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*Before M.M. Kumar, J.*

HARCHAND KAUR,—*Petitioner*

*versus*

GOBIND SINGH,—*Respondent*

*E. P. No. 22 of 2002*

*AND C.M.5/E of 2006*

28th April, 2006/3rd May, 2006

*Representation of People Act, 1951— Ss. 100(1)(b) and 123(1A)— Election to Punjab Legislative Assembly— Respondent declared elected— Challenge thereto— Allegations of 'corrupt practice' against respondent that while holding charge as a Cabinet Minister he misused his power by sanctioning pension to ineligible persons and employing various women voters as Aganwari Workers- Respondent himself admitting his signatures on pension papers- Petitioner fully proving the fact that cash in the name of pension was presented as a gift to voters directly for inducing the voters to vote in favour of respondent- Petitioner disclosing a concise statement of material facts on which he relies and also setting forth full particulars of corrupt practices in the petition as required under section 83(b)- Petitioner also filing affidavit in the prescribed form as required under the Act in support of allegations of corrupt practices— Respondent failing to place on record any material, any independent evidence, oral or documentary to show that no corrupt practice was committed by him— Election of respondent held to be void— However, prayer for staying the operation of judgement allowed upto 28th May, 2006 while imposing some conditions.*

*Held*, that the case concerning 'corrupt practice' has been sufficiently pleaded in paras 17 to 21, 24, 26, and 30 which have been duly supported by the affidavit dated 10th April, 2002 of the election petitioner. Under section 83(b) of the Act, the election petitioner is required to disclose in the election petition a concise statement of material facts on which the petitioner relies and also set forth full particulars of any corrupt practice that petitioner has alleged including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice with the date and place. An

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affidavit in the prescribed form in support of the allegations of such corrupt practice and the particulars thereof is also required to be attached with the petition, which has been done in the present case.

(Para 45)

*Further held*, that the election petitioner has been able to establish the ground of 'corrupt practice' by proving the fact that cash money was disbursed by the respondent-turned candidate on 10th February, 2002, 11th February, 2002 and 12th February, 2002 after he had become a 'candidate' in the election within the meaning of Section 79(2) of the Act. He distributed cash to the beneficiaries on 10th February, 2002, 11th February, 2002 and 12th February, 2002. There is admission made by the returned candidate with regard to disbursement of pension between 25th January, 2001 to 13th February, 2002. The afore-mentioned fact has also been proved by the statements made by PW9 to PW-12 that he himself distributed the pension apart from distributing cash in the form of pension. Therefore, I am of the view that the broad and basic features of the case of the election petitioner stands established and the corrupt practice committed by the returned candidate is fully covered by Section 123(1) of the Act. The money in the name of pension was presented as a gift to the voters directly for inducing the voter to vote in favour of the returned candidate, which would be clearly covered by the afore-mentioned provision.

(Para 48)

*Further held*, that the election petitioner has been able to establish beyond a reasonable doubt the 'corrupt practice' indulged by the returned candidate and the returned candidate has failed to place on record any material, any independent evidence, oral or documentary, to show that such a practice was not committed by him as he was under a duty to do so. The election petitioner has been able to prove that the returned candidate disbursed cash amount under the grab of pension on 10th February, 2002, 11th February, 2002 and 12th February 2002 to the voters as has been deposed by various witnesses. The pattern disclosing the working of the returned candidate has established which show that disbursement of case in the grab of person has been used as a tool to induce the voters to vote for the returned candidate.

(Para 50)

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*Further held*, that conditional stay of the operation of the judgment deserves to be granted to the applicant-turned candidate. The applicant-turned candidate has been representing the Sherpur 82 Constituency for the last over four years on account of the election held on 13th February, 2002. He has been member of various Committees and on account of disability which he is likely to suffer by virtue of the judgment dated 28th April, 2006 he would immediately stand disqualified to attend the session of the Assembly or meeting of other Committees constituted by the Assembly. Therefore, keeping in view the larger interest of the business to be transacted in the Assembly or by the Committees and also the fact that first appeal is a right available in all jurisdictions, which in the present case is provided by Section 116-A of the Act, I deem it appropriate to direct that operation of the judgment dated 28th April, 2006 shall remain stayed up to 28th May, 2006 subject to some conditions.

(Para 55)

R.S. Bains, Advocate, *for the petitioner*.

K.S. Sidhu, Advocate, *for the respondent*.

### JUDGMENT

**M.M. KUMAR, J.**

(1) Smt. Harchand Kaur (for brevity 'the election petitioner') has filed this petition under Section 80 and 81 read with Section 100 of the Representation of the People Act, 1951 (for brevity 'the Act'), challenging and for setting aside the election of Shri Gobind Singh Kanjla (for brevity 'the returned candidate') from 82-Sherpur (SC) Assembly Constituency (for brevity 'the Constituency'), held on 13th February, 2002.

(2) The case of the election petitioner in short is as follows :—

(3) The petitioner contested election from the Constituency, held on 13th February, 2002. Her name is enrolled in the voter list at Sr. No. 1098 from village Ghanauri Kalan, Tehsil Dhuri, District

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Sangrur. On the recommendation made by the Election Commission of India, the Governor of Punjab, had issued notification under Section 15 of the Act which was published in the official gazette of the State of Punjab on 26th December, 2001, calling upon all Constituencies to elect members for the purpose of constitution of new elected Assembly on the expiry of the term of the existing Assembly. The election programme was issued by notification published by the Election Commission in the official gazette, which was as follows :—

- |       |                                                        |           |
|-------|--------------------------------------------------------|-----------|
| (i)   | The last date for making nomination.                   | 23-1-2002 |
| (ii)  | The date for the scrutiny of nomination.               | 24-1-2002 |
| (iii) | The last date for the withdrawal of candidature.       | 28-1-2002 |
| (iv)  | The date on which poll is to be held.                  | 13-2-2002 |
| (v)   | Counting of votes.                                     | 24-2-2002 |
| (vi)  | The date before which the election is to be completed. | 28-2-2002 |

(4) The election petitioner being voter from one of the village falling in the Constituency and on account of the fact that she belonged to Ramdasi Sikh caste, which is declared as Scheduled Caste, applied for issuance of Scheduled Caste Certificate. The certificate was issued by Tehsildar, Dhuri on 15th January 2002 (P-1). The election petitioner claims to be fully eligible and qualified to contest election from the reserved Constituency in accordance with the provisions of Section 5 of the Act. The Ramdasi Sikh caste to which the election petitioner belongs is covered by the notification issued by the State of Punjab.

(5) In addition to the election petitioner, nine other candidates including the returned candidate filed nomination papers from the

Constituency, which was displayed by the Returning Officer after scrutiny. The names of the aforementioned persons are as under :—

Sr. No.	Name of the Candidate	Name of party from which Contested
(i)	Harchand Kaur	Indian National Congress
(ii)	Harnek Singh	Bahujan Samaj Party
(iii)	Chand Singh Chopra	C.P.I. (M)
(iv)	Piara Singh	Shiromani Akali Dal
(v)	Rajdev Singh	Shiromani Akali Dal (Simranjit Singh Mann)
(vi)	Harnek Singh	Independent
(vii)	Gian Singh	Independent
(viii)	Gurmail Singh	Independent
(ix)	Gobind Singh	Independent
(x)	Bant Singh	Independent

(6) The election was held on 13th February, 2002 by using the Electronic Voting Machines. The counting of votes polled in the Constituency started on 24th February, 2002 at 8.00 A.M. and the result of the election was declared on the same day. According to the result declared, the details of the votes polled in favour of each of the candidate is given hereunder against his or her name :—

Sr. No.	Name of the Candidate	Name of Party from which contested	No. of Votes polled
(i)	Harchand Kaur (Election Petitioner)	Indian National Congress	19439
(ii)	Harnek Singh	Bahujan Samaj Party	3661

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(iii)	Chand Singh Chopra	C.P.I. (M)	3238
(iv)	Piara Singh	Shiromani Akali Dal	26525
(v)	Rajdev Singh	Shiromani Akali Dal (Simranjit Singh Mann)	4369
(vi)	Harnek Singh	Independent	1493
(vii)	Gian Singh	Independent	540
(viii)	Gurmail Singh	Independent	456
(ix)	Gobind Singh (returned candidate)	Independent	30132
(x)	Bant Singh	Independent	1039

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(7) The total number of votes polled were 90882 and two votes were rejected. The rest of the votes were valid. The returned candidate was declared elected.

(8) There are allegations of corruptions with the averment that the returned candidate was a Cabinet Minister and was incharge of Social Security, Women and Child Development Department, Punjab, in the Shiromani Akali Dal ministry headed by Sardar Parkash Singh Badal. The returned candidate is alleged to have misused his power and indulged in corrupt practices to win support from voters before and after issuance of the notification so as to be elected to the Assembly. Apart from the allegation of deletion and addition of the names of thousands of voters, who were against and for the returned candidate, there are further allegations of corrupt practices of the nature as envisaged by Section 123(1) of the Act. Those allegations have been levelled in paragraph Nos. 17, 18, 19, 20, 21, 24, 26 and 30 of the election petition. In order to avoid any ambiguity, the above mentioned paragraphs are reproduced extenso as under :—

“17. That the Respondent was a Cabinet Minister and was holding the charge of Social Security and Development Department in the Ministry of S. Parkash Singh Badal, with an intention to derive benefit in the assembly elections scheduled to be held on 13th February, 2002, misused his power, he got released Rs. 1000/Rs. 800 to

old age pensioners between 25th January, 2002 to 11th February, 2002. The Names of a few such persons are given below :—

S.	Name	Address No.	P.L.A. No.
1	Jangir Kaur, w/o Charan Singh	V.P.O. Ghanaur Khurd, Tehsil Dhuri, District Sangrur	31100
2	Tejo, w/o Kaur Singh	V.P.O. Ghanaur Kalan, Tehsil Dhuri District Sangrur	19433
3	Bhola Singh, s/o S. Bachan Singh	V.P.O. Mahamimadpur, Tehsil Dhuri, District Sangrur	3605
4	Gurdev Kaur, w/o Sarup Singh	V.P.O. Ghanaur, Khurd, Tehsil Dhuri, District Sangrur	120315
5	Lal Singh, s/o Jagta Singh	V.P.O. Katron, Tehsil Dhuri, District Sangrur	158113
6	Nirmal Singh, s/o Jeet Singh	V.P.O. Ghanaur Khurd, Tehsil Dhuri District Sangrur	90160
7	Maghar Singh, s/o Chanda Singh	V.P.O. Pedhani Kalan, Tehsil Dhuri, District Sangrur	59042
8	Shyam Kaur, w/o Hamir Singh	V.P.O. Ghanaur, Kalan, Tehsil Dhuri, District Sangrur	31194
9	Mohinder Kaur, w/o Karam Singh	V.P.O. Ghanaur, Khurd, Tehsil Dhuri, District Sangrur	3336

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10	Mukhita Kaur, w/o Mukand Singh	V.P.O. Ghanaur, Tehsil Dhuri, District Sangrur	31145
11	Baldev Kaur, w/o Karnail Singh	V.P.O. Katron, Tehsil Dhuri District Sangrur	120293
12	Tej Kaur, w/o Mit Singh Singh	V.P.O. Katron Tehsil Dhuri, District Sangrur	120272
13	Jagar Singh, s/o Chanda Singh	V.P.O. Pedhani Kalan, Tehsil Dhuri, District Sangrur	31093
14	Jeouni Kaur, w/o Modan Singh	V.P.O. Ghanaur Khurd, Tehsil Dhuri, District Sangrur	31094
15	Hamir Kaur, w/o Ram Singh	V.P.O. Ghanaur Khurd, Tehsil Dhuri, District Sangrur	29218
16	Dalip KaurKaur, w/o Amar Singh	V.P.O. Ghanaur Khurd, Tehsil Dhuri, District Sangrur	31035

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True translated and Photostat copies of relevant portion of Pass Books of few such persons are annexed as Annexures P-8 to P-11.

(18) That it is a matter of record that Respondent Gobind Singh misused his power as Minister and got released pension to 27856 persons only in Sherpur Constituency with an intention to get benefit of the same in 2002 elections. Many of such beneficiaries are not legally entitled to receive the pension. It amounts to corrupt practice under Section 123 of the Representation of Peoples Act, 1951. It materially affected the election.

(19) That as per statutory provisions, a male of 65 years of age and a female of 60 years of age is entitled to get old-age



pension, but the Respondent Gobind Singh, with an intention to derive benefit in the assembly elections, 2002, misused his power as Social Security Minister, sanctioned pension to ineligible persons and got released pension to the persons who were/are not entitled to the old-age pension. This materially affected the result of election. It is corrupt practice undertaken by Respondent under Section 123 of Representation of Peoples Act, 1951. Instances of few such persons are given below :—

List of Persons who have been sanctioned pension but were not eligible as they were under age for pension :—

Sr. No.	Voter No.	Name	Age as per voter list
<b>Village Pedhani Kalan, Tehsil Dhuri, District Sangrur</b>			
1	331	Major Singh, s/o Kirpal Singh	47 years
2	494	Sant Singh, s/o Kartar Singh	51 years
3	1092	Sher Singh, s/o Magher Singh	49 years
4	1100	Chhota Singh, s/o Mukand Singh	48 years
5	1101	Pal Kaur, d/o Chhota Singh	47 years
6	235	Malkiat Kaur, w/o Raja Singh	47 years
<b>Village Panjgraian, Tehsil Dhuri, District Sangrur</b>			
1	537	Ranjit Singh, s/o Narinder Singh	40 years
2	683	Ravinder Kumar, s/o Chanan Ram	41 years
3	684	Amarjit Kaur, w/o Ravinder Kumar	40 years
4	463	Bhajan Singh, s/o Santa Singh	50 years
5	455	Dalip Kaur, w/o Dalbara Singh	52 years
<b>Village Bishangarh, Tehsil, Malerkotla, District Sangrur</b>			
1	70	Mahinder Kaur, w/o Surjit Singh	40 years
2	296	Basant Kaur, w/o Bahadur Singh	49 years
3	298	Ujjagar Singh, s/o Joginder Singh	40 years
4	439	Nikki, w/o Saddiq Khan	42 years

5	857	Rajnit Kaur, w/o Kamikkar Singh	46 years
6.	860	Tarlochan Singh, s/o Niranjan Singh	46 years
7.	861	Harminder Singh, w/o Tarlochan Singh	43 years

20. That it is also relevant to mention that the Respondent being a Cabinet Minister, with an intention to get benefit in the election, 2002, misused his power as Social Security Minister and violated the procedure in sanctioning/ releasing the old-age/widow/handicapped pensions which were sanctioned by him in person to the persons of Sherpur constituency, whereas under the Statutory Rules, this power has vested with the Deputy Commissioner concerned. Names of few such persons are given below :—

List of persons who have been sanctioned pension by the Minister himself

Sr. No.	Name	Address
1	Nirmal Singh, s/o Natha Singh	Village Tibba, teh. Dhuri, distt. Sangrur
2	Switari Kaur, w/o Parkash Chand	Village Tibba, teh. Dhuri, distt. Sangrur
3	Surjit Kaur, W/o Pritam Singh	Village Fatehgarh Panjgraian, teh. Dhuri, distt. Sangrur
4	Gurdev Kaur, W/o Nahar Singh	Village Sultanpur, teh. Dhuri, distt. Sangrur
5	Harbans Kaur, W/o Narnail Singh	Village Sultanpur, teh. Dhuri, distt. Sangrur
6	Amarjit Kaur, W/o Mohinder Singh	Village Kala Boola, teh. Dhuri, distt. Sangrur

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7	Hamir Kaur, W/o Mohinder Singh	Village Bari, teh. Dhuri, distt. Sangrurhehlan,, teh. Dhuri, distt. Sangrur
9.	Lachhmi Devi w/o Harbhagwan	Village Ghanauri Kalan, Rishi, teh. Dhuri, distt. Sangrur
10.	Ramjanan w/o Faqiria Mohammad	Village Ghanauri Kalan, teh. Dhuri, distt. Sangrur
11.	Malkit Kaur w/o Jang Singh	Village Gurbakshpura, teh. Dhuri, distt. Sangrur
12.	Surjit Kaur w/o Gurnam Singh	Village Herike, teh. Dhuri, distt. Sangrur

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It materially affected the result of election. he is guilty of committing Corrupt Practice with a view to get votes in the election. It is covered under Section 123 of Representation of People Act, 1951. Election stood vitiated and deserved to be quashed. True translated and photocopies of few forms sanctioned by Respondent directly are annexed as Annexure P-12 to P-15.

21. That the Respondent Gobind Singh, being the Cabinet Minister and holding charge of Social Security Department, misused his power and got various women voters of this constituency employed as Anganwadi Workers for a period of up to 28th February, 2002. They were kept in service as they were compelled to undertake to work for his election and caste their votes and manage other votes, their votes in the election scheduled to be held on 13th February, 2002 in his favour. It materially affected the result of election. He is guilty of committing Corrupt Practice with a view to get votes in the election. It is covered under Section 123 of Representation of

Peoples Act, 1951. Election stood vitiated and deserved to be quashed. Particulars of a few such women are given below :—

List of Anganwadi workers appointed by the Social Security Minister (Respondent No. 1) up to 28th February, 2002.

Sr. No.	Name	Address
1	Manjit Kaur, w/o Rajinder Pal Singh	Village Punnawal, teh. Dhuri, distt. Sangrur
2	Kiran Bala, w/o Bhim Chand	Village Didargarh, teh. Dhuri, distt. Sangrur
3	Raji, w/o Jaseen Mohammad	Village Mahadpur, teh. Dhuri, distt. Sangrur
4.	Rajwinder Kaur, w/o Sukhchain Singh	Village Allal, Rishi teh. Dhuri, distt. Sangrur
5.	Sukhwinder Kaur, w/o Didar Singh	Village Ina Bajwa, teh. Dhuri, distt. Sangrur
6.	Paramjit Kaur, w/o Jagroop Singh	Village Sherpur,, teh. Dhuri, distt. Sangrur
7.	Amarjit Kaur, w/o Bahadar Singh	Village Badshahpur, teh. Dhuri, distt. Sangrur
8.	Raj Kaur, w/o Kewal Singh	Village Ghanauri Kalan, teh. Dhuri, distt. Sangrur
9.	Gurjeet Kaur, w/o Jagjit Singh	Village Ghanauri Kalan, teh. Dhuri, distt. Sangrur

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10. Kirandeep Kaur, w/o Bhupinder Kumar	Village Bugra, teh. Dhuri, distt. Sangrur
11. Neelam Kaur, w/o Prem Chand	Village Ladda, teh. Dhuri, distt. Sangrur
12. Parminder Kaur, w/o Tarlochan Singh	Village Kumbharwal, teh. Dhuri, distt. Sangrur
13. Sarabjit Kaur, w/o Balraj Singh	Village Fatehgarh Panjgraian, teh. Dhuri, distt. Sangrur

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It materially affected the result of election. He is guilty of committing Corrupt Practice with a view to get votes in the election. It is covered under Section 123 of Representation of People Act, 1951. Election stood vitiated and deserved to be quashed. True translated and photocopy of one such appointment letter is annexed as Annexure P-16.”

“24. That he distributed money among voters for their promises to vote for him, directly as well as through his agents with his consent in the presence of respectable village persons who stood surety on behalf of them. He promised to get constructed drains and many Pacca pavements, streets in case he is voted. He is guilty of committing Corrupt Practice with a view to get votes in the election. It is covered under Section 123 of Representation of People Act, 1951. Election stood vitiated and deserved to be set aside.”

“26. That Respondent Gobind Singh also paid cash at various places for getting votes as informed by respectables persons of that area namely Avtar Singh, s/o Shri Baldev Singh, Balbir Singh, s/o Budh Singh, both r/o V. & P.O. Ladda, Tehsil Dhuri, District Sangrur, Jaspal Singh, Sarpanch, Village Bir Mamgarh, Tehsil Malerkotla, District Sangrur and Ramzan Khan, Sarpanch, Village Jatewal, Tehsil Malerkotla, District Sangrur.”

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“30. That respondent with the active support of his supporters indulged in corrupt practice and offered bribery in the form of gift and promise to give cash to those under Section 123(1)A(b) and B(b). This also vitiated the election which has a material fact.”

(9) Apart from the aforementioned allegations, it has also been averred that speeches were delivered by the returned candidate, his supporters or agent with his consent at places promoting feeling of enmity and hatred between different classes of citizens on the ground of religion, caste and community. A reference has been made to various meetings which were allegedly held in Gurudwaras. In para 24 the election petitioner has asserted that the returned candidate is alleged to have distributed money amongst voters to secure their votes for himself directly as well as through his agent with his consent. There are numerous other allegations made in paragraph Nos. 27 and 28. However, no detailed reference to those allegations is being made for the reason that the election petitioner has confined her challenge to the corrupt practices under Section 123(1) of the Act.

(10) The stand of the returned candidate in his written statement has been divided into two portions. Firstly, numerous preliminary objections have been raised asserting that the election petition lacks material facts and particulars. The allegations are totally false, frivolous and scandalous in nature. It has been categorically asserted that no material facts of corrupt practice has been alleged in paragraph Nos. 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 of the petition, inasmuch as, no time, date and place has been mentioned in these paragraphs and, therefore, it has been prayed that these paragraphs are liable to be struck off from the pleadings. Allegation in the preliminary objections furthers that the election petitioner is inviting this Court to hold a fishing enquiry, which is impermissible and beyond the scope of election law. There are further allegation that two copies of the election petition has not been supplied, there is no proper verification in accordance with the provisions of the Act, Code of Civil Procedure and High Court Rules and Orders. The affidavit is also stated to be defective and is not in accordance with law. In the end it has been claimed that the election petitioner did not disclose any cause of action and the same was liable to be dismissed.

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(11) On merits, the case of the returned candidate is as follows :—

(12) It is asserted that he was a Cabinet Minister of Social Security, Women and Child Development Department. However, it is denied that he has ever committed any corrupt practice to win the support of voters. As a matter of fact, the returned candidate was denied the ticket by the party President of Akali Dal and the then Chief Minister Sardar Parkash Singh Badal and he (returned candidate) tendered his resignation as Cabinet Minister. Thereafter, he contested the election as an independent candidate. He has no role to play in preparation or revision of the electoral rolls, which are revised by the Election Commission, an independent statutory body, in accordance with the provisions of the Electoral Registration Rules, 1960 (for brevity 'the Rules'). The allegation of joining hands with the District Electoral Officer or the Sub Divisional Officer have been categorically denied. It has further been denied that there is any election or addition of names of voters at the instance of the returned candidate or that any help from the public servants in that regard was ever obtained. The averments of the election petitioner have been termed as 'a bundle of lie and scandalous'.

(13) With regard to the commission of corrupt practices or any other malpractice, the returned candidate has asserted that he has not indulged in any such practices. It would be appropriate to extract the reply contained in paragraph Nos. 17, 18, 19, 20, 21, 24, 26 and 30 of the written statement and the same is as under :—

"17. That in reply to Para No. 17 of the Election Petition it is submitted that the Replying Respondent was a Cabinet Minister in the Government of Shri Parkash Singh Badal, but the allegations regarding releasing old age pension between 25th January, 2003 to 11th February, 2002 by the Replying Respondent are totally wrong and vehemently denied. The Replying Respondent has resigned from the Punjab Cabinet and primary membership of the Shiromani Akali Dal on 12th January, 2002 when the Replying Respondent was denied the Ticket by Shri Parkash Singh Badal. There is no question of releasing the old age pension between 25th January, 2002 to 11th February, 2002 at the instance of Replying Respondent

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when the Replying Respondent was not even a minister at the relevant time as the Replying Respondent had already resigned from the Punjab Cabinet on 12th January, 2002. Moreover, the Replying Respondent does not himself sanction or release the old age pension. The old age pension is sanctioned at District level by the Additional Deputy Commissioner or the Sub Divisional Officer as the case of an applicant is processed by the committee constituted under the Old Age Pension Rules, 1996 and the Replying Respondent has no hands whatsoever in sanctioning or releasing of the old age pension. Hence the allegations levelled against the Replying Respondent in this para being false, frivolous and vexatious and are liable to be struck off.

18. That the averments made in Para No. 18 of the Election Petition are wrong and hence denied. The Replying Respondent had never misused his powers to get released the pension. The pensions are released as per the policy of the State Government by the Additional Deputy Commissioner or the Sub Division Officer, the cases of the applicants are approved by the committee constituted under the Punjab Old Age Pension Rules, 1996 and he pensions were released by the Additional Deputy Commissioner or the Sub Divisional Officer of the Sub Division and the Replying Respondent has no role whatsoever to play in releasing the pension. Hence there is no question of commission of corrupt practice by the Replying Respondent. The allegations levelled in this para are scandalous and vexatious. Hence the allegations levelled against the Replying Respondent in this para being false, frivolous and vexatious and are liable to be struck off.
19. That the allegations made in Para No. 19 of the Election petition are wrong and hence vehemently denied. The Replying Respondent is not directly connected with the sanctioning or releasing of the pension. The pensions are sanctioned by the concerned Additional Deputy Commissioner or the Sub Divisional Officer, the age is verified by the Chief Medical Officer on the basis of the



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documents and the antecedents of an applicant are verified by the Nambardar or the Panchayat. The Replying Respondent has no role at all in sanctioning or releasing of the pensions. Hence the allegations levelled in this para of sanctioning pension to ineligible persons against the Replying Respondent are totally wrong and hence vehemently denied. Moreover, the Replying Respondent has no knowledge when the pensions were sanctioned to under age persons. In any case the Replying Respondent is not at all involved in pension sanctioning process. Hence the allegations made against the Replying Respondent of corrupt practice are totally wrong, false, and frivolous and hence vehemently denied. Hence the allegations levelled against the Replying Respondent in this para being false, frivolous and vexatious and are liable to be struck off.

20. That Para No. 20 of the Election Petition is wrong and hence vehemently denied. The Replying Respondent had not himself sanctioned the pension much less to the persons mentioned in this para. The allegations of misusing the powers by the Replying Respondent are bundle of lie and hence vehemently denied. The Replying Respondent is neither a sanctioning authority nor he had sanctioned pension to any one. The pension to the old age persons, widows, handicapped persons are sanctioned throughout Punjab at District or Sub Division level by the respective Additional Deputy Commissioners or sub Divisional Officers after their cases are duly verified by the Committee constituted under the Rules and there is no question of Replying Respondent committing any corrupt practice as Replying Respondent has no role to play whatsoever in sanctioning the pension. Hence the allegations levelled against the Replying Respondent in this para being false, frivolous and vexatious and are liable to be struck off.
21. That the allegations made in Para No. 21 of the Election Petition are wrong and hence vehemently denied. The Replying Respondent has never misused his powers in employing any Anganwari Workers. The Anganwari Workers were appointed at the Block levels by a Section

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Committee which is consisting of a program Officer as Chairman and including a C.D.P.O. of concerned Block, one C.D.P.O. of the adjoining Block and the Senior Medical Officer. The Replying Respondent has no role to play whatsoever, in employing the Anganwari Workers. The Replying Respondent has not appointed even a single Anganwari worker throughout of Punjab what to talk of appointing Anganwari Workers in Sher Pur constituency. The allegations against the Replying Respondent of appointing Anganwari Workers are wrong and hence vehemently denied. The Anganwari Workers belonging to the area concerned are appointed by the duly constituted committee at Block level and the Replying Respondent has no authority whatsoever in appointing the Anganwari Workers. Not even a single person of the list mentioned in this Para has any connection with the Replying Respondent and the allegations of their appointment levelled against the Replying Respondent are wrong and vehemently denied. Hence this Para of the Election Petition is liable to be struck off.”

“24. That Para No. 24 of the Election Petition is wrong and hence vehemently denied. No money whatsoever was ever distributed by the Replying Respondent or his agents to allure the voters. The material facts regarding date and time of distributing money and making promises is missing. The allegations are totally false and frivolous. Hence the averments made in this para are liable to be struck off.”

“26. That the allegations made in Para No. 26 of the Election petition are totally wrong, false and hence vehemently denied. The Replying Respondent had not paid any cash at any place for getting votes. The persons mentioned in this para are the supporters of the petitioner. No time, date and place has been mentioned when the Replying Respondent has paid the cash. The allegation made in this para lacks material facts and particulars and are liable to be struck off.”

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“30. That para No. 30 of the election Petition is wrong and hence vehemently denied. The Replying Respondent has not offered any bribery or distributed cash any one and has not committed any corrupt practice. Hence the allegations levelled against the Replying Respondent are totally wrong, false, frivolous and vexatious and are liable to be struck off.”

(14) The election petitioner filed a replication reiterating her allegations. However, it is pertinent to mention that the assertion made by the returned candidate that he was no longer a Cabinet Minister and resigned on 12th January, 2002 from the Cabinet as well as primary membership of Shiromani Akali Dal have not been controverted in paragraph Nos. 17 to 21 in replication.

(15) After perusing the pleadings of the parties and hearing their learned counsel, preliminary issues were framed on 16th January, 2003. The other issues were framed on 17th April, 2004 and the same read as under :—

**Issues framed on 16th January, 2003 :—**

- “1. Whether the Election Petition lacks material facts and material particulars and does not disclose any cause of action. If so, its effects ? OPR
2. Whether the true copy of the Election Petition has not been supplied to the respondent as required under the provisions of Representation of People Act, 1951. If so, its effect ? OPR
3. Whether the Election Petition has not been properly verified as per provisions of Representation of People Act, 1951, the High Court Rules and Orders and the Code of Civil Procedure. If so, its effects. ? OPR
4. Whether the affidavit in support of Election Petition regarding allegations of corrupt practice has not been verified in accordance with the provisions of Representation of People Act, 1951. If so, its effects ?”

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**Issues framed on 17th April, 2004 :—**

- “5. Whether the respondent is guilty of corrupt practices committed by him or with his consent as enumerated in paras Nos. 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 which materially affected the result of election and his election deserves to be set-aside.
6. Whether any corrupt practice (bribery, offer any gift or money as a reward to an Elector for having voted or refrain from voting, gives a gratification to any person with the object of inducing him to exercise any other Elector right) has been committed by returned candidate or his election agent or any other person with the consent of a returned candidate or his election agent under Section 123 of the Representation of the People Act, 1951?
7. Whether disbursement of money under the pretext of old age pension etc. between the day of nomination and polling day by the returned candidate or by his consent by other persons through department of Social Security women and Child Development, of which he was a minister, to induce the electors in his constituency to vote for him, amounts to a corrupt practice under Section 100(1)(b) ?
8. Whether a large number of voters names have been deleted from the electoral rolls without any procedure by the officials in connivance with and at the behest/consent of the returned candidate ?
9. Whether the returned candidate himself or on his behalf or with his consent, large number of fresh appointments as Anganwari workers were issued for specific period, by the department of Social Security Women and Child Development to induce the voters in his constituency to vote for him and thus committed a corrupt practice under the Act ?”

**Oral Evidence :**

(16) It is worthwhile to point out that eventually the petitioner has confined his challenge to the election of the returned candidate on the ground of corrupt practices as envisaged by Section

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123(1) read with Section 100(1)(b) of the Act. According to the afore-mentioned provision 'bribery' has been considered to be a corrupt practice i.e. any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly inducing him to vote or refrain from voting at an election or as a reward to an election for having voted or refrain from voting. Therefore, the whole analysis of oral and documentary evidence has to be in the light of the aforementioned issue which in fact are issue Nos. 5, 6, 7 and 9.

(17) It has already been noticed that the last date for making the nomination was 23rd January, 2002 and for withdrawal was 28th January, 2002. Therefore, any act done before 23rd January, 2002 has to be ignored for the purposes of concluding as to whether it amounted to a corrupt practice within the meaning of Section 123(1) read with Section 100(1)(b) of the Act.

(18) The salient features of oral evidence produced by the petitioner may now be noticed, which are as under :

(19) Smt. Paramjit Kaur, PW 1, Child Development Project Officer, Dhuri has produced the record of old age pension of voters of Sherpur constituency in respect of 12 villages. The record pertains to January/February, 2002 and the same has been exhibited as PW-1/1 to PW-1/45. In her statement she has deposed that old age pension is given to the males of 65 years and females of 60 years. According to her an application has to be submitted to the Child Development Project Officer for the afore-mentioned purpose and the same is forwarded to the Sub Divisional Magistrate who is the sanctioning authority. The Pension letters are issued after the sanction is accorded by the Sub Divisional Magistrate. The attention of the witness was drawn to the words (Parwan) written in the Punjabi script which in English means 'approved'. Underneath the words 'Parwan' there are signatures of Gobind Singh. The witness has testified that the word is there but she expressed here inability to recognise the signatures underneath the afore-mentioned words. Such words have appeared in all the applications Exs. PW-1/1 to PW-1/45. She has stated that a Minister is not directly involved in sanctioning the old age pension and if an applicant is not eligible and does not fulfill the

requirement of getting pension then even on the asking of the Minister such a person cannot be granted pension. She has admitted familiarity with the returned candidate as she had been meeting him as a Minister in the Official meetings. She has also stated that returned candidate had resigned from Shiromani Akali Dal Ministry to contest the election from the constituency as an independent candidate. She also produced 24 applications of various candidates who sought appointment as Anganwari Workers, which have been exhibited as Exs. PW-1/46 to PW-1/70 and it has signatures identical to the one on Exs. PW-1/1 to PW-1/45. It has been noted in Punjabi language that 'the prayer made has been accepted, be adjusted'. When the attention of the witness was drawn to the portion mark "B" on Ex. PW-1/70, she has also stated that Anganwadi Workers were given appointments till 2002 and thereafter their appointments were discontinued and the orders passed by the authorities discontinuing them have been upheld by the Hon'ble High Court. In her cross-examination with regard to the appointment of Anganwari Workers she stated that she was not posted at Dhuri (which covers the constituency in question) when these appointments were made. A selection committee on the basis of the instructions issued in the year 1988, was constituted. The Child Development Project Officer as well as the Senior Medical Officer used to be the members. The Anganwadi workers are required to be selected from the village or at the most from the adjoining village. No MLA or Minister was the member of the Selection Committee. She has given details of marks to be allocated in the interview. The witness was confronted with instructions dated 31st May, 2000 to show the allocation of marks for various qualifications and the document was taken on record as Ex.PW-1/71. She has candidly accepted that all applicants were appointed before 11th November, 2001 and no one was appointed thereafter.

(20) Shri Devinder Kumar, PW-2, Superintendent Social Security in the office of District Programme Office, Sangrur has produced the judgements of the High Court, which have been exhibited as Exs. PW-2/1 to PW-2/11. He conceded in the cross-examination that appointment letters were in respect of the whole district of Sangrur and not of Sherpur constituency alone and the orders did not have the signatures of the returned candidate. He also accepted in his cross-examination that on 12th January, 2002, the returned

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candidate resigned from the Shiromani Akali Dal Ministry who used to be the Social Security Minister and the appointment orders are upto November, 2001 and not thereafter.

(21) The statements of PW-3 Gurnam Singh Gill, the then Sub Divisional Magistrate, Dhuri and PW-8 Shri Gurlavleen Singh Sidhu, D.T.O. Sangrur, pertains to the electoral rolls and the deletion or additions made therein. As the issue afore-mentioned has not been pressed there is no necessity to make a detailed reference to the statement of these witnesses.

(22) PW-4, Shri N.K. Kapur, Assistant Manager, State Bank of Patiala, Ghanauri Kalan has produced on record the original ledger and photo copies of samples from the original ledger in respect of 84 persons belonging to village Ghanauri Kalan and Ghanauri Khurd. The afore-mentioned documents have been exhibited as Exs. PW-4/1 to PW-4/84. The witness has stated that no other amount could be credited in these accounts except the pension received by the person concerned from the Social Security Department. In his cross-examination, the witness has stated that those accounts were opened on 7th September, 2001, 6th August, 2001 and on some other dates. The witness further stated that it was not possible for him to state whether any deposit was made in the accounts opened in the year 2002 and in one of the accounts no transaction has been recorded showing any credit. In another account opened on 25th February, 2002 there are some transactions. The witness denied the opening of account by him or the procedure for releasing the pension or personal knowledge about the identity of any of the 84 persons.

(23) PW-5 is Shri Satish Kapur son of Shri Sohan Lal Kapur, District Social Security Officer, Sangrur. This witness has stated that pension was released from November, 2001 to March, 2002 and the payments have been made from August, 2001 to February, 2002. He has produced copies of compilation made from originals as well as the original themselves. Copies of the same are Exs. PW-5/1 to PW-5/8. According to the witness an amount of Rs. 200 p.m. as pension is released to a pensioner through a Coordinate Bank. He showed his inability to explain as to who has sanctioned the pension by stating that he was not posted at Sangrur. The compilation placed on record has been duly certified by the District Social Welfare Officer, Sangrur.

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(24) PW-6 Jagmail Singh, C.W.P.O. Block Malerkotla-II, has produced 92 applications in respect of pension out of which 86 belong to old age pension, 5 of handicapped and only 1 belongs to widow category. These applications were submitted before July, 2001 as has been admitted by the witness himself. Similar is the position with regard to pension record pertaining to the year 2001 which has been produced by PW-7 Pritpal Singh, C.P.D.O. Block Sherpur.

(25) The statement of PW-9 Ram Singh, resident of village Ghanauri, who is a Tailor-master in the village, is significant because this witness has stated that on 11th February, 2002 the returned candidate has called every one by public announcement on the loudspeaker to come and it was promised that the returned candidate would get the pension paid to all of them. The gathering was called at Dhuriwala Darbaza, Ghanari where langer was also arranged and entries of Rs. 600 and Rs. 800 were made. Significantly the witness stated that he was also given a sum of Rs. 1,200 by Gobind Singh Kanjhla, the returned candidate. In the cross-examination the witness conceded that earlier he never voted for a candidate after accepting the money except during that election. No other candidate had offered him money in return for his vote. He accepted that he knew that casting vote in consideration of money is a crime even then he accepted Rs. 1,200. He, however, stated that he was not aware that he could be prosecuted and sentenced and that he never reported the distribution of money by the returned candidate to any one. He also accepted that an amount of Rs. 1,200 was given to him as pension but he did not disclose this fact to any one. However, he disclosed this fact to Bibi Harchand Kaur, after about a month of the election and also expressed his desire to appear as a witness. The suggestion that he has deposed against the returned candidate with regard to distribution of money on 11th February, 2002 and 12th February, 2002, has been denied. Nothing useful was extracted despite subjecting the witness to detailed examination.

(26) To the same effect is the statement of PW-10 Jaspal Singh, who is an agriculturist and has stated that the returned candidate had filled up the form of pension in respect of Karamjit Kaur, which was duly signed by the witness as well. The pension forms were filled on 12th February, 2002, Opposite State Bank of India, Sandhaur Branch, at about 6.30 to 7.00 P.M. at his village.



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The Minister used to call the ladies and make entries in the pension pass book from Rs. 200 to Rs. 600. The witness also stated that the payment used to be made in cash. He identified the signatures of the returned candidate on Exs. PW-1/1 and PW-1/3, which are in green ink. The witness further deposed that signatures on other documents like Exs. PW-1/1 to PW-1/45 and Exs. PW-6/1 and PW-7/1 are of the returned candidate. In the cross-examination, he accepted that the returned candidate had resigned from the Shiromani Akali Dal as well as the office of Minister on 12th January, 2002. The witness admitted in his cross-examination that he is currently supporter of congress party and also stated that he has been attesting applications for fee concession and admission forms as well as old age forms for pension in his capacity as Sarpanch. He deposed that the returned candidate although was no longer a Minister but yet he was acting like a Minister. His signatures were sometimes taken on the application form for old age pension forcibly by the returned candidate although he did not report the matter either to the Police, Deputy Commissioner, Sub Divisional Magistrate or any one else. He has further stated that he reported the matter to the election petitioner Bibi Harchand Kaur. He also failed to report the matter to any quarter with regard to payment of Rs. 200 to Rs. 600 as it is a usual phenomenon and the persons mighty like the returned candidate could do anything. The witness also stated that the returned candidate won by a margin of 10,000 votes but by making the payment of cash amount. He denied any relationship with the returned candidate or having worked with him or having ever been his class fellow. The cross-examination with regard to payment of cash is confined only to the following effect :—

“.....I also did not report the matter with regard to payment of certain amount of Rs. 200 to Rs. 600 to any quarter as it is a usual phenomena. Although I am aware that acceptance of monetary consideration and cash is a crime, yet those who are mighty can do everything.....”

The aforementioned cross-examination shows that no question has been put to the witness that the returned candidate did not in fact made cash payment amounting to Rs. 200 to Rs. 600 to the voters in the village. The witness had denied the suggestion about the distribution of the cash amount as incorrect and has also pointed out that the returned candidate had won on account of making payment of cash.

(27) Another significant statement has been made by PW-11 Davinder Singh, resident of Gathala (Kuthala), Tehsil Malerkotla. This witness stated that the returned candidate visited his village on 7th January, 2002 and 2nd time on 10th February, 2002 when he was to attend the bhog of Akhand Path Sahib which was kept by one Gurmel Singh Zimindar. On 7th January, 2002, the returned candidate opened account of various persons and distributed the pass books concerning pension, which included old age pension and handicapped pension. On 10th February, 2002, an announcement was made on the loudspeaker inviting the villagers to collect the pension. Rs. 500 each in the form of pension was given to various persons. He had exhorted the voters to cast their votes in his favour and their pension would be doubled. In an answer to the question in cross-examination the witness replied that he did not support any party although his wife was granted ticket for Gram Samiti Elections by the Congress Party. He conceded that the election petitioner has helped his wife during the election and she secured ticket for her. However, he denied the suggestion that he was helped by the election petitioner in obtaining the Congress ticket and winning the election. The witness has also conceded that he or his wife did not get any money in lieu of pension on 10th February, 2002. No complaint or intimation was sent to any higher authority like Deputy Commissioner, Sub Divisional Magistrate or B.D.P.O. The suggestion of making a false statement being from Congress Party has been denied. This witness has also stated that he has come to the Court from his village in his own Maruti Car. The witness categorically stated that he was present at the time of distribution of cash in the form of pension although no money has been paid to him or to his wife.

(28) At the end, Harchand Kaur, election petitioner appeared as her own witness as PW-12. It was stated on behalf of the returned candidate that contents of paras 1 to 10 of the election petition were admitted because these paras pertain to factual position concerning reserve constituency, date of election, nominations, withdrawal, counting and result of election etc. The petitioner deposed that the returned candidate has released the pension to various villagers on 12th February, 2002, which amounted to Rs. 1,200 to 1,300, a day before the election. He had opened false accounts after issuance of notification on 26th December, 2001 by

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holding false promises to the voters that he was to continue as a Minister. He distributed the amount of pension to the voters and also threatened them. The witness has pointed out that contents of paras 11 to 17 of the petition, where names of 16 persons have been disclosed with the allegation that they have been paid Rs. 1,000 and Rs. 800 with the intention to bribe them in lieu of casting votes in favour of the returned candidate, are correct. According to the witness pension was released to all those persons who were not eligible. She named Sant Singh, Kartar Singh, Kartar Kaur, Raja Singh and various other names which have been mentioned in the petition. He had released pension of Rs. 500 to Rs. 700 as the returned candidate yielded considerable influence upon the local officers including Deputy Commissioner and Senior Superintendent of Police. After the election those persons did not get any pension. Anganwadi workers were appointed by the returned candidate with his influence but they were removed from the service on 28th February, 2002 after the declaration of the result. The witness has further alleged that the returned candidate used to move in a *carvan* (convoy) of 12 vehicles, which included red light vehicles in order to create an impression that he was continuing as a Minister. The witness has mentioned that Rs. 200 p.m. is the old age pension which could be released but contrary to the instructions, the returned candidate has been releasing pension to the tune of Rs. 1,200 to 1,300. The witness identified the signatures of the returned candidate on documents, namely, Exs. P-1/1 to PW-1/45, which reveal that all the pensions have been sanctioned by the returned candidate at his own level without following any procedure from November, 2001 to February, 2002. According to the witness, the release of pension has materially affected the election because the voters who have been paid Rs. 1,200 to Rs. 1,600 has believed that they would continue to get higher amount in future and such a voter could have hardly voted for the election petitioner. She has made a reference to the enquiry made by the Vigilance Department. In the cross-examination, the witness conceded that she was defeated by 11,000 votes and was relegated to third position and Piara Singh was at number 2 position. The witness has mentioned that for release of pension there is a different procedure prescribed and after the application is submitted the same is referred to the Sarpanch for verification and in case of old

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age pension, a doctor has to certify the age of the applicant. Thereafter the form is forwarded to the District Welfare Officer. In case the applicant own land, the matter is referred for verification to Patwari and the pension can be denied in such cases. She has alleged that pension has been sanctioned to those who are owners of huge land. She has also deposed with regard to the procedure prescribed for appointment of Anganwadi workers and in violation thereof the returned candidate has appointed Anganwari workers directly. All those workers have been thrown out of service on 28th February, 2002 merely two weeks after the election, and they have been rendered jobless. She has denied any relationship with the returned candidate or that she is having visiting terms with him. She has also denied that any of her relations are on visiting terms with him. She reiterated the averments made in the election petition that the returned candidate had allured the voters and have threatened them. She also accepted as true that the returned candidate made inflammatory speeches imputing attack on the Golden Temple to Congress. No complaint with regard to the illegalities committed by the returned candidate in respect of Anganwadi Workers or release of pension was made to any body because no body would have considered such a complaint. The witness further conceded that she had never gone to the returned candidate for release of pension or for appointment of any Anganwadi Worker and for attending any public meeting held by him. She also accepted that no complaint with regard to distribution of pension to various persons as mentioned in paras 17 to 19 was made. The position is the same with regard to those persons whose names are mentioned in para 2. The witness has further deposed that there was no question of filing any complaint to the police that the returned candidate used to go to rally with 12 vehicles as the returned candidate used to slap even police personnel. On account of the clout enjoyed by the returned candidate no grievance addressed by the petitioner would have been heard. No one would file a complaint as the whole area was terrified and they used to close their doors when the returned candidate was to visit. The witness has denied the suggestion that she could not identify the signatures of Gobind Singh Kanjhla as she had been seeing him signing or that he had not threatened the voters or that Anganwadi workers had not been appointed in accordance with the procedure or that the returned candidate was not competent to release pension.

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(29) In his statement, while appearing as RW-1, Gobind Singh Kanjhla—returned candidate, has stated that he tendered his resignation on 12th January, 2002 as a Cabinet Minister and resigned from the primary membership of the Shiromani Akali Dal because he was not allotted the Akali Dal Ticket from the Sherpur constituency. He contested the election as an independent candidate and defeated the election petitioner alongwith the candidate fielded by the Shiromani Akali Dal. He further stated that he did not spend any amount on the election and the expenses were borne by the people. He, however, conceded that he has filed return of expenses to the Election Commissioner. The vehicles for election campaign were provided by the people and he did not deliver any speech or public address from any Gurdwara or Mandir. With regard to the disbursement of pension, the witness stated that every effort used to be made that pension was not disbursed to those who did not fall within the parameters of the policy. The application used to be processed through a proper channel and only after finding out that the applicant is covered by the policy the pension used to be given. No pension could be given until and unless the applicant fulfilled the conditions of the policy and the rules. He denied that Aganwari workers were appointed without due procedure who are paid honorarium of Rs. 500 to Rs. 700. He also denied that any amount was paid by him on the day of election or before the day of election. During cross-examination, the witness has stated that the whole security alongwith the escort cars were withdrawn immediately after he resigned as a Minister and the security which used to accompany him during the election champion is usually provided to every candidate. He further denied the registration of any criminal case against him after he joined politics. However, he conceded that a false case was registered against him by one Sat Pal Sharma, who was the Central Superintendent, Government High Court, Kanjala, on 13th March, 1994 under Section 353/186/332 and 506 IPC. He was not able to disclose his date of acquittal in the criminal case nor he had the copy of the order. He also conceded the filing of criminal complaint by Charanjit Singh of Ganda Singh Wala. He denied having never demanded any commission from the grants released to the Gram Panchayats. The witness has accepted that

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the signatures on Exs. PW-1/1 to PW-1/45 are in his hand. The witness stated that merely writing a note on the form for pension would not bind the subordinate to release the pension which is subject to further rules and regulations. He also accepted that documents Exs. PW-1/46 to PW-1/70 are correct. He has also accepted the noting thereon. According to the witness, the recommendations made are not final but a committee is always constituted which comprised of various officers to make the recommendation final. He accepted that he would recommend on the application whenever any one would approach him for the pension. When the witness was confronted with Exs. PW-4/1 to PW-4/84, which are copies of the ledger reflecting the pension maintained by the Social Welfare Department as well as the State Bank of Patiala, then the learned counsel for the candidate objected to the afore-mentioned course by stating that the record did not in any way relates to the returned candidate. The witness conceded that the amount of pension given to old age person is Rs. 200 p.m. He also conceded that during the period from 25th January, 2002 to 13th February, 2002, a number of persons have been given pension to the tune of Rs. 800 to Rs. 1,200. He also accepted his signatures on Exs. PW-6/1 to PW-6/92 by explaining that there was not even a single applicant who would be ineligible because proper procedure for grant of pension to the old age persons has been followed. He also admitted that there is no one who is getting the pension without his approval which did not mean finality as the applicant was to go through a proper procedure. He conceded that position is the same with regard to documents Exs. PW-7/1 to Ex. PW-7/6. He denied the suggestion that in a public meeting on 11th February, 2002 at Dhuriwala Darwaza at Ghanauri Kalan he has distributed currency notes to the voters to secure their votes. He further denied that similar meeting was held on 12th February, 2002 where he distributed currency notes to purchase votes. He further denied the suggestion that he distributed cash in lieu of pension to the people but no entries have been made to that effect. He clarified that pension is always paid through the bank and not distributed personally. Even in respect of village Kothala, he denied the suggestion of distributing currency notes or pension.

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**Documents Produced :**

(30) The election petitioner produced large number of documents and certified copy of the FIR was produced by the returned candidate. The details of documents which were produced during the trial is as under :—

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Sr. No.	Exh. No.	Particulars
1.	Exs. PW-1/1 to PW-1/45	45 forms regarding disbursement of pension to the old age pension of voters of Sherpur constituency during January/February, 2002. Exhibited by PW-1 Smt. Paramjit Kaur.
2.	Mark "A"	All the letters of pension word 'approved' (parwan) has been recorded, which is evident from the portion, marked by PW-1 Smt. Paramjit Kaur.
3.	Ex. PW-1/2	Stamp of the Social Security Minister. Exhibited by PW-1 Smt. Paramjit Kaur.
4.	Exs. PW-1/46 to PW-1/70	24 applications for appointment as Anganwari workers in respect of the period January/February, 2002. Exhibited by PW-1 Smt. Paramjit Kaur.
5.	Mark "B"	The form discloses in Punjabi language 'prayer has been accepted be adjusted', which is evident from the portion, marked by PW-1 Smt. Paramjit Kaur.
6.	Ex. PW-1/71	An extract of instructions dated 31st May, 2000, which gives different description of marks allocation for various qualifications.

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7. Ex.PW-2/1 to Ex. PW-2/11 11 judgements of High Court. Exhibited by PW-2 Shri Devinder Kumar
  8. Ex.PW-4/1 to Ex.PW-4/84 Photo copies of samples from original ledger concerning 84 persons belonging to villages Ghanauri Kalan and Ghanauri Khurd, duly certified by the Manager, State Bank of Patiala, VPO Ghanauri Kalan. Exhibited by PW-4 Shri N. K. Kapur.
  9. Ex.PW-5/1 to Ex. PW-5/8 Record concerning 84 pensioners belonging to villages Ghanauri Kalan and Ghanauri Khur duly attested by the District Social Security Officer, Sangrur. Exhibited by PW-5 Shri Satish Kapur.
  10. Ex.PW-6/1 to Ex.PW-6/93 Record concerning to 92 original applications, out of which 86 belong to old age pension, one belongs to widow category and another 5 belong to handicapped. Exhibited by PW-6 Shri Jagmail Singh.
  11. Mark PW-7/1 to PW-7/6 Record containing 6 original files regarding pension in respect of Sherpur Block, village wise i.e. village Gurbaxpura—73 cases, village Katraon—100 cases, village Alal—26 cases, village Bari Khurd—63 cases and village Ghanaur Khurd-78 cases. Marked by PW-7 Shri Pritpal Singh.



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12.	Ex. RW-1/1	Certified copy of the FIR Exhibited by RW-1 Shri Gobind Singh Kanjla.
13.	Mark "X"	Photostat copy of complaint No. 7273/2001, filed by Charanjit Singh, Sarpanch of Ganda Singh Wala, Sangrur against Shri Gobind Singh Kanjla. Marked by RW-1 Shri Gobind Singh Kanjla.

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**Arguments :**

(31) Mr. R.S. Bains, learned counsel for the election petitioner has argued that there is ample evidence on record to prove the corrupt practice committed by the returned candidate, which is covered by Section 123(1)A read with Section 100(1)(b) of the Act. According to the learned counsel, a perusal of paragraph 18 of the election petition read with statements of PW-4, PW-10, PW-11, PW-9 and PW-12 would establish that amount of rupees 200, 400, 600 and 800 was disbursed to various voters in the form of pension between 26th December, 2001 to 13th February, 2002. Learned counsel has maintained that the rate of pension is Rs. 200 as per the statement made by PW-5 and disbursement of Rs. 400, 600, and 800 has been made during the crucial period i.e. 25th January, 2002 to 11th February, 2002 in the pass-books of numerous voters as is evident from Exs. PW-4/1 to PW-4/84. He has also drawn my attention to various pension forms and pass-books to show that the returned candidate by exercising his official position has sanctioned pension under his own signature before the issuance of election programme in April, May, June and July, 2001 and in fact disbursed the pension only during 25th January, 2002 to 11th February, 2002 so as to influence the voters. He has also made a reference to the statement of PW-10 to argue that his statement establishes that the amount was deposited on the asking of the returned candidate. Reliance has also been made to the similar statements of PW-11, PW-12 and PW-9. In support of his submission, the learned counsel has placed reliance on para 9 of the judgment of the Supreme Court in the case of **R. Puthunainaralithan versus Ph. Pandian (1)**, to argue that

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the trial of an election petition might be more like a trial in criminal case and the burden to prove corrupt practice is on the election petitioner. The doctrine of preponderance of probabilities in a civil action is not a substitute for a proof of corrupt practice in an election petition, however, the accused cannot always maintain silence and in a criminal trial the accused need not lead any defence evidence. In the election petition once an election petitioner has adduced evidence to prove that the returned candidate had committed corrupt practice, the burden shifted to the returned candidate to rebut the evidence. Learned counsel then referred to para Nos. 5, 6 and 13 of another judgment of the Supreme Court in **Rajendra Prasad Jain versus Sheel Bhadra Yajee Ana, (2)**, and the judgment in the case of **Ram Sharan Yadav versus Thakur Muneshwar Nath Singh and others, (3)**, to argue that oral evidence can also constitute the basis for concluding the commission of corrupt practice. Making reference to paragraphs 53, 63 and 64 of another judgment of the Supreme Court in the case of **S. Harcharan Singh versus S. Sajjan Singh and others, (4)**, learned counsel has argued that despite the deficiency in pleadings, the Supreme Court has accepted the commission of corrupt practices. For the same proportions, learned counsel has placed reliance on the judgment of the Supreme Court in the case of **Ram Swarup Verma versus Onkar Nath, (5)**, **Jagir Singh versus Jasdev Singh, (6)**, **Partap Singh versus Rajinder Singh, (7)**, and **Umed versus Raj Singh, (8)**.

(32) Mr. K.S. Sidhu, learned counsel for the returned candidate has pointed out that in paragraph 17 of the written statement filed by the returned candidate it has been categorically stated that the returned candidate had resigned as Cabinet Minister from the Ministry of Sardar Parkash Singh Badal and also gave up preliminary membership of the Shiromani Akali Dal on 12th January, 2002 and, therefore, he submitted his nomination papers on 23rd January, 2002. He has maintained that despite categorical assertion in paragraph 17

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(2) AIR 1967 S.C. 1445

(3) (1984) 4 S.C.C. 649

(4) (1985) 1 S.C.C. 370

(5) (1970) 3 S.C.C. 783

(6) AIR 1975 S.C. 1627

(7) AIR 1975 S.C. 1045

(8) AIR 1970 S.C. 43

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of the written statement, there is no indication in the replication either in paragraph 17 or in any other paragraph that in fact he continued to be the Minister nor any document has been produced to prove the allegation that the returned candidate had exercised his influence as Cabinet Minister for distributing pension to the voters of his constituency or exerted influence on the officials for the aforementioned purpose. Learned counsel has further pointed out that even a suggestion was not given to the returned candidate when he appeared as his own witness as RW-1. Learned counsel has drawn my attention to the statement made by the official witness PW-1, who has pointed out that Minister has no role in the grant of pension to the voters. Learned counsel has also drawn my attention to Exs. PW-1/1 to PW-1/45 to argue that recommendations were made in April to August, 2001 and even the pass-books PW-4/1 to PW-4/85 would show that the accounts were opened in July/August, 2001. Learned counsel has then drawn my attention to the statement of PW-5, who had stated that he did not know as to who had sanctioned the pension and Shri Jagmail Singh, PW-6, could not even recognise the signatures of the returned candidate when confronted by the election petitioner. Similar is the position with regard to statement of Shri Pritpal Singh, PW-7, C.D.P.O. Learned counsel has then referred to the statements made by PW-7 and PW-2, who had deposed that the returned candidate had resigned as Minister and member of the Shiromani Akali Dal.

(33) On the basis of the pleadings and the evidence, learned counsel for the returned candidate has argued that there is not even an iota of evidence produced on record showing that the returned candidate has released pension. The recommendations made by him as a political worker somewhere in April to August were not binding on the officers, who were required to process the pension forms in accordance with rules and depending on the eligibility of a candidate, the pension used to be released. In any case, the returned candidate has not indulged in corrupt practice, which may be covered by Section 123(1)A of the Act.

(34) Learned counsel for the returned candidate has then argued that in the absence of any cogent evidence the Will of the electorates should not be lightly set at naught because the standard of proof required to prove a corrupt practice in an election petition is equivalent to that of a criminal trial. For the aforementioned proposition,

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the learned counsel has placed reliance on a judgement of the Supreme Court in the case of **Shivajirao B. Patil versus Vilasrao D. Deshmukh**, (9). For the same proposition he has also placed reliance on other judgments of the Supreme Court in the case of **Ananga Uday Singh Deo versus Ranga Nath Mishra & Others** (10), **Harsh Kumar versus Bhagwan Sahai Rawat & others** (11), and **P.H. Pandian versus Veldurai & another** (12).

(35) Having heard detailed arguments, purusing the statement of witness as well as documents produced on record, I now proceed to record my finding on issue Nos. 5,6,7 and 9. The afore-mentioned issues principally deal with the allegations of 'corrupt practice' as envisaged by S.123(1A) read with Section 100(1)(b) of the Act.

(36) In paras 17 to 21 which have already been extracted in preceding paras of this judgment, there are specific allegations made by the election petitioner against the returned candidate that he misused his power by getting the old age pension released between 25th January, 2002 to 11th February, 2002. It has also been alleged that pension was got released to 27856 persons in Sherpur constituency with the object of advancing the election prospectus of the returned candidate. There are allegations that many of the beneficiaries were not legally entitled to receive the pension and that respondent No.2 was not himself entitled to pass orders for releasing pension which was required to be done by the Deputy Commissioner, concerned. In para 21 there are further allegations of procuring appointments by the returned candidate in favour of a number of women of the constituency as Aganwari workers upto 28th February, 2002 in order to advance the election prospectus of the returned candidate. In para 24 of the election petition, the allegations of distributing cash amongst the voters to secure their votes in favour of the returned candidate directly as well as through his agent with his consent has also been levelled.

(37) In the corresponding para, the reply is that the returned candidate had no role in sanctioning or releasing the pension. He has

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(9) JT 1999 (9) S.C. 448

(10) JT 2001 (8) S.C. 574

(11) JT 2003 (8) S.C. 104

(12) JT 2001 (9) S.C. 10

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repeated his assertion in categorical terms in para 17, 19 and 20. The relevant portion of the reply of para 17 is reproduced hereunder :

“Moreover, the replying respondent does not himself sanction or release the old age pension. The old age pension is sanctioned at District level by the Additional Deputy Commissioner or the Sub Divisional Officer as the case of an applicant is processed by the committee constituted under the Old Age Pension Rules, 1996 and the replying respondent, has no hands whatsoever in sanctioning or releasing of the old age pension. Hence the allegations levelled against the replying respondent in this para being false frivolous and vexatious and are liable to be struck off.”

(38) The respondent has also denied to have obtained any help in making the appointments of Anganwari workers and that he or his agent distributed any cash to allure the voters to vote for him.

(39) The election petitioner has produced on record Exs.PW-1/1 to Ex.PW-1/45, which are original applications for old age pension of the area of Dulma (Tehsil Malkerotla) and village Gurbaxpura and Exs. PW-1/46 Exs.PW-1/70. The first set of exhibits are the applications for grant of pension and the second set of applications is for appointment as Anganwadi workers. These documents were produced by the official witness, namely, Paramjit Kaur(PW-1) who is Child Development Project Officer, Dhuri. The returned candidate when appeared as his own witness as RW-1, was confronted with Exs. PW-1/1 to PW-1/45 and his attention was pointedly drawn to signatures and nothing in green ink. He candidly admitted his signatures on these documents with the noting approved ('Parvan'). According to the noting the expression 'parwan' (approved) in Punjabi script has been written alongwith the signatures of the witness. It clearly shows that the returned candidate himself used to grant approval to the pension as a Cabinet Minister. When he has approved grant of pension then there was no question of refusing the same by any subordinate staff. The picture which emerges is directly contrary to the stand taken by the returned candidate in various paras of his written statement. It is also worth while to point out that Exs. PW-1/46 to PW-1/70 have also been produced which are applications for appointment as Anganwadi workers. On Ex. PW-1/70, the returned candidate has

accepted his noting and signatures giving appointment to one Jaspal Kaur as Anganwadi Worker. The noting shows that 'the application is accepted and be adjusted'. It also shows that the returned candidate has been appointing Anganwadi workers under his own signatures in his capacity as Minister of Socail Security, Development of Women and Children. The afore-mentioned fact also demolishes the stand of the responent-turned candidate as disclosed in para 21 of his written statement. The credibility of the returned candidate in the witness box has been further eroded when he made incorrect statement about the forfeiture of the security deposits of the election petitioner, portion of which has been marked as "X" on the file. During cross-examination when his attention was drawn then he accepted that it is a matter of record. The witness has categorically deposed, as is clear from the portion marked as "Y" that there was no criminal case registered against him after he joined politics. However, on the question posed during the cross-examination posed during the cross-examination, he accepted that a police case was registered at the instance of one Sat Pal Sharma, who was Central Superintendent, Government High School, Kanjla, in 1994 under Section s 353/186/332 and 506 IPC. He also accepted that a criminal complaint was filed against him by the Sarpanch Charanjit Singh of Ganda Singh Wala, which was eventually taken up by the Human Rights Commission. The aforementioned discussion shows that the returned candidate is unworthy of his credit as he has taken a false stand in the written statement and he has told lies in the witness box. In this backdrop the critical question is whether the acts of the returned candidate in respect of distribution of cash amount in the name of person, releasing or making the entries in the pass books in respect of pension and the appointment of Anganwadi workers constitute 'corrupt practice' within the provisions of Section 123(1A) of the Act.

(40) In support of the allegations, the election petitioner has produced the oral as well as documentary evidence. PW-9 Ram Singh is a Tailor-master and a handicapped person. He is a resident of village Ghanauri and is an independent witness because from his cross-examination or by any other evidence it could not be established that he is a supporter of the election petitioner or of the Congress Party. The witness in unmistakable terms stated that the returned candidate had invited the villagers on 11th February, 2002 in village Ghanauri at Dhuriwala Darwaja by making public announcement

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on the loudspeaker. The returned candidate promised to release the pension to all of them. Apart from making entries of Rs. 600 and Rs. 800 in the pass books, the witness himself was paid a sum of Rs. 1,200 in cash by the returned candidate. Despite lengthy cross-examination, the credibility of this witness could not be impeached in respect of his basic deposition that he was paid Rs. 1,200 as pension after accepting the promise that he was to vote for the returned candidate. The date and place have been specifically named i.e. on 11th February, 2002 at Dhuriwala Darwaza at village Ghanauri. It is pertinent to mention that the last date for filing nomination papers was 23rd January, 2002 and for withdrawal of candidature was 28th January, 2002. It is thus obvious that the returned candidate had become a 'candidate' within the meaning of Section 79(b) of the Act.

(41) The aforementioned version of PW-9 Ram Singh has been fully supported by Jaspal Singh, PW-10, in respect of distribution of cash on the next day in his own village. He had stated that the returned candidate had filled up the form of pension in respect of one Kamaljit Kaur on 12th February, 2002 opposite State Bank of India, Sandhaur Branch, Bir Hanumangarh, at about 6.30 to 7.00 P.M. He further stated that he had also signed the aforementioned application form for pension in his capacity as Sarpanch. The witness further stated that the returned candidate called a number of females and made entries in their pass books amounting to Rs. 200 to Rs. 600. The payment was made in cash. The signatures of the returned candidate on documents like Exs. PW-1/1 to PW-1/45 in green ink and Ex. PW-6/1 and PW-7/1 have been duly identified by the witness. The credibility of this witness was sought to be impeached by extracting the statement that he did not report the matter either to the police, Deputy Commissioner, Sub Divisional Magistrate or any one else. To this, the response of the witness was that mighty persons like the returned candidate could do any thing and that no body was coming forward to report the matter to any authority against him as he had physically beaten up the reporters and the Sarpanch of the village Gandewal. The witness has also admitted that currently he has been supporter of Congress Party. However, the credibility of the witness with regard to filling up the pension papers on 12th February, 2002 opposite State Bank of India, Sandhaur, at about 6.30 to 7.00 P.M. could not be impeached nor any evidence has been produced by the

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respondent to controvert the statement made by PW-10, Jaspal Singh, who is an agriculturist. The mere fact that the witness belongs to Congress Party would by itself not be sufficient to render the statement made by the witness as doubtful or treating the witness as unworthy of his credit. No portion of the statement suggests that the witness has tried to tell lie or has concealed any fact. Even the demeanour of the witness was not such as to indicate any such thing.

(42) Devinder Singh, PW-11, again an agriculturist has also deposed in the same vein. According to the witness, the returned candidate had visited their village on 7th January, 2002 when he opened accounts of various persons and distributed pass books concerning old age, handicapped and widow pension. On 10th February, 2002, the returned candidate again visited his village namely Kathala to attend the Bhog of Akhand Path Sahib kept by one Gurmail Singh, Zimindar. The villagers were invited by announcement made on a loudspeaker to collect the pension. Rs. 500 in cash was given to various persons by exhoring the villagers to cash their votes in his favour if they wanted their pension to be doubled. The credibility of the witness was sought to be impeached by extracting the statement that his wife was given ticket for election of Gram Samiti by the Congress Party and that she was helped by the election petitioner. No complaint is said to have been made by the witness to any other higher authority. The demeanour of the witness was observed by the Court and there was nothing to suggest that the witness was telling a lie.

(43) The versions as pleaded and disclosed by PW-9, Ram Singh, PW-10, Jaspal Singh and PW-11, Devinder Singh have been whole heartedly supported by the election petitioner Bibi Har Chand Kaur when she appeared as her own witness as PW-12. She stated that the returned candidate had released pension to various villagers on 12th February, 2002 amounting to Rs. 1,200 to Rs. 1,300, which happened to be a day before the election. She has disclosed the names of 16 persons in the petition who have been paid Rs. 1,000 and Rs. 800 with the intention to bribe them in consideration of casting their votes in favour of the returned candidate. She has named certain ineligible persons also. Similar allegations have been made with regard to appointment of Anganwadi workers up to 28th February, 2002 and the fact of removing them from service thereafter.



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(44) A close analysis of the documentary evidence, as has already been noticed, shows that the pension used to be sanctioned by the returned candidate himself. Therefore, I am inclined to accept the version of the election petitioner that the returned candidate had used the tool of payment of pension to bribe the voters. There is direct oral evidence of Ram Kumar (PW-9), who is a beneficiary of the cash amount of Rs. 1,200 paid by the returned candidate to him on 11th February, 2002 at Dhuriwala Darwaza, village Ghanauri, which was paid to him on the pretext of handicapped pension as he himself is an handicapped person. The aforementioned witness is not a party worker and he seems to me a simple villager. Therefore, I am inclined to accept his statement worthy of his credit because it is direct oral evidence within the meaning of Section 60 of the Evidence Act, 1872. There is no rebuttal by the returned candidate to the categorical statements made by Ram Singh, PW-9, Jaspal Singh, PW-10, Devinder Singh, PW-11 and Bibi Harchand Kaur, election petitioner (PW-12). The credibility of the respondent-turned candidate in the witness box is highly doubtful as he has made incorrect statements during the cross examination and had taken an untenable stand in the pleadings. Section 95 of the Act does not excuse the witness from answering any question as to any matter relevant to a matter in issue in the trial of an election petition by taking up the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture especially when the certificate of indemnity from the High Court could be given and the answer to such question has not been made admissible in evidence against the witness in a civil or criminal proceedings except in the case of any criminal proceedings for perjury. Therefore, it is established by the election petitioner that the returned candidate has committed a 'corrupt practice' by inducing the voters to vote for him in consideration of payment of cash named as pension on 10th February, 2002, 11th February, 2002 and 12th February, 2002 when the polls were to be held on 13th February, 2002.

(45) I also find considerable merit in the submission made by the learned counsel for the petitioner. The case concerning 'corrupt practice' has been sufficiently pleaded in paras 17 to 21, 24, 26 and 30, which have been duly supported by the affidavit dated 10th April, 2002 of the election petitioner. Under Section 83(b) of the Act, the election petitioner is required to disclose in the

election petition a concise statement of material facts on which the petitioner relies and also set forth full particulars of any corrupt practice that the petitioner has alleged including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice with the date and place. An affidavit in the prescribed form in support of the allegations of such corrupt practice and the particulars thereof is also required to be attached with the petition, which has been done in the present case. There is documentary evidence on record in the form of Exs. PW-4/1 to PW-4/84, which are samples of ledger maintained by the State Bank of Patiala, alongwith ledgers maintained by the District Social Welfare Officer, Sangrur. The originals were produced before me and the photo copies thereof were taken on record. It is appropriate to mention that a number of persons who have been named in the election petition in para 17 have been shown to have been paid pension on 6th February, 2002 or 8th February, 2002. In that regard, reference may be made to Ex. PW-4/11 of Sham Kaur, Ex. PW-4/12 of Tejo and Ex. PW-4/13 of Bhola Singh. The election petitioner had placed on record photo copies of their pass books as Exs. P/8, P/9 and P/10. Similar is the position with regard to Hamir Kaur as shown in Ex. PW-4/17, Mukhtiar Kaur PW-4/28, Bhagwan Singh PW-4/31 and so on. A gernal trend is discernible from the aforementioned documents Exs. PW-4/1 to PW-4/84 that an amount of Rs.200 and 400 have been deposited in their account by transfer on 25th January, 2002. Another amount of Rs. 200 has been deposited on 5th February, 2002. On 6th February, 2002, the aforementioned amount of Rs. 800 has been withdrawn. Then cash amount has been distributed by the returned candidate on 10th February, 2002, 11th February, 2002 and 12th February, 2002 by making a public announcement on the loudspeaker that the pension is being distributed as has been stated by PW-9, PW-10, PW-11. There is nothing on the record to rebut the statement made by PW-9, PW-10, PW-11 and PW-12 except the sole statement made by the returned candidate who is shown to be a person unworthy of his credit during cross-examination.

(46) It is true that mere oral evidence especially of party workers cannot be made the sole basis for recording a finding that a candidate has committed corrupt practice. The aforementioned view

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has been taken by the Supreme Court in the cases of **Surinder Singh versus Hardial Singh, (13)** and **Manmohan Kalia versus Yash, (14)**. However, the position will be drastically different if the oral testimony is corroborated. In the present case the demeanour of respondent-turned candidate, his eventual admission of his signatures on the pension forms, Ex. PW-4/1 to PW-4/84 would show that the respondent-turned candidate had no regard for the truth. In his cross-examination he admitted distribution of pension when he stated on 2nd March, 2005 before me that 'it is correct that during the period from 25th January, 2002 to 13th February, 2002 a number of persons have been given pension to the tune of Rs. 800 to Rs. 1,200'. He also accepted his signatures on the documents Ex. PW-6/1 to Ex. PW-6/92, which are original application forms in respect of the old age pension granting approval to the release of pension in respect of old age persons, widows and others. It has further been proved that the cash amount in large number of cases has been distributed as an allurement to secure votes, which fact is proved from statements of PW-9, PW-10, PW-11 and PW-12. Ram Singh, PW-9, is in fact a direct beneficiary and he has made the aforementioned statement in the witness box. The statements of these witnesses have corroborated each other to the extent that the returned candidate has indulged in distribution of cash. All the three witnesses have categorically deposed about the distribution of cash on 10th February, 2002, 11th February, 2002 and 12th February, 2002 in their respectively villages. It is true that while accepting oral evidence the Court should be extremely cautious and be on guard because the election of a validly elected candidate is likely to be declared void. However, the Court is not helpless when it finds that the fact of corrupt practice has proved, which has not been rebutted by the returned candidate as is required to be done.

(47) In the case of Ram Swarup Verma (supra), the question before the Court was whether the returned candidate was guilty of appealing to the voters to vote for him on the ground of his caste and refrain from voting to Mishra on the ground that he was a Brahmin. The High Court has placed heavy reliance on the oral testimony with which the Hon'ble Supreme Court concur as is evident from the reading of paras 5,6 and 7. Similar position emerges from the reading of the

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(13) 1985 (1) S.C.C. 91

(14) 1984 (3) S.C.C. 499

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judgement in the case of **Hardeo Narain Singh versus Surajdeo Singh and others (15)**, holding that the broad and basic features of the petitioner's case are established beyond doubt even by oral evidence. Thus the election of the returned candidate was held as void. The views of their Lordship in this regard read as under :

“the first information report was really the most contemporaneous documentary evidence which supported the case of election petition. The report of the presiding officer also indicates that the number of persons who cast their votes prior to the firing incident was large. The oral evidence of a large number of witnesses, including the Magistrate who was on duty at the kayeea polling station, and the Sub Inspector of Police who recorded the FIR on the spot, all go to prove the case of the respondent beyond doubt. The broad and basic features of the petitioners case have thus been established beyond doubt.”

(48) When the principles laid down by the Supreme Court are applied to the facts of the present case then it emerges that the election petitioner has been able to establish the ground of 'corrupt practice' by proving the fact that cash money was disbursed by the respondent-returned candidate on 10th February, 2002, 11th February, 2002 and 12th February, 2002 after he had become a 'candidate' in the election within the meaning of Section 79(2) of the Act. He distributed cash to the beneficiaries on 10th February, 2002, 11th February, 2002 and 12th February, 2002. There is admission made by the returned candidate with regard to disbursement of pension between 25th January, 2001 to 13th February 2002. The aforementioned fact has also been proved by the statements made by Ram Singh, PW-9, Jaspal Singh, PW-10, Devinder Singh, PW-11 and Bibi Harchand Kaur, PW-12, that he himself distributed the pension apart from distributing cash in the form of pension. Therefore, I am of the view that the broad and basic features of the case of the election petitioner stands established and the 'corrupt practice' committed by the returned candidate is fully covered by Section 123(1A) of the Act. The money in the name of pension was presented as a gift to the voters directly for inducing the voter to vote in favour of the returned candidate, which would be clearly covered by the aforementioned provision.

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(49) The principle as to whether the charge of 'corrupt practice' in an election petition has to be proved like a charge before the criminal court came up for consideration before the Supreme Court in the case of P.H. Pandian (supra). In para 9, their Lordships permitted raising of an inference on the ground that the trial of an election petition is not like a criminal trial that the accused can keep silent where he does not need to lead any defence because the burden of proof is always on the prosecution. However, in the election petition it has been held that when the election petitioner has adduced sufficient evidence to prove that the returned candidate had committed corrupt practice then the burden shifts on him to rebut that evidence and his failure to do so may result into raising of an inference against him. The observations of their Lordships are apparent from the reading of para 9 of the judgement which is as under :—

“Under these circumstances, the necessary conclusion would be that he had also used that vehicle and its expenditure was deliberately withheld by him. He suppressed that fact in his expenditure return. From these facts, the High Court has reasonably arrived at the finding that had he produced the account, the expenditure would have been shown to be in excess of the limit prescribed under the Act. An adverse inference was drawn from the commission to produce the account that the appellant had committed corrupt practice under Section 123(6) of the Act. This conclusion, on the basis of the evidence on record, cannot be said to be vitiated by any error of law. It is true that the charge of corrupt practice under Section 123 is treated akin to a charge in a criminal trial. The trial of an election petition is like a trial in the criminal case and the burden to prove corrupt practice is on the election petitioner. The doctrine of preponderance of probabilities in a civil action is not extended for proof of corrupt practice. It is not, like a criminal trial, that the accused can always keep mum. In a criminal trial accused need not lead any defence evidence. It is an optional one. The burden of proof of charge in a criminal case is always on the prosecution. The guilt of the accused beyond reasonable doubt should be established by the prosecution. But in an election petition when the election petitioner had adduced evidence to prove that the returned candidate had committed corrupt practice, the burden shifts on the returned candidate to rebut the evidence. After its consideration, it is for the Court to

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consider whether the election petitioner had proved the corrupt practice as alleged against the returned candidate. In view of the findings recorded earlier, it must be concluded that the respondent had established that the appellant had committed corrupt practice under Section 123(6) of the Act and thereby the declaration of the result of the election of the appeal is void is not vitiated by any error of law warranting interference." (Emphasis added)

(50) Therefore, on findings, principle and precedent I am of the considered view that the election petitioner has been able to establish beyond a reasonable doubt the 'corrupt practice' indulged by the returned candidate, and the returned candidate has failed to place on record any material, any independent evidence, oral or documentary, to show that such a practice was not committed by him as he was under a duty to do so. I am further of the view that the election petitioner has been able to prove that the returned candidate disbursed cash amount under the garb of pension on 10th February, 2002, 11th February, 2002 and 12th February, 2002 to the voters as has been deposed by various witnesses. The pattern disclosing the working of the returned candidate has established, which show that disbursement of cash in the garb of pension has been used as a tool to induce the voters to vote for the returned candidate.

(51) The argument of the learned counsel for the returned candidate based on various judgments of Hon'ble the Supreme Court to the effect that the standard of proof to prove corrupt practices in an election is equivalent to a criminal trial is undoubtedly undisputable on principle but at the same time the principles laid down in the judgment of Hon'ble the Supreme Court in the case of P.H. Pandian (supra) are required to be kept in view. A reference to the aforementioned principles laid down in P.H. Pandian's case (supra) has already been made by quoting para 9 of the judgment. I am also not impressed with the factum of resignation of the returned candidate as a Cabinet Minister on 12th January, 2002 and giving up preliminary membership of the Shromani Akali Dal on that date. The resignation either from the Cabinet or from the primary membership of the Shriomani Akali Dal has no connection with the distribution of cash in the name of pension on 10th February, 2002, 11th February, 2002 and 12th February, 2002 when voting was to take place on 13th February, 2002. Therefore, I do not find any substance in these arguments raised on behalf of the returned candidate.

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(52) In view of the above discussion, the election of the returned candidate—respondent from 82 Sherpur (SC) Assembly Constituency, held on 13th February, 2002, is declared as void. The Election Branch of the Registry is directed to forward copies of the judgment to all concerned quarters for further necessary action in accordance with law at the earliest so that any decision with regard to the disqualification of the returned candidate to contest any further election may be taken. The election petition is entitled to her costs, which is determined at Rs. 50,000.

**Order dated 3rd May, 2006 Passed in CM. No. 5E of 2006**

(53) This is an application filed under Section 116(B)(1) of the Representation of People Act, 1951 (for brevity 'the Act') for staying the operation of the judgment dated 28th April, 2006 passed by this Court in Election Petition No. 22 of 2002 declaring the election of the applicant—returned candidate as void on account of corrupt practice as envisaged by Section 123(1)(A) read with Section 100(1)(B) of the Act. According to the applicant—returned candidate no appeal has yet been filed and such an application can be entertained at the stage. It has further been asserted that the applicant—returned candidate is Member of various committees constituted by the Punjab Legislative Assembly. During the course of hearing learned counsel has placed on record a notification dated 11th April, 2006 (Mark "A") showing that the applicant—returned candidate is a Member of Committee on Subordinate Legislation and his name figures in the notification at serial No. 4. This Committee is to meet on 5th May, 2006 at 2.30 P.M. as per the agenda note issued on 1st May, 2006 (Mark "B"). The learned counsel has also placed on record a meeting agenda of another Committee namely the Committee on Welfare of Scheduled Castes, Scheduled Tribes and Backward Classes for the year 2006-2007 (Mark "C"). This Committee is also to meet on 5th May, 2006 (Mark "D") although the time for meeting is different. It has further been pointed out that sometime is required for preparation of the appeal although certified copy of the judgement dated 28th April, 2006 has been obtained by the applicant-returned candidate.

(54) In reply to the notice of the application, the prayer made by the applicant-returned candidate has been opposed by the an applicant-petitioner by asserting that no irreparable loss is likely to be caused to the applicant-returned candidate by permitting the operation of the judgement. It has further been asserted that if a

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person has been found guilty of corrupt practice then there is no reason to permit the stay of the operation of the judgement especially when such a person has the right of appeal before Hon'ble the Supreme Court. It has also been pleaded that the applicant—returned candidate has to show sufficient cause for seeking stay of the operation of the judgement dated 28th April, 2006 within the meaning of Section 116(B) of the Act.

(55) Having heard the arguments of the learned counsel for the parties, I am of the considered view that conditional stay deserves to be granted to the applicant—returned candidate. The applicant—returned candidate has been representing the Sherpur-82 Constituency for the last over four years on account of the election held on 13th February, 2002. He has been member of various Committees and on account of disability which he is likely to suffer by virtue of the judgement dated 28th April, 2006 he would immediately stand disqualified to attend the session of the Assembly or meeting of other Committees constituted by the Assembly. Therefore, keeping in view the larger interest of the business to be transacted in the Assembly or by the Committees and also the fact that first appeal is a right available in all jurisdictions, which in the present case is provided by Section 116 A of the Act, I deem it appropriate to direct that operation of the judgement dated 28th April, 2006 shall remain stayed upto 28th May, 2006 subject to the following conditions :

- (a) that the applicant—returned candidate may attend the meetings of the Legislative Assembly or the meetings of the Committees constituted by the Assembly but he would not have any voting right; and
- (b) that he would be entitled to mark his attendance in the register of the Assembly as well as of the Committees but he would not be entitled to draw any salary.

(56) The aforementioned conditions have been imposed by following view of the Hon'ble the Supreme Court in the case of **Indira Nehru Gandhi versus Raj Narain (16)**.

(57) The Civil Misc. application stands disposed of. The Registry is directed to send copies of this order to all concerned as per law.

(58) A copy of the order be given dasti to the counsel for the parties today itself under the signatures of the Bench Secretary.

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**R.N.R.**