

SUPREME COURT OF INDIA

M. J. Jacob

Vs.

A. Narayanan

C.A. No. 3611 of 2008

(R.V. Raveendran and Markandey Katju J.J)

06.03.2009

JUDGMENT

MARKANDEY KATJU, J.

1. These appeals have been filed under Section 116 A of the Representation of People Act, 1951 (in short 'the Act'), against the final judgment and order dated 5.5.2008 passed by the High Court of Kerala in Election Petition No. 2/2006, declaring the election of the appellant (M.J. Jacob) from no.79 Piravom Legislative Assembly Constituency to be a member of Kerala Legislative Assembly, the polling for which was held on 29.4.2006, as void. The High Court has also made an order recording the names of O.N. Vijayan (election agent of the returned candidate) and two others Jinson V. Paul and P.G. Manu as persons who have been proved at the trial to have been guilty of corrupt practice under Section 123 (4) of the Act of preparing, publishing and distributing the pamphlet (Ex.P1). C.A. No.3611 of 2008 is by the returned candidate. C.A. No.5183 of 2008 is by his election agent and C.A. No.5774 of 2008 is filed by the persons named under Section 99(1)(a)(ii) of the Act.

2. Heard Shri Fali Nariman, learned Senior Advocate assisted by Ms. Malini Poduval and Vishnu B. Saharia for the appellants, and Shri K.K. Venugopal, learned Senior Advocate assisted by Ms. Bina Madhavan for the respondents. The impugned judgment was passed on an Election Petition challenging the election of the appellant M.J. Jacob as an MLA for the Kerala Legislative Assembly in the polling held on 29.4.2006. The High Court by the impugned judgment has declared the said election to be void on the ground that the appellant was guilty of corrupt practice under Section 123 (4) of the Representation of People Act, 1951 (in short "the Act").

3. The Election Petition in question was filed by a voter in the election and not a candidate.

4. The ground on which the Election Petition was allowed was that a corrupt practice was committed by the publication of the pamphlet Ext. P1 and that such a publication has been made by the appellant's election agent, one Shri O.N. Vijayan (RW1), and by two other persons (RW2 and RW3) with the consent of the appellant or his election agent, that the statement of facts in Ext. P1 was made in relation to the personal character or conduct of PW-30 Shri T.M. Jacob, who was a candidate in the said election, which is false and which the publisher of Ext. P1 either believes to be false or does not believe to be true, and that such statement was reasonably calculated to prejudice the prospects of Shri T.M Jacob PW 30 in the election. Hence it was prayed that the election be declared to be void under Section 100 (1) (b) of the Act r/w Section 123 (4) thereof. Though in the election petition, it was contended that several statements in Ext.P1 amounted to false statements in relation to the personal character and conduct of Shri T.M. Jacob, in this appeal, we are concerned with only one allegation, viz., question No.2 posed to Shri T.M. Jacob in Ext.P1.

5. Section 123(4) of the Representation of the People Act states that the following is one of the corrupt practices : "The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

6. The entire pamphlet Ext. P-1 has been quoted in the impugned judgment, but it is not necessary to repeat the same here except the relevant allegation in the said pamphlet which is in paragraph 2 which states :- CHARIOT RIDE OF DEVELOPMENT TRICKERY WITH THE RIDDLES OF A QUARTER CENTURY.

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"2. A member of your personal staff who had attempted to murder Thirumaradi Congress Mandalam

president P.J. Baby, Joseph Babu and K.P. Jacob at Onakoor is still continuing as an absconder. Can you give an answer to the ordinary Congressmen in this regard?"

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RECOGNIZE THE SHAMELESS HYPOCRITE OF DEVELOPMENT TRICKERY REACT AGAINST THE DECEIVER OF PEOPLE.

7. It is on the basis of this statement in the said pamphlet Ext. P1 that the election of the appellant has been declared void by the High Court on the ground that it amounts to a corrupt practice. The High Court has held:- "The foregoing discussions and reasons lead to the following conclusions: i. Question no.2 in page 3 of Ext.P1 amounts to a statement of facts affecting the personal character and conduct of Shri T.M. Jacob. The said statement in Ext.P1 is false. ii. The tail-piece of Ext.P1, namely, the exhortation to `recognize the shameless hypocrite of development trickery.....react against the deceiver of the people.....' amounts to a statement of facts affecting the personal character and conduct of Shri T.M. Jacob in the setting in which it is placed, referable to Question no.2 in page 3 of Ext.P1. iii. The publication of Ext.P1 containing the aforesaid statements has been made by the respondent, he having owned up the responsibility of the said publication by having its expenditure met by making payment through his election agent and showing such expenditure as an expenditure incurred by him in the return filed under Section 77 of the Act and by RW1, the election agent of the respondent and RW2 and RW3. iv. Publishers of Ext.P1, namely, the respondent and RW1, his election agent and those who were involved in the preparation, publication and distribution of Ext.P1, namely, RWs 2 and 3, had no reason to believe that the aforesaid statements are true and had every reason to believe that they are false. v. The aforesaid statements made in Ext.P1, were reasonably calculated to prejudice the prospects of Shri T.M. Jacob in the election.

8. We fail to see how the aforesaid statement in the said pamphlet amounts to a corrupt practice. There are two allegations in the said paragraph 2. Firstly, that a member of the personal staff of Shri T.M. Jacob had attempted to murder some persons. According to the evidence, this statement was regarding one Shri Scaria who was on the personal staff of Shri T.M. Jacob when he was a Minister. Admittedly, there is no dispute that the said Shri Scaria was an accused in the aforesaid murder case and in fact a charge sheet had been filed by the Police. The second part of the said statement in paragraph (2) is that Shri Scaria is absconding. There is a serious dispute between the parties whether this statement is correct or not, but even if it is incorrect we fail to understand how this would make the said allegation a corrupt practice for the purposes of the Act.

9. Shri K.K Venugopal, learned counsel for the respondent submitted that in fact this statement that Shri Scaria was an absconder in the said criminal case of attempt to murder meant that Shri T.M Jacob was harbouring Shri Scaria when the latter was absconding. He referred to the evidence of

several witnesses to support his contention. We do not agree. There is no mention in paragraph (2) of the pamphlet that Shri T.M. Jacob was harbouring Shri Scaria.

10. Even assuming that an inference can be drawn from the allegation that Shri T.M. Jacob was harbouring Shri Scaria, that is only one possible inference. There may be any number of other inferences also. It is well settled that in an Election Petition for proving an allegation of corrupt practice the standard of proof is like that in a criminal case. In other words, the allegation must be proved beyond reasonable doubt, and if two views are possible then the benefit of doubt should go to the elected candidate vide *Manmohan Kalia vs. Yash & Ors.* (1984) 3 SCC 499 vide paragraph 7 in which it is stated :- "It is now well settled by several authorities of this Court that an allegation of corrupt practice must be proved as strictly as a criminal charge and the principle of preponderance of probabilities would not apply to corrupt practices envisaged by the Act because if this test is not applied a very serious prejudice would be caused to the elected candidate who may be disqualified for a period of six years from fighting any election, which will adversely affect the electoral process."

11. In *Razik Ram vs. Jaswant Singh Chouhan* (1975) 4 SCC 769 vide paragraphs 15 and 16 it was observed:- "Before considering as to whether the charges of corrupt practice were established, it is important to remember the standard of proof required in such cases. It is well settled that a charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. Thus, the trial of an election petition being in the nature of an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial. Just as in a criminal case, so in an election petition, the respondent against whom the charge of corrupt practice is levelled, is presumed to be innocent unless proved guilty. A grave and heavy onus therefore, rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt. It is true that there is no difference between the general rules of evidence in civil and criminal cases, and the definition of "proved" in Section 3 of the Evidence Act does not draw a distinction between civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainty amounting to demonstration is rarely to be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the definition is that of a person of prudence and practical good sense. "Proof" means the effect of the evidence adduced in the case. Judged by the standard of a prudent man, in the light of the nature of onus cast by law, the probative effect of evidence in civil and criminal proceedings is markedly different. The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is requisite for a conviction. The same is largely true about proof of a charge of corrupt practice, which cannot be established by mere balance of probabilities, and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the mind of the Court is left rocking with reasonable doubt -- not being the doubt of a timid, fickle or vacillating mind -- as to the veracity of the charge, it must hold the same as not proved. We have reiterated the above principles not as a ceremonial refrain of what has been said by this Court again and again but to emphasise their importance as a guide in the matter.

A court embarking upon an appreciation of evidence, without this rudder and compass, is apt to find itself at sea, mistaking every flotsam for shore, suspicion for proof and illusion for reality. Since these principles were not constantly kept in mind, the approach of the High Court in this case to the issues involved, and the treatment of evidence, appears to have gone awry. It is therefore, necessary to reappraise the evidence from the standpoint indicated above."

12. In *Surinder Singh vs. Hardial Singh* (1985) 1 SCC 91 vide paragraph 23 it was observed:- "It is thus clear beyond any doubt that for over 20 years the position has been uniformly equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in criminal trials..."

13. The above decision has been followed in *Mercykutty Amma vs. Kadavoor Sivadasan* (2004) 2 SCC 217 vide paragraph 27 where it was observed:-

"Allegations of corrupt practices are quasi-criminal charges and the proof that would be required in the support thereof would be as in a criminal charge. The charges of corrupt practices are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in a criminal trial."

14. A basic principle in the law relating to Elections and Election Petitions is that the mandate of the people as expressed in the election results should ordinarily be respected by courts, and the election of a successful candidate should not be lightly set aside vide *R.P Moidutty vs. P. T. Kunj Muhammed* (2000) 1 SCC 481 vide paragraph 14 where it was observed:- "It is basic to the law of elections and election petitions that in a democracy, the mandate of the people as expressed at the hustings must prevail and be respected by the courts and that is why the election of a successful candidate is not to be set aside lightly. A heavy onus lies on the election petitioner seeking setting aside of the election of a successful candidate to make out a clear case for such relief both in the pleadings and at the trial. The mandate of the people is one as has been truly, freely and purely expressed. The electoral process in a democracy such as ours is too sacrosanct to be permitted to be polluted by corrupt practices. If the court arrives at a finding of commission of corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent then the election of the returned candidate shall be declared to be void. The underlying principle is that corrupt practice having been committed; the result of the election does not echo the true voice of the people. As the consequences flowing from the proof of corrupt practice at the election are serious, the onus of establishing commission of corrupt practice lies heavily on the person who alleges the same. The onus of proof is not discharged merely on preponderance of probabilities; the standard of proof required is akin to that of proving a criminal or a quasi-criminal charge. Clear-cut evidence, wholly credible and reliable, is needed to prove beyond doubt the charge of corrupt practice."

15. The same view has been taken by this Court in Mahanth Shreo Nath vs. Choudhary Ranbir Singh 1970 (3) SCC 647 at Para 4, Manphul Singh vs. Surinder Singh 1973 (2) SCC 599 at Para 13, Rahim Khan vs. khurshid Ahmed and Others 1974 (2) SCC 660 at Para 9, Bir Chandra Barman vs. Shri Anil Sarkar and Others 1976 (3) SCC 88 Para 5, Lakshi Raman Acharya vs. Chandan Singh and Others 1977 (1) SCC 423 at Para 2, Amolakachand Chhazed Vs. Bhagavandas Arya and Another 1977 (3) SCC 566 at Para 13.

16. It may be noted that in Exhibit P-2 there is no statement that Shri T.M Jacob harboured any of the accused persons. The allegation about the attempt to murder some persons is not against Shri T.M Jacob but against Shri Scaria. Hence, we fail to understand how the allegation in paragraph 2 of Ext.P1 affects the personal character or conduct of Shri T.M. Jacob. In our opinion, paragraph 2 does not convey to the electorate that Shri T.M. Jacob harboured a member of his personal staff. Paragraph 2 only speaks about absconding of a member of the personal staff of Shri T. M. Jacob and not about the harbouring of a personal staff by Shri T. M. Jacob.

17. Shri K.K. Venugopal, learned senior counsel appearing for the respondents, relied upon the decisions of this Court in Mohan Singh vs. Bhanwarlal 1964 (5) SCR 12, T.K. Gangi Reddy vs. M. C. Anjaneya Reddy 1960 (22) ELR 261, Jagjit Singh vs. Giani Kartar Singh AIR 1966 SC 773, Inder Lal vs. Lal Singh 1962 Supp (3) SCR 114, Gadakh Yashwantrao Kankarrao vs. Balasaheb Vikhe Patil 1994 (1) SCC 682. These are cases where this Court held that pamphlets/leaflets published and circulated by the elected candidate (or his agent or by other persons with the consent of the candidate or his election agent) containing false statements as to the personal character and conduct of a defeated candidate, reasonably calculated to prejudice the prospects of that candidate, constituted a corrupt practice under Section 123(4) of the Act and consequently declared the election of the elected candidate as void. 18. In Mohan Singh (supra), this Court observed : "But in considering whether a publication amounts to a corrupt practice within the meaning of Section 123(4) the Tribunal would be entitled to take into account matters of common knowledge among the electorate and read the publication in that background, for one of the ingredients of the particular corrupt practice is the tendency of the statement in the publication to be reasonably calculated to prejudice the prospects of that candidate's election." `The test in cases under section 123(4) is whether the imputation beside being false in fact, is published with the object of lowering the candidate in the estimation of the electorate and calculated to prejudice his prospects at the election. And in ascertaining whether the candidate is lowered in the estimation of the electorate, the imputation made must be viewed in the light of matters generally known to them." 19 In T.K. Gangi Reddy (supra), referring to the provisions of Section 123(4), this Court held: "Do the aforesaid allegations refer to the personal character and conduct of Anjaneya Reddy, who was a candidate for the election. The words "personal character or conduct" are so clear that they do not require further elucidation or definition. The character of a person may ordinarily be equated with his mental or moral nature. Conduct connotes a person's actions or behaviour. The said acts attributed to the first respondent certainly relate to his personal character and conduct. What is more damaging to a person's character and conduct than to state that he instigated a murder and that he was guilty of violent acts in his political career. We, therefore, have no hesitation in holding that the allegations in the two leaflets, Exts. P3 and P4, are in relation to the personal character and conduct of the first respondent.The leaflets were, therefore, calculated to create an impression in the minds of the voters not to vote for the first respondent, who was described as a murderer and a man of bad

antecedents. The leaflets, Exts. P-3 and P-4, were, therefore, in our view, calculated to prejudice the prospects of the first respondent's election."

20. In *Jagjit Singh (supra)*, this Court held: "The question as to what allegations can be said to amount to allegations in regard to the personal character of a candidate, as distinguished from the public character, is not always easy to decide on considerations of abstract principles. The policy underlying the present provision is that in the matter of elections, the public and political character of a candidate is open to scrutiny and can be severely criticized by his opponents, but not so his private or personal character. In order that the elections in a democratic country should be freely and fearlessly conducted, considerable latitude has to be given to the respective competing candidates to criticize their opponents' political or socio-economic philosophy or their antecedents and character as public men. That is why even false statements as to the public character of candidates are not brought within the mischief of Section 123(4), because the legislature thought that in the heat of election it may be permissible for competing parties and candidates to make statements in relation to the public character of their opponents, and even if some of the statements are false, they would not amount to corrupt practice. Having regard to this policy of the statute, it often becomes necessary to examine carefully whether the false statement impinges on the personal character of the candidate concerned. Though it is not easy to lay down any general considerations which would help the determination of this issue in every case, in actual practice it may not be very difficult to decide whether the false statement impinges on the personal character of the candidate or on his public character...."

21. In *Inder Lal (supra)*, this Court held: "The public and political character of a candidate is open to public view and public criticism and even if any false statements are made about the political views of a candidate or his public conduct or character, the electorate would be able to judge the allegations in that behalf. It is on this theory that false statements of fact affecting the public or political character of a candidate are not brought within the mischief of Section 123(4). In order that the elections should be free, it is necessary that the electorate should be educated on political issues in a fearless manner, and so the legislature thought that full and ample scope should be left for free and fearless criticism by candidates against the public and political character of their opponents. But the position with regard to the private or personal character of the candidate is very different. Circulation of false statements about the private or personal character of the candidate during the period preceding elections is likely to work against the freedom of election itself inasmuch as the effect created by false statements cannot be met by denials in proper time and so the Constituency has to be protected against the circulation of such false statements which are likely to affect the voting of the electors. That is why it is for the protection of the constituency against acts which would be fatal to the freedom of election that the statute provides for the inclusion of the circulation of false statements concerning the private character of a candidate amongst corrupt practices. Dissemination of false statements about the personal character of a candidate thus constitutes a corrupt practice."

22. In *Gadakh Yashwantrao Kankarrao (supra)*, this Court held: "Before adverting to the particular statements alleged to have been by Gadakh and Sharad Pawar which are alleged to constitute the

corrupt practice under Section 123(4), it would be appropriate to deal with one submission made by Shri Ashok Desai and followed up by Shri Ram Jethmalani with greater vigour relating to the manner of appreciation of evidence in such a case. Shri Desai submitted that even though it may not be quite proper to make statements reflecting on the personal character of a candidate, yet every such statement does not amount to a corrupt practice since it does not prejudice the election in the prevailing political climate. Shri Desai submitted that the existing norms do not match the earlier norms and, therefore, every reflection on a candidate's character does not necessarily prejudice his election since the electorate is not influenced by such a statement in the prevailing electoral scene..... We would also like to observe that the suggestion of a liberal construction of the election law relating to corrupt practices by appreciation of evidence in the manner suggested in the existing political climate wherein mud-slinging' is common place, does not commend to us as the proper approach envisaged by the election law. If purity of election is the essence of democracy and providing for invalidation of an election on the ground of commission of any corrupt practice is the object of enacting these provisions, it cannot be accepted that the election scene having degenerated over the years, appreciation of evidence for determining the commission of a corrupt practice must be made liberally because of the lower values in the arena of elections. If the rule of law has to be preserved as the essence of the democracy of which purity of elections is a necessary concomitant, it is the duty of the courts to appreciate the evidence and construe the law in a manner which would subserve this higher purpose and not even imperceptibly facilitate acceptance, much less affirmance, of the falling electoral standards. For democracy to survive, rule of law must prevail, and it is necessary that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values who win the elections on a positive vote obtained on their own merit and not by the negative vote of process of elimination based on comparative demerits of the candidates." "The primary requirement of Section 123(4) is that the statement should be a 'statement of fact' which is 'false', and which the maker either "believes to be false" or "does not believe to be true"... ".... The maker of the statement knows best the material on which his belief was formed and, therefore, it is for him to prove the same. Whether the maker of the statement believed it to be false or did not believe it to be true, is then ordinarily a matter of inference from the facts so proved."

23. It is now well settled that the five ingredients required to establish a corrupt practice under Section 123(4) of the Act are: (i) there should be a publication by the candidate or his agent, or by any other person, with the consent of a candidate or his election agent; (ii) the said publication should contain a statement of fact which is false; (iii) the person making such publication should either believe such statement to be false or not believe it to be true; (iv) such false statement should be in relation to the personal character or conduct of any candidate; and (v) such false statement should reasonably be calculated to prejudice the prospects of that candidate's election.

24. There is thus no doubt that any false accusation relating to the personal character or conduct of any candidate calculated to prejudice the prospect of his election would amount to a corrupt practice. But what is crucial is that the false statement should relate to the personal character or conduct of a defeated candidate. Where the false statement was about some one other than the candidate, this Court has refused to consider the publication to be a corrupt practice under Section 123(4). In *Dev Kanta Barooah v. Golak Chandra Baruah* (1970) 1 SCC 392 a statement imputed corruption and chaos when the defeated candidate was chairman of a Municipality and asked the

voters to note the injustices and chaos during his tenure. This Court refused to hold the same as a corrupt practice under Section 123(4) on the following reasoning:

"It may, however, be noted that, in this part, it is not stated that Respondent No.1 himself was corrupt. The imputation only is that, during his tenure of office, there were instances of corruption and chaos. Thereafter, the four instances are given. It cannot, therefore, be held that the leaflet was intended to convey to the readers that Respondent No.1 was himself corrupt. The impression that would be expected to be created would be that his administration as Chairman of the Municipality was so unsatisfactory that corruption and chaos prevailed in the affairs of the Municipality. The imputation, therefore, was as to mismanagement of the affairs of the Municipality by Respondent No.1, indicating that he was not a good administrator. The leaflet was not intended to convey to the voters any reflection on the personal character of Respondent No.1."

25. In *Jagdish Prasad Tiwari v. Ramdhani Mishra* (1975) 1 SCC 108, this court held (vide para 3) :

"Under Section 123(4) of the Representation of the People Act the false statement must be in relation to the personal character or conduct of the candidate. We should here set out the offending portion in Ext. P1 : Then Tewariji who now proclaims himself a Congressman, and has as well been accepted, had no satiety from reviling using abusive and debased terms, Prime Minister Indira Gandhi, and the Congress. His supporters were raising slogans of very mean standard, Gali Gali mein Jhandi hai Indira Gandhi Randi hai. xxxxx The Hindi words used are "Khari Khoti" which mean true and false rather than legitimate and illegitimate. However, as pointed out by the learned Judge the first sentence relates to what the appellant himself did. The second sentence relates to what his supporters did. It is the second sentence that is obscene and abusive of the Prime Minister. Therefore, it cannot be said that the character or conduct of the appellant was attacked and therefore the matter does not fall within sub-section (4) of Section 123. We are, therefore, of opinion that the appellant has failed to prove the corrupt practice that he alleged against the respondent even as the learned Judge did."

26. We may also refer to the principles relating to construing offending pamphlets, laid down in *Kultar Singh v. Mukhtiar Singh* (1964) 7 SCR 790: "The principles which have to be applied in construing such a document are well-settled. The document must be read as a whole and its purport and effect determined in a fair, objective and reasonable manner. In reading such documents, it would be unrealistic to ignore the fact that when election meetings are held and appeals are made by candidates of opposing political parties, the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exaggerated language, or the adoption of metaphors, and the extravagance of expression in attacking one another, are all a part of the game, and so, when the question about the effect of speeches delivered or pamphlets distributed at election meetings is argued in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be construed in that light. In doing so, however, it would be unreasonable to ignore the question as to what the effect of the said speech or pamphlet would be on

the mind of the ordinary voter who attends such meetings and reads the pamphlets or hears the speeches."

27. In this case, the pamphlet published on behalf of the appellant - Shri M. J. Jacob, addressed certain questions to Shri T.M. Jacob - one of the rival candidates. Question (2) extracted above required Shri T.M. Jacob to give an answer to the ordinary Congressmen in regard to a member of his personal staff (one Scaria) attempting to murder a Congress Mandalam President -- P J Baby and two others -- Joseph Babu and K.P. Jacob at Onakoor and remaining an absconder. The allegations therein were against Scaria, a member of personal staff of J. M. Jacob, that is, (i) he attempted to murder three persons and (ii) he continued to be an absconder. Neither of these allegations are made against the candidate Shri T M Jacob. Nor did it contain any allegation that Shri T.M. Jacob was in any way involved either in Scaria's alleged attempt to murder the said three persons or that he helped Scaria to remain an absconder by harbouring him or otherwise. It is not therefore possible to read into the question, an implied false statement that Shri TM Jacob harboured a member of his personal staff who was an murder accused and absconder.

28. As already stated above, there is no mention in paragraph 2 of Ext. P1 that Shri T. M. Jacob has harboured any accused. However, Shri K. K. Venugopal, learned counsel for the respondent submitted that the conclusion that T.M. Jacob harboured the accused can be drawn by innuendo. We regret we cannot agree, for the reason already mentioned above. Moreover, it has been held in M. J. Zakharia Sait vs. T. M. Mohammed (1990) 3 SCC 396 that (vide paragraph 57) that for an allegation of corrupt practice by innuendo in an Election Petition, it is necessary to plead as well as to prove the extrinsic facts to spell out the innuendo meaning of the words complained of. We have carefully perused the Election Petition and we find that there is no clear pleading of the extrinsic facts to spell out the innuendo. On this ground only the Election Petition should have been dismissed.

29. It may be noted that in paragraph 3 of the Election Petition it is stated:- "The reference in annexure "A" that Shri T.M. Jacob has harboured a member of his personal staff and that he is an absconder escaping arrest is totally false as he had appeared in Court and was granted bail."

30. The above statement is totally different from alleging that the statement in para 2 of Ext. P1 that Shri Scaria is an absconder is an innuendo. As already mentioned above, in paragraph 2 of Ext. P1 there is no mention that Shri T.M. Jacob is harbouring Shri Scaria, and the mention is only that Shri Scaria who was in the personal staff of Shri T.M. Jacob is absconding. Hence, there should have been a clear pleading in the Election Petition that the statement in paragraph 2 of Ext. P1 is an innuendo, and that it really means that Shri T.M. Jacob harboured Shri Scaria, but there is no such pleading as already stated above. Innuendo is to be clearly pleaded but that has not been done in the Election Petition.

31. Shri Venugopal, learned counsel for the respondent, has invited our attention to the decision of this Court in Mohan Singh vs. Bhanwarlal (1964) 5 SCR 12 and has relied on the following observation therein

: "The interrogative form is often employed not with a view to secure information but to make and emphasize an assertion." In that case the statement in the leaflet in question was "Did you not defraud the agriculturists with respect to the licences of opium ?" It was held that the use of the interrogative form would not make the statement any the less an imputation if it is fairly capable of being so read.

32. In the present case in paragraph (2) of the pamphlet in question the last sentence stated "Can you give an answer to the ordinary Congressman in this regard?" Shri Venugopal submitted that the interrogative form used here will not make it any less an imputation against personal character.

33. In this connection it may be pointed out that this Court in Mohan Singh's case has itself stated that the interrogative is 'often' employed as an assertion. The use of the word 'often' indicates that the Court did not lay down in that decision that it is always or invariably so employed. Hence we have to see the facts of each case and not go by any rule of the thumb.

34. However, even if the statement in the interrogative form in paragraph (2) is regarded as an assertion in our opinion it will not amount to a corrupt practice under Section 123(4), for the reasons given above.

35. It may be noted that Shri T.M. Jacob has not filed any Election Petition nor made any complaint about the said pamphlet. In fact, the Election Petitioner Mr. A N. Narayanan has stated in his evidence "Shri T.M Jacob has not complained of any authority regarding publication of Ext. P1". It is also significant that Shri T.M Jacob chose to complain about another candidate (C.P. Saju) but not against the elected candidate. This clearly indicates that Shri T.M Jacob himself did not consider Ext.P1 as casting any aspersions against his personal character and conduct.

36. Arguments were advanced in great detail on behalf of both the parties as to whether the allegation that Shri Scaria is an absconder was true or not, and whether the appellant believed it to be true or not, but in our opinion it is not necessary to go into these allegations and counter-allegations. In fact no effort was made to examine Shri Scaria as a witness. In our opinion, even if the allegation was true it does not attract Section 123 (4) for the reasons already given above.

37. As already stated above, election results should not be lightly set aside and the will of the electorate should ordinarily be respected. Setting aside an election is a serious matter, and should not have been done lightly. We regret to say that in this case the election of the returned candidate has been set aside by the High Court, though no doubt by a rather elaborate judgment, by observing, according to us unwarrantedly, that paragraph No. (2) in Ext.P1 amounts to a false statement affecting the personal character and conduct of Shri T.M Jacob. Once it is held that paragraph No.(2) did not contain any statement regarding the personal character and conduct of Shri T.M Jacob it follows that the tail piece of Ext.P1 that is the exhortation to "recognize the shameless hypocrite of development trickery..... react against the deceiver of the people" will have to be considered as not against the personal character and conduct of Shri T.M Jacob, but as a statement in respect of his public and political character. This, in our opinion, does not attract Section 123(4) of the Act.

38. In a democracy many allegations and counter-allegations are made, and sometimes these are incorrect, but that does not mean that an election should be set aside straightaway on that account, as has been done in the present case, unless all the ingredients of Section 123(4) of the Act are clearly made out, otherwise almost every election will have to be set aside.

39. For the reasons given above these appeals are allowed, the Impugned judgment is set aside and the Election Petition is dismissed. There shall be no order as to costs.