Haji C. H. Mohammed Koya

Vs

T. K. S. M. A. Muthukoya

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Haji C. H. Mohammad Koya

Civil appeal Nos. 12 and 865 of 1978

(Syed M. Fazal Ali, P. N. Shinghal JJ)

12.09.1978

JUDGMENT

FAZAL ALI, J. –

1. This election appeal is directed against the order of the High Court of Kerala dated December 19, 1977 by which the election of the appellant Haji C. H. Mohammad Koya has been set aside and he has been disqualified from taking part in the elections for a period of six years under the provision of the Representation of the People Act, 1951 (hereinafter called the Act).

2. For the purpose of brevity we shall refer to the respondent-petitioner as the petitioner and Haji C. H. Mohammad Koya as the appellant.

3. In the general election held to the Legislative Assembly of Kerala on March 20, 1977 the petitioner and the appellant were the contesting candidates from No. 34 Malappuram constituency. The counting of votes took place on March 20, 1977 and the appellant was declared elected on the same date. The total votes polled were 56,276. The appellant secured 39,362 votes and thus defeated the petitioner by a margin of 20,000 votes. Aggrieved by the election results, the petitioner filed an election petition in the High Court alleging that the appellant had committed various corrupt practices falling within the ambit of Section 123(3), (3A) and (4) of the Act. It was mainly alleged that before the elections, the appellant was the Chief Editor of a Malayalam daily paper called Chandrika which was the official organ of the Muslim League. It is further alleged by the petitioner that the appellant held shares worth Rs. 3 lakhs in the printing and publishing company which published Chandrika. This paper, according to the petitioner, contains several articles, extracts of speeches and cartoons which tended to ask the Muslims to vote for the appellant on religious and communal grounds and also promoted ill-will and hatred between two classes of citizens, namely, the Janasangh and the Muslim League. It appears, however, that at the hearing the petitioner confined his case only to the corrupt practices alleged by him under Section 123(3A) of the Act. In this connection, the learned Judge of the High Court observed as follows :

> Though in the petition sub-sections (3), (3A) and (4) of Section 123 of the Act are specifically referred to, from the evidence tendered in the case it would appear that

applicability of sub-section (3A) of Section 123 alone falls for decision.

4. The petition was contested by the appellant who filed a counter-affidavit denying the assertions and averments made by the petitioner and took the stand that he made no speech which offended Section 123(3A) of the Act nor was he aware of any of the offending articles or cartoons published in Chandrika prior to the elections. He also denied that he was an Editor of Chandrika, but admitted that he was the Chief Editor and that too only in name. Being an important and an influential person he was able to collect lot of money for Chandrika from the Gulf States and that is why he was assigned an important role in Chandrika as Chief Editor for the purpose of deciding the larger policies of the paper. The appellant further denied that he had anything to do with the editorial work of Chandrika or the publication of the speeches or articles etc. It may be pertinent to note here that even the petitioner in his petition has not at all alleged or described the nature of the duties which the appellant performed as Chief Editor nor has he stated that as Chief Editor he was controlling the materials published in the paper so as to ascribe constructive knowledge to him of the articles published in Chandrika. All that the petitioner pleaded in his petition on this subject may be extracted thus :

> The respondent is the Chief Editor of Chandrika, a daily newspaper published from Calicut. It is published by the Muslim Printing and Publishing Company Limited. The major shares of this company is owned by the Muslim league Party and the respondent holds shares worth Rs. 3 lakhs in the above company. The daily Chandrika is the official organ of the Muslim League Party. It is submitted that in the daily Chandrika of which the respondent is the Chief Editor, is published reports and articles appealing to the members of the Muslim community not to vote for the candidates of the Muslim League (Opposition) in the name of religion and community.

5. As regards the speech while the petitioner admitted that he did make a speech as would appear from the extract Ex.P. 1(a) but denied that he made any communal allegations against the Janasangh but started that some of the words used by him in the speech were used purely in a figurative sense. When the appeal was heard before us counsel for the parties agreed that the only items of which could be relief upon against the appellant were (1) his speech Ex.P. 1(a), (2) Cartoon Ex.P. 5 and (3) other offending speeches and articles which were published in the paper of which he was the Chief Editor. It was conceded by Dr. Chitale, counsel for the petitioner that if he was not able to prove that the appellant was really the Editor of the paper then the presumption under Section 7 of the Press and Registration of Books Act, 1867 (hereinafter called the Press Act) would not apply and the case of petitioner would stand or fall on Ex.P. 1(a) and Ex.P. 5. It is also not disputed that although the High Court has relied on number of articles and extract of speeches published in the various issues of Chandrika yet none of these have been proved according to law by examining the writer or reporter or producing the original script of the paper. If, therefore, the petitioner fails to established that the appellant was virtually the Editor of Chandrika or at any rate performed the duties of the Editor then no constructive knowledge of these articles can be attributed to him.

6. The High Court framed following issues :

> 1. Whether the petition is maintainable ?
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> 2. Whether the election is vitiated by all or any of the corrupt practices alleged in the petition ?

3. Regarding reliefs and costs.

7. As regards issue 1 the High Court held that the petition was maintainable and decided this issue against appellant. This finding has not been challenged by the appellant before us and we therefore affirm the same.

8. The main issue in the case was issue 2 and we should have expected the High Court to have framed a more detailed issue giving the nature and character of the corrupt practices alleged by the petitioner against the appellant in order to give a clear picture to the parties regarding the matters which were to be decided by the Court. However, as both parties understood what the allegations were and proceeded to trial on that basis the vagueness of the issues framed by the High Court has not caused any prejudice to any of the parties.

9. The main corrupt practice pleaded against the appellant by the petitioner and which has been vehemently argued before us is to be found in paragraph 5 of the petition which is regarding the inflammatory speech Ex.P. 1(a) said to have been made by the appellant and which according to the petitioner fell within the mischief of Section 123(3A) of the Act.

10. Another important averment made in the petition was in paragraph 11 of the petition which refers to the cartoon and be extracted thus :

> In Chandrika dated March 12, 1977 on the front page a cartoon is published. It depicts Janasangh as pig and Shri E. M. Sankaran Nampoodiripad, the Marxist Leader, cutting the flesh of the pig and serving it to the Muslim. This is an attempt to promote feelings of enmity an hatred between different classes of citizens of India on grounds of religion. It is well known that to eat pork is pardial anathema (haram) for true muslims. The publication of this cartoon in Chandrika is with the consent and knowledge of the respondent, which promoted hatred of the Muslims against the Muslims against the United Front Of Marxist Party and Janata Party and Muslim League (Opposition) of which the petitioner is a candidate from concerned constituency.

It is clearly pleaded that the cartoon was published in Chandrika with the consent and knowledge of the appellant. Thus, in order cases, consent and knowledge were not expressly pleaded by the petitioner, who sought to rely only on the presumptions to be drawn under Section 7 of the Press Act.

11. We shall first take up, therefore, the question whether the petitioner can avail of the presumption to be drawn under Section 7 of the Press Act. The High Court has found that in the circumstances of the case, Section 7 of the Press Act fully applies to the facts of the present case. We are however for the reasons that we shall give hereafter unable to agree with the view taken by the High Court.

12. Before dealing with the various provisions of the Press Act, it may be necessary to divide this question into two parts : (1) the legal aspect, and (2) the factual aspect. The legal aspect concerns the effect of the various provisions of the Press Act and the extent of their applicability to the appellant. The factual aspect would take within its fold the duties and responsibilities performed by the appellant as the Chief Editor. We will first take up the legal aspect.

13. The Preamble to the Press Act runs thus :

> Where as it is expedient to provide for the regulation of printing presses and of newspapers, for the preservation of copies of every book and newspaper printed in India and for the registration of such books and newspapers, it is hereby enacted as follows :
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> It would thus appear that the object of the Press Act was to regulate printing presses and newspapers in order to preserve copies of newspapers and books. Moreover, in order to avoid multiplicity of suits and uncertainties of liabilities, it was considered necessary to choose one of the persons from the staff, and make him liable for all the articles or matters published in the paper so that any person aggrieved may sue only the person so named under the provisions of the Press Act and is relieved from the necessity of making a fishing or roving enquiry about persons who may have been individually responsible for the offending matters published in the paper. Our opinion in this regard is however reinforced by the statement of objects and reasons accompanying the Press Act which may be extracted thus :
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> Whereas it is expedient to repeal the Indian Press Act 1910 and the Newspapers (Incitements to Offences) Act, 1908, and to make further provision in the Press and Registration of Books Act, 1867, for the liability of editors of newspapers in civil and criminal proceedings and to make certain amendments in that Act in order to facilitate the registration of printers and publishers; and to provide in the Sea Customs Act, 1878, the Code of Criminal Procedure, 1898, and the Indian Post Office Act, 1898, for the seizure and disposal of certain documents; it is hereby enacted as follows :
>
> It was with this avowed object that the Press Act clearly defines 'Editor' who has a clear legal, status under the Press Act. Section 1(1) of the Press Act defines 'Editor' thus :
>
> 'Editor' means the person who controls the selection of the matter that is published in a newspaper.
>
> Section 5 of the Press Act provides that no newspaper shall be published except in conformity with the rules hereinafter laid down. Section 5(1) runs thus :
>
> Without prejudice to the provisions of Section 3, every copy of every such newspaper shall contain the names of the owner and editor thereof printed clearly on such copy and also the date of its publication.

It would thus be clear that under Section 5(1) of the Press Act the legal requirement is that every newspaper shall contain the name of the owner and the editor printed clearly, so that there is no confusion in the minds of the people on this account. Sub-section (2) of Section 5 of the Press Act makes it incumbent on the printer and the publisher to appear before the authorities mentioned in that section and make a declaration.

14. Sub-rule (2) of Rule 8 of the rules made under the Press Act runs thus :

Every copy of every newspaper shall have printed legibly on it the names of the printer, publisher, owner and editor and the place of its printing and publication in the following form :

> Printed by .... and published by .... on behalf of .... (name of owner) .... and printed at .... (place of printing) .... and published at .... (place of publication) .... Editor ....

This rule enjoins that the name of the printer, publisher, owner and editor must be clearly indicated. The note to this rule is extracted thus :

> Note : This form may be modified to suit the circumstances of each paper, for example, where the printer, publisher and owner are the same the imprint line can be : Printed, published and owned by .... The editor's name, however, should be given separately in every case.

This requires that the editor's name, however, should be given separately in every case. Rule 6 requires every publisher to submit an annual statement to the Press Registrar. It is not disputed in the present case that this statement was not made by the appellant but PW 2, Aboobaker who was the editor, publisher and printer of Chandrika. The annual statement which has to be filed in Form 2 contains one of the columns where the editor's name has to be shown. Section 7 of the Press Act runs thus :

> In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some court empowered by this Act to have the custody of such declarations, or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, or printed on such newspaper as the case may be, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every newspaper whereof the title shall correspond with the title of the newspaper mentioned in the declaration or the editor of every portion of that issue of the news paper of which a copy is produced.

15. Section 8(A) of the Press Act provides that where any person's name has appeared as an editor in a paper although he was not an editor he shall within two weeks of his becoming aware that his name has been so published, appear before the District, Presidency or Sub-Divisional Magistrate and make a declaration that his name has been incorrectly published and get a certificate from the Magistrate that the provisions of Section 7 shall not apply to him. It may be interesting to note the following facts here :

> 1. That the issue of Chandrika shown to us clearly and unmistakably mention the name of Aboobaker as the printer, publisher and editor of Chandrika and does not mention the appellant as the Editor of Chandrika. The appellant is merely shown as the Chief Editor but this is an officer which is not at all contemplated by the Press Act.
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> 2. That if the appellant was really the editor of the paper then PW 2, Aboobaker ought to have resorted to Section 8(A) to correct the mistake in the paper where his name was shown as the editor but no such thing has been done. On the other hand, PW 2, Aboobaker tacitly and clearly admits that he is the editor of the paper.
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> 3. That the petitioner has not at all pleaded in his petition the nature of the duties

> performed or responsibilities shouldered by the appellant as Chief Editor. There is no averment at all in the petition that the appellant controls the selection of matter that is published in the newspaper which alone would make him an editor as defined in Section 1(1) of the Press Act. The words 'Chief Editor' are clearly absent from the Press Act and in fact foreign to it because the Press Act has selected only one person who has a special status and that is the editor who can be sued, if necessary, or can sue and against whom alone a presumption under Section 7 of the Press Act can be drawn.

While holding that the presumption under Section 7 of the Press Act is available to the High Court has completely overlooked the aforesaid aspects mentioned by us. The law on the subject is absolutely clear and there are a number of decisions of this Court which have interpreted the relevant sections of the Press Act.

16. In the case of State of Maharashtra v. Dr. R. B. Chowdhary ((1967) 3 SCR 708, 710) this court observed as follows :

> The term 'editor' is defined in the Act to mean a person who controls the selection of the matter that is published in a newspaper. Where there is mentioned an editor as a person who is responsible for selection of the material Section 7 raises presumption in respect of such a person. The name of that person has to be printed on the copy of the newspaper and in the present case the name of Madane admittedly was printed as the editor of the Maharashtra in the copy of the Maharashtra which contained the defamatory article. The declaration in Form I which has been produced before us shows the name of Madane not only as the printer and publisher but also as the editor. In our opinion the presumption will attach to Madane as having selected the material for publication in the newspaper .... In the circumstances not only the presumption cannot be drawn against the others who had not declared themselves as editors of the newspaper but it is also fair to leave them out because they had no concern with the publishing of the article in question.

This case, therefore, clearly holds that where a person is not shown in the paper to be its editor no such presumption under Section 7 of the Press Act can be drawn but it must be held that he has no concern with the publishing of the article.

17. To the same effect is another decision of this Court in the case of D. P. Mishra v. Kamal Narain Sharma ((1970) 3 SCC 558 : (1971) 3 SCR 257 : AIR 1971 SC 856). In this case which was also an election matter a newspaper called Mahakoshal was published from Raipur and one Shukla was registered as the printer, publisher and editor with the Press Registrar. The defence of Shukla was that he had appointed one Tarangi as the editor of Mahakoshal in June 1962 and was not present at the relevant time. This Court pointed out that the proceedings for naming a person who is found responsible for publication of an offending matter and for constituting a corrupt practice are in the nature of quasi-criminal proceedings. It follows therefore that being a corrupt practice it has to be proved beyond reasonable doubt and not by the measure of preponderance of probabilities. The Court observed in this connection as follows : [pp. 562, 564, paras 11, 15, 17]

Section 7 raises a presumption that a person whose name is printed in a copy of the newspaper is the editor of every portion of that issue. The presumption must be rebutted by evidence ... The presumption under Section 7 of the Press and Registration of Books Act undoubtedly arises, but in a

charge under Section 123(4) of the Representation of the People Act the presumption under Section 7 of the Press and Registration of Books Act, 1867 would come with greater or less force, according to the circumstance to the aid of a person claiming that the editor was responsible for the publication and that the publication was to the knowledge of editor.

Granting that there was close association between Mishra and Shukla and even granting that Mahakoshal was exclusively carrying on propaganda on behalf of Mishra, unless there is evidence to prove that Shukla had either authorised the publication of the offending matter, or had undertaken to be responsible for all the publications made in the Mahakoshal, no inference that the offending publications were made to the knowledge and with the consent of Shukla may be raised.

The statement filed by Shukla is not inconsistent with the case set up by him in this proceeding. Responsibility for publication was accepted by him but he had clearly stated that the publication of news items from the correspondents were attended to by the sub-editors and that he generally laid down the policy of the newspaper and gave general directions. He admitted his responsibility because he was the Chief Editor, and not because he personally had with knowledge published the article which constituted contempt of Court.

We may mention here that in this case Shukla in his statement has clearly stated that the publication of the news-items in the paper were attended to by sub-editor and he generally laid down the policy of the newspaper and gave general directions. No such allegation or evidence is forthcoming in the instant case because it has neither been alleged nor proved that the appellant was in any way controlling selection of the matters published in the paper.

18. In the case of Harasingh Charan Mohanty v. Surendra Mohanty ((1974) 3 SCC 680 : (1974) 2 SCR 39, 52 : AIR 1974 SC 47) this Court pointed out that consent or agency could not be inferred but had to be proved affirmatively like any other fact. In this connection the Court observed as follows : (p. 692, para 26)

Consent or agency cannot be inferred from remote causes. Consent cannot be inferred from mere close friendship or other relationship or political affiliation. As pointed out in D. P. Mishra's case (supra) however close the relationship, unless there is evidence to prove that the person publishing or writing the editorial was authorised by the returned candidate or he had undertaken to be responsible for all the publications, no consent can be inferred.

It was further held in this case that the presumption under Section 7 of the Press Act is a rebuttable presumption and the so called editor can rebut the presumption by showing that he had nothing to do with the publication of the editorial or the news report. In our opinion, even if any presumption is drawn against the appellant the same has been sufficiently rebutted by him not only from the evidence adduced by the appellant but also by the evidence adduced by the petitioner. We shall presently deal with this facet of the matter, namely, the factual aspect of this question. The Court further observed as follows :

> When once it is established that neither the editorial (Ex. 1) nor the news report (Ex. 2) were published by the respondent or by some one else with his consent or that the speech alleged to be made by Biju Patnaik, even if it amounts to corrupt practice, was made without the consent of the respondent, and that Biju Patnaik was not his agent it is unnecessary to consider the question whether the editorial and the news report as well as the speech of Biju Patnaik did in fact constitute corrupt practice

under sub-section (3) of Section 123 of the Act.

19. As against this Dr. Chitale, counsel appearing for the petitioner submitted two points before us. In the first place, he argued that the provisions of Rule 8 thereof have not at all been complied with, and therefore, the appellant cannot escape his liability even though he was the Chief Editor. It was argued that the note to Rule 8 as also the form mentioned in Rule 8, sub-rule (2) clearly provide that the editor's name must be separately shown in every paper and in the instant case the issue of the paper Chandrika shows in a composite form that the editor, printer and publisher of the paper was PW 2, Aboobaker. It was contended that the provisions of Rule 8(2) have not been complied with because the name of the editor has not been separately shown. In these circumstances, it was argued that as the name of the Chief Editor was separately shown he must be taken to be the editor of the paper under the provisions of the Press Act and the rules made thereunder. We are however unable to accept this argument. In the first place, the paper clearly shows the name of the editor as Aboobaker. As the printer, publisher and the editor was one and the same person it cannot be said that merely because the name of the editor was not shown at separate place he was absolved of his responsibilities as the editor. The intention of the rule is merely to clarify who the editor of the paper is and once this is shown then there is a substantial thought not a literal compliance of the rule. Secondly, the Press Act does not recognise any other legal entity except the editor in so far as the responsibilities of that office are concerned. Therefor, mere mention of the name of the Chief Editor is neither here nor there, nor does it in any way attract the provisions of the Press Act, particularly Section 7. Thirdly, it is not even pleaded in the petition, much less proved, that the appellant being the Chief Editor, it was part of his duty to edit the paper and control the selection of the matter that was published in the newspaper which in fact has been demonstrably disproved by the appellant. Thus, we are unable to accept the finding of the High Court that any presumption under Section 7 of the Press Act can be drawn against the appellant.

20. This brings us to the factual aspect of the matter. In this connection, the definite case of the appellant is that although he has been shown as the Chief Editor Chandrika he was not at all connected with any editorial function but his name was lent to the paper because of his past services to Chandrika and because he used to get lot of money for this paper being an influential man. This has been proved not only by the evidence led by the appellant but also by the evidence adduced by the petitioner.

21. Before taking the evidence on this point we might mention a few admitted facts which loom large in our minds : (1) that the petitioner proceeds on the footing in his petition that the appellant was the Chief Editor and nowhere he has been mentioned as the editor of Chandrika; (2) there is no pleading by the petitioner that the appellant was an editor within the meaning of Section 1(1) of the Press Act particularly when the paper Chandrika was the pivot and the sheet anchor of his case and which clearly showed that the appellant was not the editor but PW 2, Aboobaker was officially and factually the editor of the paper and yet there is no positive denial of this fact in the petition; (3) no particulars of the functions, duties and powers of the appellant as Chief Editor have been pleaded. On the other hand, it has been pleaded that the appellant held shares worth Rs. 3 lakhs in the company but that will not attract the provisions of the Press Act at all; and (4) as Aboobaker was admittedly the editor of the paper Chandrika as clearly admitted by the petitioner himself in his evidence, the onus was clearly on the petitioner to allege and prove that the duties of the editor were actually performed not by PW 2, Aboobaker but by the appellant. In this background we would now discuss the evidence of the parties on this point.

22. PW 1, Thangal (petitioner) categorically states thus :

V. C. Aboobaker is the editor and printer of Chandrika.

> He further admits that Aboobaker's responsibility is to submit the reports and the speeches supplied by the appellant. He also admitted that Aboobaker does the editing. The witness no doubt says that he had seen the appellant in the Chandrika office twice but that by itself would not show that the appellant was the editor of the paper.

23. Strong reliance was placed by counsel for the petitioner on the statement of PW 1 to the effect that the appellant was doing the day-to-day editorial work of Chandrika. In the first place, this statement does not appear to be true and is clearly contradicted by the petitioner's own witnesses, namely, PWs 2 and 5 who have categorically stated that Aboobaker was the editor and the appellant was not a member of the editorial group and was extremely busy with the elections to be able to devote any time to do the work of the editor. The evidence of this witness shall be discussed hereafter. Another important aspect of the matter is that as the petitioner was not connected with Chandrika he is not competent to depose to show who did the editing work of Chandrika. The only competent witness on this point are PWs 2 and 5 and the appellant and they have said that the appellant had nothing to do with the editorial work of the paper. Moreover, it would appear from the evidence of PW 5 that there is a special attendance register for the editorial staff and the appellant had not signed the said register which clearly shows that the appellant had no concern at all with the editorial group. Finally, the allegation that the appellant was doing day-to-day editing work of Chandrika is not merely a piece of evidence but a material fact which ought to have been pleaded in the petition if the petitioner wanted to rely on the presumption under Section 7 of the Press Act. If this fact was within the knowledge of the petitioner there was no reason why he did not mention it in his petition. In these circumstances, therefore, the statement of PW 1 on the point cannot be accepted.

24. PW 2, Aboobaker who has been examined as the petitioner's own witness categorically states that he is the printer, published and editor of Chandrika and his statement on this point is extracted thus :

> I am the printer, editor and publisher of the Malayalam Daily Chandrika. This is published by Chandrika Printing and Publishing company.

He further states that in this institution (Chandrika) the post of Chief Editor is an ornamental post. Thus, the witness fully supports the appellant's case that he was the Chief Editor only in name and his post was purely ornamental. The witness further admits that all responsibilities are with the editor and Chandrika has no regular Board called the Editorial Board. He further admits that as an editor he knows what his responsibilities are. The witness admits in clearest possible terms that the authority to change the policies from time to time is vested in him. His statement may be extracted thus :

The authority to change policy from time to time is vested in him (sic me)

> He further states that the reports of the news are published only after he is satisfied about the truthfulness of the report concerned. This shows clearly that PW 2 was both de jure and de facto an editor inasmuch as the control of the policy was vested in him. He was performing the duties and shouldering the responsibilities of the editor and the reports were published under his authority.

25. Reliance was however placed by counsel for the petitioner on the statement of the witness PW 2 which runs thus

In the Chandrika Office, Chief Editor has got special room ... He is interested in the maintenance of the standards of Chandrika as a newspaper .... He knows the policy of the paper. If anything appears against the declared policy of the paper he has got the authority to give necessary direction to me about that.

to show that the appellant was controlling the general policy of the paper. We are unable to infer from this statement that the appellant was controlling the selection of the matter published in the paper so as to fall within the definition in Section 1(1) of the Press Act. The appellant was no doubt connected with the paper for a long time and there is nothing wrong in his giving directions to the editor if he found that some event took place against the declared policy of the paper. The witness at a later stage of his evidence has clearly stated that he had not discussed with the appellant the news item which appeared in the paper nor did the appellant give any direction to the witness about the printing and editing of the paper. This statement may be extracted thus :

> I have not discussed with the respondent about the news items which appeared in the paper. He did not give any direction about the printing and publishing of the paper.

The witness further clarifies that the Chief Editor has no such special responsibility. He further states thus :

> In the editorial staff of Chandrika there are 20 persons including me. This 20 include trainees also. Under me, there are two news editors. There are two Chief Sub-Editors, 5 or 6 Sub-Editors. I have got supervision of their work .... I have only responsibility of editing and printing of the paper.

This clearly shows that the witness was not only entirely responsible for the printing and editing of the paper but was also supervising the work of the sub-editors under him. He also admits that the declaration under the Press Act was filed by him. To an express question whether the appellant has been selecting or editing any of the day-to-day matters appearing in the paper the witness categorically denied the same. The statement may be extracted thus :

> The declaration under the Registration of Press and Books Act was filed by me. Has the respondent been selecting or editing any of the day-to-day matter appearing in the paper ? (Q.) No. (Ans.) ..... At the time of election because of his responsibility as the Secretary of the Muslim League and as a leader of the United Front, during the months of February and March, the respondent was mostly on tour .... On all days when I was present, I signed the register.

It is, therefore, clear that even the witness examined by the petitioner has knocked the bottom out of the case of the petitioner that the appellant had anything to do with the duties and functions of an editor, and the question put to the witness is denied by him clearly shows that the appellant has demonstrably disproved that he could be an editor of the paper as defined in Section 1 of the Press Act. Further this witness has also admitted that at the time of election because of the appellant's being the Secretary of the Muslim League and leader of the United Front he was mostly on tour. This admission goes to show that the appellant was too busy to be ascribed knowledge of the articles or speeches published in Chandrika.

26. PW 3, C. K. Hassan who is a worker of the petitioner merely says that the appellant Haji C. H. Mohammad Koya was the Chief Editor and it was mentioned in the Chandrika paper that the Chief Edition would given speeches. The witness further says that since it was printed in the Chandrika paper it was understood that the appellant was the Chief Editor. This takes us nowhere because the witness does not throw any light on the duties performed by the Chief Editor and also does not say who was the editor of Chandrika. In these circumstances, the evidence of this witness is absolutely valueless on the point in issue.

27. PW 4, Mohammad Ali Shihab Thangal is an important witness being the President of the Muslim League and Managing Director of the Muslim Printing and Publishing Press which published the paper Chandrika. The witness was fully conversant with the working of the editorial department of the paper. The witness clearly states that the appellant was the Chief Editor and the editor was under him. The witness further categorically asserts that the policy of Chandrika is decided by the editorial staff which as has already been seen does not include the Chief Editor. This fact was admitted by PW 2 as reported above. Even this witness does not say that the appellant as the Chief Editor was a member of the editorial staff. On a specific question asked to him whether the appellant as the Chief Editor had powers to take decision about the paper, the witness has denied knowledge of the same. The witness further proves that the appellant as the Chief Editor was drawing a salary of Rs. 700 per month, but the witness admits that the entire management is done by Seethi Sahib as Director-in-Charge. Thus, according to this witness, Seethi Sahib who has been examined as PW 5 is the most competent witness to prove as to what was the exact nature of the duties of the Chief Editor.

28. PW 5, Seethi Haji is the Director-in-Charge of the Muslim Printing and Publishing Press and admits that he attended to the administrative functions of the Press. He clearly admits that Aboobaker (PW 2) was the editor of Chandrika paper and his responsibilities are the same as they were in 1974-75. While explaining the reason why the post of Managing Editor and Chief Editor existed in the establishment, he says that this was because it was thought that the names of big personalities would be prestigious. In other words, the witness fully corroborates the version given by PW 2 that the appellant's name as Chief Editor was merely ornamental. The witness also says that although the appellant had a lot of experience in journalism yet that was not the only reason why he was made the Chief Editor but another consideration that weighed with the authorities concerned was that the appellant was a leader of the community. The witness further asserts thus :

> To write 'Chief Editor' has a value of its own that was why the name was inserted. (Ans.) He is also a leader of the community as well as a journalist. He is an M.P. So his name was inserted.

The witness stoutly denied the suggestion put to him that there was an impression among the public that Chandrika and everything about it constitutes the responsibility of the appellant. The witness says that from 1967 to 1974 the appellant was in Chandrika but there is no such impression in the public. The appellant is a shareholder having invested Rs. 400 whereas Rs. 3 lakhs have been invested in the name of the Muslim League.

29. Another important suggestion which is denied by the witness was an answer to the following question :

> Will you work out the policy of the paper on your own accord without the knowledge of C.H. ?

I do things now, after consulting PW 2. Till now I have not asked C.H.

It is, therefore, clear that even in matters of policy the witness who was in charge of the administration of the paper would not consult the appellant but only PW 2 who was admittedly the editor of the paper. In other words, it is clear that the appellant had nothing to do with the policy of the paper much less the editing part of it. To a question that except the Chief Editor the appellant has got any other official position in this company the witness answered 'nothing'. The witness further stated that the Chief Editor had not raised any objection to him about any news item published in chandrika or the policy matter of the paper from which he inferred that the Chief Editor had approved the policy for it he had no (sic any) objection he would have told him. Again, the witness makes a very significant statement which runs thus :

> I am present in the office on almost all days. I was in-charge of going through the publications appearing everyday in the paper and checking up as to whether they are in conformity with the declared policies and interests of the paper. It was my responsibility to place objections, if any, if they were against the declared policies.

The witness further stated that the Manager had nothing to do with the editing and printing of the paper but categorically asserted that PW 2 is selecting and editing everyday's matters in the Chandrika. Thus, on the admission of this witness who was fully conversant with the working of the paper PW 2 alone fulfils the requirements of the definition of an editor as given in Section 1 of the Press Act and totally excludes the appellant from the scope and ambit of an editor as defined in the aforesaid section.

30. The witness further admits that there is a special attendance register for the editorial staff and when the register is shown to him be admits that this is the same register since January 1977. This register is marked Ex. R-7. The witness further admits that the register is for the entire editorial staff including PW 2. The witness further asserts that the appellant who was the Chief Editor had not signed in this register. This therefore clearly and conclusively proves and unmistakably shows that the appellant was not a part of the editorial staff at all and had no concern with that department. This is all the evidence led by the petitioner and from this evidence it has not at all been proved that the appellant as the Chief Editor performed any functions of the Editor or was an editor within the meaning of Section 1 of the Press Act. Before concluding this part of the case we might refer to the evidence of the appellant himself. But before we do that it would be necessary to analyze the pleading of the appellant.

31. In para 4 of the counter-affidavit which is really a substitute for the written statement the appellant avers as follows :

> The actual functions of the editor are being looked after by Sri V. C. Aboobaker who is the editor, printer and publisher of the Chandrika. This respondent has very little time to perform the functions of the Chief Editor as he is preoccupied with other important activities on account of his membership of Parliament and his being the Secretary of the Indian Muslim League both All-India and State .... The actual editing and publishing were entirely looked after by Sri V. C. Aboobaker.

In the evidence given by the appellant as his own witness what he has stated in his counter-affidavit is fully proved and further supported by the evidence of PWs 1 to 5 as discussed above. At any rate the appellant himself has made the entire position clear in his evidence which is fully corroborated

by the witnesses of the petitioner examined by him.

32. On a specific question put to him as to whether he worked as Chief Editor during those days, the witness has categorically denied the same. The witness further stated that he became the Chief Editor in 1971 and continued to be so till 1977. He has further clarified that when he became the Chief Editor he was not doing the editing work which he was doing before. According to the witness, he joined the paper as far back as 1944 as Sub-Editor. It is, therefore, natural that in the early stages of his career he was a part of the editorial staff and must be performing editorial duties when he became the editor. But what we have to see is what was the position in 1977 after he became the Chief Editor. On this point, the witness has categorically stated that as Chief Editor he was not doing any editing work. The witness has further explained that when he became the Chief Editor he was also an M.P. and so he did not get any time for doing the editorial work. The witness then goes on to state that from 1974 to 1977 till the Lok Sabha was dissolved he was in Delhi as an M. P. and even during that time his name used to be printed in the paper as Chief Editor but he was not doing any editing work. He further states that as leader of the United Front and of the Muslim League he had much work to do during the election time and he was very busy with the election speeches. Explaining the responsibilities and duties of an editor the witness stated thus :

> The responsibility of editing Chandrika is of PW 2 Aboobaker. There is a large staff of Chief Sub-Editors and Sub-Editors to assist him. There are two Chief Sub-Editors, including Sub-Editors there are about 10, 20 persons. The work of these persons is supervised and co-ordinated by PW 2.

The witness further states that the Chief Editor has no room in the editorial section. He further corroborates PW 2 by stating that PW 2 has given the declaration under the Press Act.

32A. Regarding the nature of the functions which explained in his statement that in the absence of the editor PW 2 the Manager requested the appellant to sign the letter and so he signed it. This was just an act of official accommodation which was totally unconnected with the duties performed by the appellant. After all the appellant was a high officer in the said organisation and if the letter had to be sent to one of the correspondents and was a little urgent instead of waiting for the editor to come there could be no harm if the Manager asked the appellant as Chief Editor to sign it. Such a casual act on the part of the appellant done not voluntarily but at the request of the Manager cannot clothe him with the legal status of an editor.

33. Thus, this fact alone would not show that he was performing any editorial functions. The witness further states that the Chandrika has no editorial Board but there is an editorial group consisting of Editor, Sub-Editors and others. This is the relevant part of the evidence of the appellant on this question. Thus, on a close and careful consideration of the evidence discussed above, the following inescapable conclusions emerge :

> 1. PW 2, Aboobaker was admittedly the editor of Chandrika, fulfilled all the conditions of Section 1(1) of the Press Act and his name was printed as editor in the issues of Chandrika.
>
> 2. PW 2 as the editor of the paper supervised the editorial staff, controlled the Section of materials to be published in the paper, approved the policies to be followed in publication and was wholly in charge of the editorial group.

3. The appellant was never shown or referred to as the editor anywhere. Even the register which is meant to be signed by the editor and the other staff on the editorial group was not signed by the appellant as he had nothing to do with the editorial work.

4. The appellant had been appointed as Chief Editor because he was a Member of Parliament and an influential man who could get finances for the paper from the Gulf States but he had no hand at all in any of the functions and duties performed by the editor.

5. The appellant was no doubt shown as Chief Editor in the issues of the Chandrika but the Press Act as held by us does not recognise any such legal entity and the only person who is recognised by the Press Act is the editor who in this case was PW 2 and who had admittedly filed the declaration under Section 5(2) of the Press Act.

6. Although Section 8A was the specific provision under which a person could apply for a certificate that he ceased to be the editor no such action was taken by PW 2 to get his name struck off from the roll of editor. This clearly shows that PW 2 alone was the editor and the appellant was merely a name-lender and his post was purely ornamental.

7. The petitioner himself has not at all anywhere pleaded in his petition that the appellant was the editor nor has he mentioned the duties or responsibilities which were performed by the appellant as Chief Editor so as to bring him within the fold of Section 1 of th__e Press Act. 34. From the facts established above, it is manifest that the petitioner has miserably failed to prove either that the appellant was the editor or the paper or that he was performing the functions, duties or shouldering the responsibilities of the editor. It is obvious that a presumption under Section 7 of the Press Act could be drawn only if the person concerned was an editor within the meaning of Section 1 of the Press Act. Where however a person does not fulfil the conditions of Section 1 of the Press Act and does not perform the functions of an editor whatever may be his description or designation, the provisions of the Press Act would have no application. In these circumstances, therefore, the High Court had no legal justification to draw a presumption against the appellant under Section 7 of the Press Act in holding that he was proved to the Editor of Chandrika, and, therefore, must be deemed to be aware of the articles published in the said paper. Even if, for the sake of argument, it is assumed that the appellant was the editor it has been pointed out by this Court the presumption to be drawn under Section 7 of the Press Act is rebuttable and the evidence and the circumstances of this case discussed above show that this presumption has been sufficiently rebutted.

35. The next question that arises for consideration is that if the finding of the High Court on this point is rejected as it must be, then can the petitioner be liable for the materials or speeches published in the paper Chandrika. The publication of the material promoting hatred between two classes of citizens is undoubtedly a corrupt practice and it is well settled by long course of decisions of this Court that such practices must be clearly alleged with all the necessary particulars and proved not by the standard of preponderance of probabilities but beyond reasonable doubt. We are fortified in our view by the decision of this Court in the case of Mohan Singh v. Bhanwarlal (AIR 1964 SC 1366 : (1964) 5 SCR 12) where this Court observed as follows :

The onus of establishing a corrupt practice is undoubtedly on the person who set it up, and the onus is not discharged on proof of mere preponderance of probability, as in the trial of a civil suit : the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous.

To the same effect is a decision of this Court in the case of Magraj Patodia v. R. K. Birla ((1970) 2 SCC 888 : AIR 1971 SC 1995 : (1971) 2 SCR 118) where this Court observed as follows :

> But the fact remains that burden of proving the commission of the corrupt practice pleaded is on the petitioner and he has to discharge that burden satisfactorily. In doing so he cannot depend on preponderance of probabilities. Courts do not set at naught the verdict of the electorate except on good grounds.

36. In the case of D. Venkata Reddy v. R. Sultan ((1976) 2 SCC 455 : AIR 1976 SC 1599 : (1976) 3 SCR 445), this Court after reviewing most of the previous decisions of this Court observed as follows :

> In a democracy such as ours, the purity and sanctity of elections, the sacrosanct and sacred nature of the electoral process must be preserved and maintained. The valuable verdict of the people at the polls must be given due respect and condour and should not be disregarded or set at naught on vague, indefinite, frivolous or fanciful allegations or on evidence which is of a shaky or prevaricating or prevaricating character. It is well settled that the onus lies heavily on the election petitioner to make out a strong case for setting aside an election. In our country election is a fairly costly and expensive venture and the Representation of the People Act has provided sufficient safeguards to make the elections fair and free. In these circumstances, therefore, election results cannot be lightly brushed aside in election disputes. ..... Another principle that is equally well settled is that the election petitioner in order to succeed must plead all material particulars and prove them by clear and cogent evidence. The allegations of corrupt practices being in the nature of the quasi-criminal charge the same must be proved beyond any shadow of doubt.

In the case of Ramanbhai Nagjibhai Patel v. Jashvant Singh Udesingh Dabhi ((1978) 3 SCC 142 : AIR 1978 SC 1162) this Court observed as follows : (pp. 145-146, para 8)

We may state that the charge of bribery is in the nature of a criminal charge and has got to be proved beyond doubt. The standard of proof required is that of proving a criminal or a quasi-criminal charge. A clear-cut evidence, wholly credible and reliable is required to prove the charge beyond doubt. Evidence merely probabilising and endeavouring to prove the fact on the basis of preponderance of probability is not sufficient to establish such a charge.

37. In the light of these decisions we shall now proceed to decide the next question. In view of our finding that the appellant has not been proved to be the editor of the paper Chandrika Ex.P. 2 to P. 11 excepting Ex.P. 5 will have to be totally excluded from consideration because those are speeches and articles of various persons published in Chandrika and the constructive knowledge of this has been ascribed to the appellant by virtue of the allegation that he was the editor of the paper. As however this has not been proved it was incumbent on the petitioner to prove knowledge of these articles or speeches like any other fact. The admitted position position appears to be that neither the writer of the article nor the speaker who delivered the speech nor the reporter nor even the

manuscripts of the speeches have been produced before the Court. In these circumstances, therefore, all these articles and speeches are inconsequential until they are shown to have been made with the knowledge and consent of the appellant. Even in the pleading the petitioner has not averred that the appellant had any independent knowledge of these things or that these speeches or articles were written with his express or implied consent. The petitioner has based his case entirely on the footing that as the appellant was the editor he must be deemed to be aware of these articles and speeches and if the speeches contained offending matters and promoted hatred and ill-will between two classes of citizens the appellant must be deemed to have committed the corrupt practice under Section 123(3A) of the Act. As the entire edifice built by the petitioner for the admissibility of Ex.P. 2 to P. 11 except P. 5 collapses, the allegation of the petitioner on this score is clearly disproved. Moreover, we are fortified in our view by the decision of this Court in the case of Samant N. Balakrishna v. George Fernandez ((1969) 3 SCC 238 : (1969) 3 SCR 603 : AIR 1969 SC 1201) where this Court observed as follows :

> The best proof would have been his own speech or some propaganda material such as leaflets or pamphlets etc. but none was produced ..... A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well-known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible.

38. We might also mention here that the High Court rejected Ex.P. 12 and P. 13 by finding that these documents did not fall within the mischief of Section 123(3A) of the Act. Some reliance was however placed on Ex.P. 1(d) which is said to have been written by the appellant. This document cannot be taken into consideration for two reasons. In the first place, this was undoubtedly a material particular if it was an article actually written by the appellant and contained offending matter, and, therefore, it was necessary that it should find place in the petition before being considered by the Court. Secondly, it has not been proved to have been written by the appellant at all. This document is in the nature of an editorial written on March 1, 1977. The appellant has already denied that he had anything to do with the editorial work and was too busy with the election work as an M.P. and had no time to devote to these things. The learned Judge of the High Court has wrongly mentioned in his judgment at page 28 of the paper book Vol. 1 that the petitioner had made out a case that Ex.P. 1(d) was written by the appellant. There is no such averment in the petition at all and the High Court has committed a clear error of record. Thirdly, the appellant stated that he could not say after such length of time that the editorial was written by him. But on re-examination the appellant categorically asserted that the editorial written could not be in his language and thus denied having written the editorial. Although PW 2, the editor of the paper was examined by the petitioner and being the editor he was the best person to know whether or not this editorial was written by the appellant yet this document was not put to him. In these circumstances, this document has not been proved according to law, and, therefore, must be excluded from consideration. Counsel for the petitioner also did not press us to consider these documents Ex.P. 2 to P. 11 except P. 5 if we find that the appellant was not the editor of the paper Chandrika or that the presumption is not available to the petitioner.

39. Reliance was however placed by counsel for the petitioner as also by the High Court on two documents, namely, Ex.P. 1(a) which was an extract of a speech delivered by the appellant at one of the election meetings where he is said to have made certain observations which tended to promote

hatred or ill-will between the Janasangh and the Muslim League.

40. Reliance was further placed on Ex.P. 5 which was a cartoon printed in the paper Chandrika and it was alleged by the petitioner that it was done with the knowledge and consent of the appellant. The cartoon, according to the High Court, did contain offending matter inasmuch as it tried to promote feelings of hatred between two classes of citizens. So far as Ex.P. 1(a) the speech of the appellant is concerned the petitioner made the following averments in the petition which may be extracted thus :

> The respondent is the Chief Editor of Chandrika, a daily newspaper published from Calicut. It is published by the Muslim Printing and Publishing Company Limited. The major shares of this company are owned by the Muslim League Party and the respondent holds shares worth Rs. 3 lakhs in the above company. The daily Chandrika is the official organ of the Muslim League Party. It is submitted that in the daily Chandrika of which the respondent is the Chief Editor, are published reports and articles appealing to the members of the Muslim community not to vote for the candidates of the Muslim League (Opposition) in the name of religion and community.

40A. The analysis of the averment clearly discloses the following facts :

> 1. The petitioner has not mentioned the name of a single person who had actually heard the speech and made a report.
>
> 2. According to the evidence of PW 1 he was present at the place where the speech was delivered by the appellant and yet this fact, though a very material particular, does not find mention in the averment in the petition referred to above.
>
> 3. It is not indicated in the petition as to how and in what manner the speech tended to promote feelings of enmity or hatred between two classes of citizens. Even the classes of citizens against whom hatred was preached by the speaker have not been mentioned.

From the infirmities mentioned above, it is clear that so far as the speech is concerned the allegations made in the petition are vague. Assuming however that para 5 may amount to an allegation as contemplated by Section 123(3A) of the Act, we shall proceed now to determine how far the petitioner has been able to prove his case within the four corners of the aforesaid section.

41. No evidence was produced by the petitioner to prove whether the extract of the speech was correct and was a reproduction of the very words used by the appellant. Although the witnesses for the petitioner admitted that his speeches were reported to the paper by the reporters neither the script of the speech nor the reporter concerned was examined as a witness to prove that the contents were the transcript of the speech delivered by the appellant. The entire case of the petitioner on this point rests on an admission made by the appellant in his statement in court that the extract printed in the paper was more or less the correct reproduction of his speech. Thus, it is clear that the petitioner relies on this part of the case solely on the admission of the appellant. It is well settled that an admission unless it is separable has to be taken as a whole or not at all. In the case of Hanumant v. State of Madhya Pradesh (1952 SCR 1091 : AIR 1952 SC 343) this Court observed as follows;

It is settled law that an admission made by a person whether amounting to a confession or not

cannot be split up and part of its used against him. An admission must be used either as a whole or not at all.

To the same effect is the decision of this Court in the case of Palvinder Kaur v. State of Punjab (1953 SCR 94 : AIR 1952 SC 354) where Mahajan, J., speaking for the Court observed as follows :

> The court thus accepted the inculpatory part of that statement and rejected the exculpatory part. In doing so it contravened the well accepted rule regarding the use of confession and admission that these must either be accepted as a whole or rejected as a whole and that the court is not competent to accept only the inculpatory part while rejecting in exculpatory part as inherently incredible.

42. The same view was taken in a recent decision of this Court in the case of Dadarao v. State of Maharashtra ((1974) 3 SCC 630 : 1974 SCC (Cri) 120) where this Court observed as follows :

It may not, however, be overlooked that the admission made by the appellant must be read as a whole, for what he has stated is that he had made his signature in the account books of the branch office after an audit objection was raised that he ought to have signed the books at the end of every day in his managerial capacity. The statement of the appellant on this aspect is not capable of dissection because the particular part thereof on which the High Court relies is inextricably connected with the other part which the High Court has not taken into consideration.

43. In view of the settled law on the question, it is manifest that the petitioner would fail or succeed on the admission of the appellant and the admission will have to be read in the light of what the appellant has himself stated in his statement unless there are other satisfactory reasons for taking a contrary view. To begin with the offending words of the extract may be quoted thus :

> C.H. declared emphatically that the assassins who dissected the community are now canvassing votes for the United Front of Janasangh and RSS who were thirsting for Muslim blood. He loudly declared that the community should rest only after completely flooring this front in the ring of the elections. C.H. exhorted the gathering to cut down the fascist scarecrows to the extent that they cannot rise again.

Out of the entire speech this is the only portion against which offence has been taken as falling within the mischief of Section 123(3A) of the Act. It was suggested by counsel for the petitioner that the words used by the speaker clearly indicate that the party of the United Front of Janasangh and RSS was after Muslim blood and the Muslim community should not rest unless this party is obliterated from the election. Strong exception has been taken by counsel for the petitioner to the use of the words 'assassins' for describing the Muslims who had gone over the side of the United Front. This passage was put to the appellant who stated thus :

> In Ex.P. 1(a) second Paragraph it is said 'Murderers who split the community' which community was split. (Q.). I was referring to the split in the Muslim League (Ans.) ..... The speech was at 2 o'clock in the night. I do not know whether the words which I exactly used have come in the paper. The general idea is the same. I say that you used these very words; can you deny. (Q.). I am not sure (Ans.). When a speech is made different versions will come in the paper. I do not usually prepare my speeches. I speak extempore.

I cannot say that I used the very same words. But I have strongly urged that the Opposition Front be

defeated (Ans.). Have you said "RSS-Janasangh which was thirsting for the Muslim blood" ? (Q.). The speech was made a year ago. I do not remember the actual words used. Ex.P. 1(a) report was written by Chandrika reporters. The ideas were mine. The phrase 'thirsting for blood' was used in a figurative language (Ans.).

It is clear that the appellant does not admit that the extract contains the very words which were used by him in his speech particularly when the appellant delivered an extempore speech. As the speech was delivered a year before by the appellant, it is quite natural that he would not have been able to remember the actual words used by him. The appellant however makes it clear that the phrase 'thirsting for Muslim blood' was used in a figurative sense and not literally. That must obviously have been so. He has further stated that he used the words 'thirsting for blood' in a figurative sense and not in the sense of drinking blood. What he meant was to give the Muslim community a warning that it would guard itself against such undesirable candidates by defeating them in the election. It was, therefore, a speech in a political matter. Further while explaining the words 'Getting into the battlefield' the witness has stated that he used the same in the sense of getting ready for a political contest. This is how the appellant has explained his speech and the explanation given by him cannot be rejected because no other evidence has been produced by the petitioner excepting the statement of the appellant regarding the interpretation of the speech.

44. Furthermore, the extract of the speech quoted above also shows that there does not appear to be any intention on the part of the speaker to preach hatred or enmity between two classes of citizens, namely, Janasangh, RSS and the Muslim League. We might mention that a good deal of argument was advanced before us by counsel for the appellant as to the nature, character and significance of the term 'citizen' and it was contended that political parties having a particular ideology could not be treated as a class of citizens as contemplated by Section 123(3A) of the Act. In the view which we have taken it is not necessary for us to examine this question. We shall assume for the sake of argument that Janasangh, RSS and the Muslim League were different classes of citizens, but even then that does not advance the case of the petitioner any further. We feel ourselves in complete agreement with the interpretation given by the appellant regarding the speech made by him. In the first place, being the speaker and appellant was the best person to say what he meant by the speech he delivered. Secondly, the petitioner has not produced either the reported who was present at the meeting when the appellant spoke nor has he called for the script of the speech the extract of which was given in the newspaper. It is very difficult to interpret a part of the speech completely torn from its context. Furthermore, the words 'thirst for Muslim blood' have been used for a particular purpose as explained by the appellant, because the words following, namely, 'he loudly declared that the community should rest only after completely flooring this front in the ring of the elections' clearly show that what the speaker meant was that as Janasangh and RSS were against the Muslim they should muster all efforts to get them defeated and teach a lesson to the dissident Muslims who had joined the Janasangh Party. There does not appear to be any element of hatred or enmity in the extract of the speech of the appellant reported above. There is no exhortation by the speaker to the Muslims to attack the Janasangh or the RSS or to do any kind of harm or violence. The entire speech is made against a political background and for a political purpose.

45. Another intrinsic circumstance which takes the speech out of the ambit the Section 123(3A) of the Act is the conduct of the petitioner. The petitioner admits in his evidence that he heard the speech of the appellant but did not take down the same. He further clearly admits that the speech excited religious sentiments which is an election offence and yet he did not complain to anyone about the speech of the appellant. In this connection, the petitioner stated thus :

> It is speech which excites the religious sentiments. That is an election offence. I had not complained to any authority about the speech of the respondent.

46. The petitioner has not examined any independent member of the public belonging to the place where the speech was delivered and who had heard the same to prove that the speech tended to promote hatred or enmity between different communities, nor is there any such evidence consisting of the members of the people to show what impact the speech made on them. On the other hand, it was rightly pointed out by Mr. Nariman, counsel for the appellant that there is reliable evidence to show that the speech was not treated to be an offending one or one that fell within the mischief of Section 123(3A) of the Act.

47. PW 1 admits in his statement that a paper called 'Mathrubhumi' dated March 1, 1977 which was shown to him contains the correct reproduction of the speech of the appellant. In this connection, the witness states as follows :

> I read the Mathrubhumi also. 'Mathrubhumi' dated March 1, 1977 shown to the witness. Is not the news item under the heading THE UNITED FRONT WILL RETURN TO POWER on page 3 in this about the same news P. 1(a) meeting (Q.). A copy of paper shown to witness. The witness reads the passage. The report about the meeting may be correct. Does it give an exact report of the speech of the respondent on that day. (Q.) Yes (Ans.).

This extract in the Mathrubhumi is Ex. R-1 and runs thus :

> C. H. Mohammad Koya expressed the opinion that the fate of those who condemned and denigrated the leaders of the community and those who stabbed the organisation from behind the back will be known by the next election.

A perusal of this extract would clearly show that the appellant never preached any hatred or enmity between two classes of citizens, but had merely condemned the dissident leaders of the community who had stabbed the organisation, namely the Muslim League, in the back and who were seriously condemned for their defection. Had the speech been understood by the public and the intellectuals as promoting hatred or enmity between two parties, some comment on this aspect must have been found in the paper Mathrubhumi which belonged neither to the Janasangh nor to the Muslim League.

48. Furthermore, there is another paper 'League Time' which is Ex. R-14 and which clearly mentions that in the last election communalism has not played any part at all. The relevant extract may be quoted thus :

> Communalism has not played any part in the election. Mr. Rajagopal pointed out this is a hopeful situation.

Thus, both these papers found no communal tinge nor any sermon preaching hatred or enmity between Janasangh and Muslim League in any of the speeches delivered by the appellant at the various meetings in the course of the elections.

49. In view of the circumstances, therefore, the only evidence from which the Court can find that the appellant had committed a corrupt practice as contemplated by Section 123(3A) of the Act is the evidence of the appellant containing the explanation and the ramifications of his speech which being

an admission has, in the facts and circumstances of this case, to be taken as a whole or not at all. Moreover, as the offending extract of the speech is an integral part of the speech of the appellant it cannot be dissected. In other words, a corrupt practice must be proved beyond reasonable doubt and applying this standard we must hold that the petitioner has failed to prove that the speech given by the appellant promoted or attempted to promote hatred or enmity between two classes of citizens. In these circumstances, the allegation in para 5 of the petition against the appellant has not been proved. None of the aspects discussed by us have been adverted to by the High Court which seems to have proceeded on presumptions and assumptions.

50. Lastly we come to the next item on which reliance is placed which is Ex. P-5, the cartoon. The allegation regarding the cartoon is made by the petitioner in para 11 of the petition which may be extracted thus :

> In Chandrika dated March 12, 1977 on the front page a cartoon is published. It depicts Janasangh as a pig and Shri E. M. Sankaran Nampoodiripad, the Marxist leader, cutting the flesh of the pig and serving it to the Muslim. This is an attempt to promote feelings of enmity and hatred between different classes of citizens of India on grounds of religion. It is well-known to eat pork is pardial anathema (haram) for true Muslims. The publication of this cartoon in Chandrika is with the consent and knowledge of the respondent which promoted hatred of the Muslims against the United Front of Marxist Party and Janata Party and Muslim League (Opposition) of which the petitioner is a candidate from the concerned constituency.

It may be pertinent to note that in this averment the petitioner has pleaded that the cartoon was published with the consent and knowledge of the petitioner - a fact which the petitioner has miserably failed to prove. There is absolutely no evidence on record to show that the cartoon was shown to the appellant and his approval was obtained before it was published, nor is there any evidence to show that the appellant had any knowledge direct or indirect about the cartoon before its publication in Chandrika. We might indicate here that the term 'consent' is a much stronger word than knowledge because it implies conscious assent and there is nothing to show that the appellant at any time gave his consent to the publication of the cartoon. The actual cartoon seems to depict Janasangh as a pig and Shri E. M. S. Nampoodiripad the Marxist Leader cutting the flesh of the pig and serving it to Muslims. It is well known that pork is strictly prohibited by Islam and the very act of offering pig to a Muslim is extremely abhorrent to the Muslim so the cartoon no doubt attempts to promote feeling of hatred between the Hindus and the Muslims and the High Court was right in coming to this finding. But this does not conclude the matter because it must be affirmatively proved by the petitioner that this cartoon was shown to the appellant or was within his knowledge or had his consent before its publication. On this there is no evidence at all. Indeed if there is any evidence it is to negative this fact. The petitioner has mainly relied on the statement of PW 2, the editor which is to the effect that the copy of Chandrika used to be sent to the appellant. That by itself would not show that the appellant must have read all the issues of Chandrika including the one which contained the cartoon. In fact, as indicated above, PW 2 has himself admitted that at the time of election because of his responsibilities as the Secretary of the Muslim League and as a leader of the United Front during the months of February and March the appellant was mostly on tour. The appellant has also admitted that during the relevant time he never got time to read the paper completely. He has also stated categorically as indicated by us while dealing with his evidence that he was extremely busy and has stated thus :

> As a leader of the United Front and the leader of the Muslim League I got much

> work to be done during election time. During this time were you very busy with your election speeches ? (Q.) Yes. (Ans.) I was very busy.

He has further admitted that although a copy of Chandrika was sent to him yet he did not get time to read fully. The statement runs thus :

> As Chief Editor one issue of Chandrika used to be sent to me. Did you have time to read Chandrika and other newspapers during election time ? (Q.) I do not get time to read fully (Ans.).

51. This is all the evidence that has been produced in the Court to show that the cartoon was printed with the knowledge and consent of the appellant. Putting however the case of the petitioner at the highest all that has been shown is that the appellant may have seen or received the paper and at the same time it is equally possible that in view of his preoccupation the appellant may not have read or seen the paper at all. In such a situation, the onus of proof being on the petitioner to prove that the appellant had knowledge of the publication of the cartoon, and applying the standard of proof by the doctrine of benefit of doubt, the allegation of the petitioner that the appellant was aware of the cartoon or gave his consent to its publication stands disproved for the appellant will get the benefit of doubt it two clear possibilities are available. Thus, it is impossible for us to jump to the conclusion that the appellant had any knowledge of the publication of the cartoon before its publication, or that he gave his consent to its publication merely from the fact that the appellant was the Chief Editor and received a copy of Chandrika every day particularly when the appellant has explained that he was too busy and did not find time to read the paper fully. As the allegation regarding the cartoon is also corrupt practice it has to be proved by clear and cogent evidence which is wholly wanting in this case. It is true that the appellant was shown the cartoon while he was deposing in court and was asked to give his impression but whatever he might have said in court is totally irrelevant because that would not show that he had any knowledge of the cartoon prior to its publication. He gives his impression only when the cartoon is shown to him.

52. On a careful consideration of the evidence we are clearly of the opinion that the petitioner has not been able to prove the corrupt practice alleged against the appellant. There is no legal or satisfactory evidence to prove that the speech Ex. P-1(a) made by the appellant promoted or attempted to promote feeling of enmity and hatred between two classes of citizens, namely, the Janasangh and RSS on the one side and the Muslim League on the other. Similarly, there is no reliable evidence to show that the appellant had any knowledge or had given prior consent to the publication of the cartoon Ex.P. 5. Thus, the petitioner has miserable failed to prove the allegation made by him in paragraphs 5 and 11 of the petition which alone have been pressed before us. We have also come to the conclusion that the presumption under Section 7 of the Press Act is not available to the appellant and the learned Judge was wrong in relying on the same.

53. The result is that the appeal is allowed with costs. The judgment of the High Court setting aside the election of the appellant and unseating him is quashed as also the order of the High Court disqualifying the appellant from contesting the election for a period of six years. The election petition filed by the petitioner before the High Court is dismissed.

In Civil Appeal No. 865 of 1978

Fazal Ali, J. - In view of our decision in the case of Haji C. H. Mohammad Koya v. T. K. S. M. A. Muthukoya (Civil Appeal No. 12 of 1978), the appeal is dismissed but without any order as to costs.

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