S. Kandaswami Vs. S.B. Adityan and ors.

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SooperKanoon Citation : sooperkanoon.com/807033

Court : Chennai

Decided On : Sep-18-1959

Reported in : (1960)1MLJ100

Appellant : S. Kandaswami

Respondent : S.B. Adityan and ors.

Judgement :

Basheer Ahmed Sayeed, J.

1. This is an appeal against the order of the learned District Judge of Kanyakumari at Nagercoil acting as the Election Tribunal, Tirunelveli, in Election Petition No. 98 of 1957. The petitioner, who is the appellant before us, was one Kandaswami. He was a contesting candidate for the election to the Madras Legislative Assembly from the Sattankulam constituency. In the election he was defeated and the 1st respondent was declared elected to the said constituency. Thereupon the appellant filed an election petition before the said Election Tribunal questioning the validity of the election of the 1st respondent and praying that the election of the 1st respondent to the Madras Legislative Assembly from the Sattankulam constituency should be declared void and that he should be paid the costs of the petition.

2. Though the petitioner sought the election of the 1st respondent to be declared void as required by the rules, the 2nd, 3rd and 4th respondents were made

parties, as all of them were either contesting candidates or candidates, who retired from the contest. As a matter of fact, while respondents 1 to 3 were the contesting candidates for the said election, the 4th respondent and two others are said to have been candidates, who either retired or withdrew from the election. The 4th respondent is said to have retired from the contest, while P.W. 10 is said to have withdrawn his nomination to the election.

3. It is not necessary for us in this appeal to go into the elaborate details of the various facts relating to the election in question. We think it sufficient to say that at the election for the said Sattankulam constituency, which was held on the 4th March, 1957, the 1st respondent secured 33,636 votes as against the petitioner, who polled only 22,429 votes. The 3rd respondent is said to have polled only 1,115 votes and the 2nd respondent 1,083 votes only. Consequently, the 1st respondent was declared elected by the Returning Officer as a result of the counting of the votes.

4. In the petition filed by the appellant, several acts of bribery and corrupt practices coming within the scope of Section 123(1) of the Act XLIII of 1951 were alleged by the appellant. These allegations have been elaborately referred to by the learned Election Tribunal in its order, dated 9th February, 1959. The petitioner also alleged against the 1st respondent and his agent that they had contravened Section 77 of the said Act XL III of 1951 in regard to expenditure incurred m connection with the election.,

5. The 1st respondent in his written statement contested the truth and validity on the various contentions raised by the petitioner and contended that his electiof was not liable to be set aside and that the petition had to be dismissed.

6. Before the Tribunal respondents 2 and 3 remained ex parte. The 4th respondent, however, filed a written statement supporting the case of the petitioner and stating that he was promised a sum of Rs. 7,500 if he would retire from the election but was actually paid only Rs. 500 and that the balance was promised to be paid later and that out of this balance the election agent of the 1st respondent paid him a further sum of Rs. 2,000 and that the balance of Rs. 5,000 remained unpaid.

7. On the petition and the counter-statements filed by the 1st and the 4th respondents, the learned Election Tribunal framed as many as ten issues with various sub-divisions to some of the said issues and taking into consideration both the oral and documentary evidence, came to the conclusion that the petitioner failed to prove his case and dismissed the petition. For reasons given in paragraph 209 the learned Election Tribunal did not award costs to the 1st respondent which he claimed he was entitled to as a consequence of the dsmissal of the petition.

8. The petitioner has therefore preferred this appeal, while the 1st respondent has preferred the memorandum of cross-objections against the order as to costs.

9. Both the appeal and the memorandum of cross-objections have been ably argued before us by learned Counsel appearing on both, sides. Mr. Mohan Kumaramangalam for the petitioner has confined his arguments to three points on the whole and did not choose to press the other points urged in the petition. The points on which he has concentrated in the course of the arguments are (1) that the 1st respondent -and his election agent bribed the 4th respondent to retire from the contest to the election, (2) that the 1st respondent and his election agent paid a sum of Rs. 10,000 to one Sri M.R. Meganathan, a candidate for the Sattankulam and Trichengode constituency and induced him to withdraw from thes aid candidature at the said election, and (3) that the 1st respondent and his election agent incurred an unauthorised expenditure in contravention of Section 77 of the Act XLIII of 1951, that the return of election expenses filed by the 1st respondent did not disclose the actual nature or the correct extent of the expenses incurred by him and that if the expenses actually incurred by him were to be added on to the expenses disclosed by the 1st respondent, the total expenditure would exceed the minimum prescribed by law. The 1st and the 2nd of the points urged by the learned Counsel for the appellant are covered by issues 2(a) and 2(b). The third point is covered by Issues 8(a) and 8(b). All these issues have been dealt with by the Election Tribunal in paragraphs 77 to 209 of its order.

10. It has been urged by the learned Counsel for the appellan that from the beginning of the election, the 1st respondent was anxious that he should secure 'Elephant' as his symbol at the election. He had this symbol in a previous election

in which he was, however, defeated. But since the symbol had become popular and associated with the 1st respondent, it was his object to see that the 'Elephant' symbol was not secured by any other rival candidates. But actually, the 4th respondent had applied for the 'Elephant' symbol along with the 1st respondent. This conflict was resolved by casting of lots and the 4th respondent got the 'Elephant' symbol for himself, while the 1st respondent got only 'Cock' as his symbol. In addition to securing the 'Elephant' symbol, the learned Counsel for the appellant also stated, that the 1st respondent was very keen on the 4th respondent not contesting against him in the said election. If the 4th respondent were out of the scene, he would not only be able to get his symbol but would also be spared serious contest. The allegation is that with a view to secure this object, on 18th February, 1957, R.W. 3 and P.W. 8 went to the house of P.W. 1, the 4th respondent, to persuade him to retire from the contest. After negotiations, it was settled that the 4th respondent should be paid a sum of Rs. 7,500 and Rs. 500 was paid then and there and the balance was promised to be paid after the retirement was effected. It may be mentioned at this stage, that while the date for the nomination for the said election was the 29th January, 1957 and the scrutiny was fixed for the 1st of February, 1957, the Withdrawal was to take place on the 4th February, 1957. In addition to withdrawal, there is also a further step that is available to the candidates and that is retirement from the contest. The date for such retirement from the contest at the election, was fixed for 22nd February, 1957, while the actual date of polling was fixed for 4th March, 1957.

11. In this contest it is alleged that on 19th February, 1957, P.W. 1 presented his retirement letter to the Revenue Divisional Officer at Tiruchendoor. He was, however, asked to go to Tuticorin and present the same to the Revenue Divisional Officer, and accordingly the 4th respondent presented his retirement letter on 20th February, 1957 and thereby retired from the contest. On the same day, it, is alleged, P.W. 1, the 4th respondent, went to the village of the 1st respondent to receive the balance of Rs. 7,000 stipulated for his retirement. The 1st respondent did not pay the balance and the 4th respondent met the 1st respondent on 23rd February, 1957, when the 1st respondent is said to have suggested to the 4th respondent that he might go to Tahsildar's office and get him a few electoral rolls, which, it is stated, were available to the candidates at concessional rates. It is

urged that the 1st respondent also gave P.W. 1 a letter addressed to his brother-in-law, one Ganapathy Nadar of Tiruchendoor, asking him to help P.W. 1 to get copies of the voters list from the Tahsildar at a concessional rate of Rs. 22 per copy, as against the normal rate of Rs. 40 for non-candidates. P.W. 1 did not find Ganapathy Nadar at Tiruchendoor and he took upon himself the responsibility to approach the Tahsildar directly and asked for the lists. He was told that since he had retired from the contest, he was not entitled to any copy at concessional rates. The letter written by the 1st respondent to his brother-in-law, Ganapathy Nadar, and the addressed cover are both marked as Exhibits A-2 and A-3 respectively, before the Tribunal.

12. The further story unfolded on behalf of the appellant is that the 4th respondent tried to meet the 1st respondent to secure the balance of Rs. 7,000 still payable to him, but he did not succeed in his attempts. Thereupon on 26th February, 1957, a notice Exhibit A-4 was sent by the 4th respondent to the 1st respondent, demanding the payment of the balance of Rs. 7,000. It is quite evident and latter admitted that this Exhibit A-4 had been drafted by a lawyer but was actually signed by the 4th respondent and sent direct. This demand notice stated that a sum of Rs. 7,500 was fixed to be paid towards the election expenses of the 4th respondent, which he had incurred prior to 20th February, 1957 and that Rs. 500 was paid thereof and that the balance was due. In case of default of payment, the notice stated that the 4th respondent would take proper steps with the Election Commissioner for setting aside the election, that the dishonest act of the 1st respondent would be published in the newspapers and that propaganda would be made against him exposing him and his dishonest act and that action would also be taken in a civil Court to recover the balance. R.W. 3, who is no other than the brother and the election agent of the 1st respondent and also an advocate by profession, replied to this notice On 20th March, 1957 arid this reply is marked as Exhibit A-6. In this reply, R.W. 3 on behalf of his principal, the 1st respondent, denied every allegation contained in the said Exhibit A-4. Thereafter a noticed was caused to be sent by the 4th respondent this time through his lawyer, namely Vaikuntamurthy, who had remained behind the scene at the earlier stage, when Exhibit A-4 was despatched to the 1st respondent by the 4th respondent. In this notice Exhibit B-1, dated 10th April, 1957, the lawyer alleged that the 1st

respondent was very anxious that the 4th respondent, should retire from the contest that the 'Elephant' symbol should be released, that the 1st respondent promised in the presence of R.W. 3 to pay a sum of Rs. 7,500 with the object of inducing the 4th respondent to withdraw from the candidature and that immediately a sum of Rs. 500 was paid and that the balance was promised to be paid to the 4th respondent on his filing his petition for his retirement with the Returning Officer at Tuticorin. Various other allegations are also made in this notice. It becomes relevant to note in this, connection as to how exactly a professional lawyer, like. Vaikuntamurthy, could have sent the notice Exhibit B-i in the terms contained therein. It is, howeve, pointed out by the learned Counsel for the appellant that at the time the notice was sent, the position of law was that the receiving of a bribe in elections was not an offence but only the giving of a bribe was made an offence under the People's Representation Act governing elections. In Adityan v. Kandaswami : (1958)1MLJ61 , it was also ruled that while the giving of a bribe in elections was an offence the receiving of a bribe was not such an offence. This state of law was, however, altered after these decisions by an amendment in 1959 of the People's Representation Act and at the present moment both the giving and the receiving of a bribe has been made a corrupt practice punishable under the law.

13. Exhibit B-1 evoked a reply in Exhibit B-2 from R.W. 3, which, again, was a categorical denial of the allegations made in Exhibit B-1. At this stage, it has to be mentioned that the 4th respondent P.W. 1 also caused a notice, dated 19th April, 1957, signed by himself and his advocate R.W. 11 to be sent to the appellant complaining that he was instigated and induced to send Exhibit A-4 on the understanding and assurance that if he were to abide by the directions of the appellant and his associates, they would pay him Rs. 500 and secure him a big sum from the 1st respondent and that, instead of getting any amount from him as promised and assured, he got only a notice from the brother of the 1st respondent, dated 20th March, 1957, Exhibit A-6, repudiating his claim for payment of any sum. This notice is marked as Exhibit A-7 and it also stated that a further notice sent to R.W. 3 in English was also of no avail and called upon the appellant that the sum of Rs. 500 promised by him should be paid immediately, failing which the amount would be collected through Court with costs. This notice was, however,

disowned by P.W. 1 when he was in the witness-box. Thereafter, a further notice was sent by the 4th respondent through his lawyer Mr. Vaikuntamurthy to R.W. 3, the notice being signed by both, on 10th May, 1957, to the effect that a panchayat was held at the office of the advocate, Mr. Vaikuntamurthy, on 29th April, 1957, between himself and the 4th respondent, in the presence of one Abdul Wahab, not called in as a witness and another, that the panchayat decided that R.W. 3 should pay a sum of Rs. 7,500 to the 4th respondent, that upto the date of the notice he had received only Rs. 2,500 and that a sum of Rs. 5,000 was still due, that the said balance was not paid in spite of repeated demands, and that arrangement should be made for the payment of the balance within a week from the date of the receipt of the notice and that in default the law would be set in motion to, recover the amount with costs. This notice is marked as Exhibit A-8 and is dated: 10th May, 1957. The significant development that falls to be noticed in connection with this Exhibit A-8 is that there is an allegation that a total sum of Rs. 2,500 had been paid but it does not state as to when and were and by whom the sum of Rs; 2,000 was paid to the 4th respondent. It has also to be noted that this notice, as also Exhibits A-4 and B-1 are quite contrary to the contents found in Exhibit A-7. Exhibit A-9 is a reply given by R.W. 3, dated 24th May, 1957, denying the convening of the panchayat and the payment of any sum to the 4th respondent and also-stating therein that two other persons mentioned in Exhibit A-8 might be the friends of the 4th respondent and that R.W. 3 had nothing to do with them. This is all the documentary evidence relied upon by the learned Counsel for the appellant to prove that there was an inducement to the 4th respondent to withdraw from the contest, that there was 'a promise and an undertaking to pay as much as a sum of Rs. 7,500 that a part payment in the sum of Rs. 2,500 was made towards the said agreed amount, that in pursuance of the said undertaking, by the 1st respondent to pay the said sum of Rs. 7,500 the 4th respondent withdrew from the contest and that such inducement or promise and payment of any sum was a corrupt practice resorted to by the 1st respondent which entitled the Tribunal to hold the 1st respondent's election void.

14. This documentary evidence was sought to be supported by the learned Counsel for the appellant by the depositions of the 4th respondent figuring as P.W. 1 and another witness P.W. 8. P.W. 1 proved the several notices that passed

between him and the 1st respondent and his brother and also spoke to the various events that are said to have transpired between himself and the 1st respondent and his brother R.W. 3. P.W. 8 was called in to corroborate the payment of the sum of Rs. 500 and also the previous negotiations that are said to have been carried on prior to the 4th respondent's withdrawal from the contest.

15. As against the documents relied upon by the learned Counsel for the appellant and the depositions of P.Ws. 1 and 8, the learned Counsel for the 1st respondent relied upon the deposition of the 1st respondent as R.W. 1, R.W. 3 and that of R.W. 11, the advocate who sent Exhibit A-7 on behalf of the 4th respondent, P.W. 1. In addition to this, the learned Counsel for the 1st respondent also relied upon the plea of alibi put forth by his client and the evidence in support thereof. It was contended on behalf of the 1st respondent his learned Counsel that his client was away from Sattankulam on the relevant dates, when he is said to have met the 4th respondent or made promise or payments of the sum of Rs. 500 or Rs. 2,000 as alleged by the 4th respondent.

16. In so far as the alibi evidence is concerned, the learned Counsel for the appellant argued that the evidence was not conclusive and that the 1st respondent should have produced more clinching evidence to prove the alibi, than what was actually adduced by him. He urged that the respondent should have produced convincing evidence about his travel to Madras and about his presence in Madras on the 18th and 19th February, and that the evidence actually produced did not rule out the possibility of another man having travelled in his place and another person having booked the trunk telephone call from Madras to Sattankulam on his behalf.

17. The learned Election Tribunal, however, accepted the appellant's case with regard to the motive of the 1st respondent to get the Elephant's symbol out of the contest and about the 1st respondent asking the 4th respondent to fetch the voters' list and disbelieved the evidence of R.W. 11 in regard to Exhibit A-7. The learned Tribunal, having found so much in favour of the appellant, however, accepted the alibi evidence adduced by the 1st respondent and held that the case of the appellant so far as the bribe offered to the 4th respondent was concerned,

was not proved. The learned Counsel attacked this finding of the learned Election Tribunal.

18. We have been taken through the entire evidence, both documentary and oral, which the learned Election Tribunal has relied upon, to come to the conclusion that the charge of bribery against the 1st respondent in relation to the 4th respondent was not proved. Though the fact of the correspondence and the notices evidenced by Exhibits A-2, A-3, A-4, A-6, B-1, B-2 and A-7, A-8, and A-9 having passed between the parties cannot be disputed, still when these exhibits are considered in the light of the oral evidence of P.Ws. 1 and 8 we are constrained to observe that we have not been impressed with the evidence of either P.W. 1 or P.W. 8. A reading of the entire deposition recorded from P.W. 1 leaves us with the impression that P.W. 1 is thoroughly unreliable and is a despicable witness. Though P.W. 8 has been called in to corroborate the payment of Rs. 500 to the 4th respondent, we do not think that his evidence could be accepted or acted upon. We are inclined to believe that Exhibits A-2 and A-3 must have come into existence in the circumstances narrated by the 1st respondent. The 4th respondent is said to have returned the sum of Rs. 100 alleged to have been paid by the 1st respondent for the obtaining of the voters' list but is said to have retained Exhibits A-2 and A-3 without returning the same to the 1st respondent. This does not seem to be a natural course of conduct that would have occurred. R.W. 1 would have certainly asked for the return of Exhibit A-2, and why it was not returned or not taken back by R.W. 1 is not made clear from the evidence of P.W. 1 or P.W. 8, who is called in to corroborate P.W. 1 in other particulars as well. However, in our opinion, nothing turns upon Exhibit A-2 and Exhibit A-3. Nor could we say that the other exhibits, namely the notices exchanged between the parties carry the case of the appellant any further. There have been demands and denials of these demands, and in the face of these, the question is as to whose evidence is to be considered more trustworthy. Is it the evidence of P.W. 1, P.W. 8 and P.W. 10 or is it the evidence of R.Ws. 1, 3, 9 10 and 11 that could be accepted. In our opinion all things taken together, the evidence on the side of the respondents seems to be more trustworthy and acceptable than the evidence on the side of the appellant.

19. In regard to the alibi set up by the 1st respondent it is in evidence that the 1st respondent was discharged from the Vellore Hospital in December. He had been there for treatment of some disease, which he had developed by reason of frequent air travel to the States and other countries, to which he had gone at an earlier stage. The last date for the receipt of the nomination for the election in question was 28th January, 1957. After filing his nomination, the 1st respondent returned to Tirunelveli and stayed in one of the lodges in Tirunelveli on the 29th. A ticket was purchased on 28th January, 1957, for his journey to Madras on 30th January, 1957. He left Tirunelveli on 30th January, 1957, by the Trivandrum Express and reached Madras on 31st January, 1957. At Madras, on that date, he had a trunk telephone call from Swayamprakasam and also attended a meeting of the directors of the Board of India Cements. Again, for his return journey from Madras, Bharath Travels reserved a ticket for him. On the same day, i.e., 2nd February, 1957, he had put in a trunk call to Tanjore and his brother R.W. 3 also, from his place in Tirunelveli, on the same day put through a trunk call to Madras. R.W. 3 inquired of the health of his brother the 1st respondent through this trunk call. The 1st respondent left Madras on 2nd February, 1957, for Tirunelveli by the Trivandrum Express and reached Tirunelveli on 3rd February, 1957 and stayed in the same lodging house. Fourth February, 1957, was the date of withdrawal of nominations. On 6th February, 1957, the 1st respondent again left Tirunelveli and reached Madras on 7th February, 1957. After staying for a couple of days at Madras he returned to Tirunelveli on 9th February, 1957. Once again, the 1st respondent left Tirunelveli on 17th February, 1957, by the Trivandrum Express. R.W. 2 proves the reservation for this and for the earlier journey on 6th February, 1957 and 7th February, 1957, and the reservation tickets are also produced. The 1st defendant arrived at Madras on 18th February, 1957 and on that day he put through a call to the Vellore Hospital requesting them that he should be given a double dose of injections in view of the fact that he would not be available for the second injection. On 17th February, 1957, itself, his office at Madras had been instructed to reserve a seat for him for his return travel on 19th February, 1957. The 1st respondent then left Madras on 19th February, 1957 and returned to Tirunelveli. The chart exhibited at the railway station at Madras proved the reservation for the 1st respondent and the railway ticket-examiner spoke to the

fact that all the seats booked had been filled up in the train. On 20th February, 1957, the 1st respondent was at Madurai and he collected all the printed materials and reached Tirunelveli on 21st February, 1957 and proceeded to Kayanoli.

20. According to the appellant's case the first meeting with P.W. 10 is said to have been on 1st February, 1957 and if the evidence of the 1st respondent is to be believed the 1st respondent could not have reached Kulasekarapatnam, where the meeting is said to have taken place in the morning of 1st February, 1957, because admittedly the train reaches Tirunelveli only about the noon. Even so, the third meeting could not have taken place at Udankudi in the morning as alleged by the appellant because in that case also the train reaches Tirunelveli very late in the afternoon. There is, however, no controversy with regard to the presence of the 1st respondent on the 4th February, at Tuticorin, but with regard to his presence at Tuticorin on the 1st, 2nd and 3rd February, 1957, what the learned Counsel for the appellant urges is that there is considerable doubt and that it was for the 1st respondent therefore to have proved positively and free from any other alternative possibility, that he was not present on the said dates at Tuticorin. In the course of the deposition of R.W. 3, however, he stated definitely that while he was present at the time of the scrutiny of the nominations on the 1st February, 1957, the 1st respondent was absent from Tirunelveli district between the 30th January, 1957 and 3rd February, 1957. He also deposed that he went to Tuticorin oh the 4th February, 1957 and withdrew his nomination filed for the Tiruchendoor constituency and that the 1st respondent did not accompany him, because it was on that day P.W. 10 withdrew his nomination from the Sattankulam constituency. The learned Counsel for the appellant relied upon Exhibit A-37 and drew our attention to the said exhibit which is an authorisation by the 1st respondent addressed to the Returning Officer to the effect, that he was appointing his brother R.W. 3 as his election agent for the Sattankulam constituency and that it was issued from the camp at Tuticorin and dated 4th February, 1957. This letter does not by any means help the case of the appellant. It is admitted that the 1st respondent was camping at Tuticorin on 4th February, 1957.

21. In this connection, the learned Counsel for the appellant raised the question that under Section 90(1) and (2) of the Representation of the People Act, every

election-petition shall be tried by the Tribunal as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits and that the provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of the Representation of the People Act, be deemed to apply in all respects to the trial of an election petition. Relying upon Section 93 of the Representation of the People Act the learned Counsel for the appellant also contended that a trial in an election petition before the Tribunal shall be deemed to be more of the nature of a trial in a civil proceeding and very much less of the nature of a trial in a criminal proceeding. Questioning the applicability of the ruling in Vashist Narain Sharma v. Devchandra and Ors. : [1955]1SCR509 , which has been relied upon by the learned Election Tribunal, the learned Counsel for the appellant argues that, while the burden to prove the allegations made against the 1st respondent in regard to the offer of bribe lies heavily on the objector, viz., the appellant, still the appellant has discharged the burden in so far as he had succeeded in showing that the alibi evidence adduced by the 1st respondent was not free from doubt and did not rule out an alternative possibility of some one else having travelled and done the various other acts relied upon by the 1st respondent and the 1st respondent taking advantage of the same to support his case. The point urged by the learned Counsel for the appellant is that the theory of preponderance of probabilities would apply to the circumstances of the present case; and that when once he had shown another probability, the burden would shift on to the 1st respondent to prove positively the plea of alibi. The basis of this argument by the learned Counsel for the appellant would appear to be that since the Evidence Act and the Civil Procedure Code apply to the trial of an election petition by the Tribunal, the theory of the shifting of the burden would also operate, in which case, the 1st respondent was bound to prove his plea of alibi with more definite and positive evidence. The substance of the argument of the learned Counsel for the appellant seems to be that the trial of an election petition is essentially a civil proceedings as contemplated under Sub-sections (1) and (2) of Section 90 of the Representation of the People Act and considered in the light of Section 100 of the same Act and Sections 3 and 4 of the Evidence Act. We do not think that we can agree with this contention of the learned Counsel for the appellant. In our opinion, the trial in an election petition is a quasi-criminal trial and

not a civil trial. In Harish Chandra v. Triloki Singh : [1957]1SCR370 , it was observed that it should not be forgotten that charges of corrupt practice are quasi-criminal in character and that the accusation in relation thereto must be sufficiently clear and precise to bring home the charges to the candidate. Judged by that standard it is the duty of the appellant to prove beyond any reasonable doubt, that the 1st respondent could have been present on the relevant dates and could have resorted to the corrupt practice alleged against him. The standard of proof in an election enquiry, in our opinion, is the same as could be achieved in a criminal trial. In Narasimha Reddi v. Bhoomaji : AIR 1959 AP111 , a Bench of the Andhra High Court held that allegations as to corrupt practices as those referred to in Sections 123 and 124 are of a quasi-criminal nature and the standard of proof required to establish them is the same as pertains to proof in criminal cases and that the onus of establishing a corrupt practice beyond reasonable doubt rests heavily on the petitioner. Even so, in Inayatullah v. Diwanchand : AIR 1959 MP58 , it has been held by a Bench of the Madhya Pradesh High Court that the trial of an Election Tribunal is in the nature of an accusation and is a quasi-criminal action. If the same test is applied, then there would be a presumption of innocence and strict proof would be required before persons charged are held to be responsible. No doubt the procedure followed in enquiries in election petitions is civil in form, but in substance, it is a criminal trial, especially when one keeps in view the results and consequences that follow from the decisions in election petitions. Simply because the procedure to be followed is civil in form, it cannot be contended that the amount of proof required for bringing the charges home to the person against whom the accusation is made, is reduced to that of an enquiry in a purely civil proceeding so as to give room for the theory of the balance of probabilities or the shifting of the burden. We do not think that it is open to the learned Counsel for the appellant to contend that if he has proved a prima facie case against the 1st respondent, it is for the 1st respondent to rebut the prima facie case made out against him. The learned Counsel for the appellant, in our opinion, ignores the distinction that has to be kept in mind, viz., the procedure that has to be followed by the Election Tribunal in accordance with the provisions of the Representation of People Act and the amount of proof that has to be adduced in order to establish the charges made in the petition against the successful candidate. The object of

an enquiry in an election petition, it must be remembered, is mostly punitive, though it may not be wholly so. The public policy involved in setting aside elections where corrupt practices are proved and the penalties that follow when such corrupt practices are established, is an important factor which has to be kept in view, when the nature of the enquiry in an election petition is to be determined. If the enquiry is before a Civil Court, which follows the Civil Procedure Code, ordinarily no penalties ensue, and it cannot be said that the trial is a punitive one, but where the consequences partake of penalties such as disqualifications and fines, etc., it is futile to contend that the enquiry is still a civil one. In Ram Dial v. Sant Lai , a Bench of the Punjab High Court has held that a charge of corrupt practice in election petitions has to be treated just like a quasi-criminal charge and if the language of any particular Sub-section of Section 123 in terms is not attracted, the benefit should like all criminal trials, be given to the person charged with the commission of the alleged corrupt practice. In Balwant Rai Tayal v. Bishan Saroo 17 El. L.R. 101 a Bench of the Punjab High Court has held that in election petitions, so far as they relate to charge of corrupt practice, there is a very great similarity to a criminal trial, and where a long list of witnesses is given as being the persons who will support a particular charge, witnesses produced thereafter whose names are not on such list are more or less in the same position as witnesses produced in criminal trials whose names have not been revealed in the first information report. It goes without saying that in a civil proceeding there are two parties involved. Their mutual rights and obligations which come up for determination are purely of a civil nature, and the result of a decision in such a dispute does not involve fines or penalties or disqualifications or loss of status and position. Such civil proceedings cannot be compared with election petitions filed under the Representation of People Act, where the terminology used is 'election offence', 'proof of guilt', 'accusations', 'charges', 'penalties' and so forth, indicating beyond any doubt that the trials of election petitions are of a criminal nature, though governed by the Civil Procedure Code and the Evidence Act, in so far as the form of the trial is concerned. Therefore, we are unable to agree with the learned Counsel for the appellant that he has attained the standard of proof that is required in order to demolish the plea of alibi set up by the 1st respondent. We think that the appellant has failed to discharge the burden that lay heavily upon

him to prove beyond reasonable doubt that the plea of alibi is not substantiated and that therefore it should not have been accepted by the Election Tribunal.

* * * * *

22. In the result, we do not think that the appellant has made out any case for our interference with the decision of the Election Tribunal, and we have no alternative but to dismiss the appeal, and it is accordingly dismissed with costs. Rupees two hundred and fifty is fixed as costs.

23. The memorandum of cross-objections is against the refusal of the learned Election Tribunal to award costs to the 1st respondent in consequence of his having dismissed the election petition. We have read the reasons given by the learned Election Tribunal for declining to awards costs. We do not think that there is sufficient ground for us to interfere with that order. The memorandum of cross-objections will therefore stand dismissed without costs.