Vikhe Patil is duly elected is set aside; and the High Court's order naming Sharad Pawar under Section 99 of the R.P. Act for commission of the corrupt practice under Section 123(4) is also set aside.

Consequently, we direct as under :—

(1) Civil Appeal No. 2115 of 1993 filed by Gadakh Yashwantrao

Kankarrao is allowed only in part. The appeal relating to declaration of election of Gadakh to be void is dismissed for the reason given by us. However, the remaining part against grant of the further relief declaring Vikhe Patil to have been duly elected, is allowed. This appeal partly succeeds to this extent only. Vikhe Patil would get Rs. 20,000 as cost from Gadakh. Other parties to bear their own costs.

(2) Civil Appeal No. 1758 of 1993 filed by Sharad Chandra Govindrao Pawar is allowed and the order naming him for commission of the corrupt practice under Section 123(4) of the R.P. Act made by the High Court is set aside. No costs.

(3) Civil Appeal No. 2116 of 1993 by Deshmukh Bhagwan Rangnath only against declaration of Vikhe Patil to have been duly elected is allowed and that further declaration is set aside. No costs.

(4) Civil Appeal No. 2444 of 1993 by Najan Rambahu Maruti similarly against declaration of Vikhe Patil to have been duly elected is allowed and that further declaration is set aside. No costs.

R.A. Matters disposed of.