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DR. (MRS.) VIMAL

v.

BHAGUJI AND ORS.

MAY 12, 1995

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[G.N. RAY AND FAIZAN UDDIN, JJ.]

Representation of the People Act 1951—Ss.123(3) and 123(3A)—Corrupt practice—Speeches made at election meeting with consent of candidate—Report of speeches published in local newspaper—Oral evidence led
C *of reporters attending meeting—Notings forming basis of reports not produced—Held; candidate not guilty of corrupt practice; evidence not unimpeachable.*

Representation of the People Act 1951—Ss.123(3) and 123(3A)—Speeches made at election meeting with consent of candidate—Report of
D *speeches published in local newspaper—Oral evidence led of reporters attending meeting—Notings forming basis of reports not produced—Held, Court should draw adverse inference against authenticity of report of speeches—Evidence Act 1872,s.59.*

E *Representation of the People Act 1951—Ss.98, 99—Speeches made at election meeting for benefit of and with consent of candidate—Court setting aside election for corrupt practice without naming collaborators—Held, Court should not make final decision of corrupt without naming collaborators.*

Appellant VM's election to the Maharashtra Legislative Assembly
F **from the said 201 Kaij Constituency (S.C.) was challenged by the defeated candidate B in the Bombay High Court inter alia on the ground that she had appealed to the voters on the ground of religion through the speeches delivered with the consent by JM and PM in the electoral constituencies for promoting communal hatred between two classes of citizens and that**
G **accordingly she was guilty of corrupt practice.**

The High Court accepted the oral evidence of reporters of two local dailies 'Maratha Sathi' and 'Ambajoagi Times' which carried their reports of the speeches of JM and PM respectively. The reports did not reproduce verbatim the next of the speeches. Although both reporters admitted that
H **they attended the meetings and made notings ('tipans') of the gist of the**

speeches as appeared important to them, these 'tipans' were not produced at the trial of the election petition in the High Court. The High Court held VM guilty of corrupt practice in making propaganda on the score of religion and promoting communal hatred between two communities through speeches delivered by JM and PM. The High Court did not name JM and PM as collaborators and issue noticed to them for having committed corrupt practice. The High Court set aside the election of VM and declared B having secured the next highest vote as elected. VM appealed to this Court.

Allowing the appeal, this Court

HELD : 1. The evidence about the foundation of corrupt practice alleged against the appellant is not clinching and unimpeachable. The finding of corrupt practice against the appellant having serious civil and criminal import is not warranted in the facts and circumstances of the case. The appellant is not guilty of corrupt practice under Section 123 and 123(3A) of the Act. [412-B, 411-H]

Mohan Singh v. *Bhanwarlal*, [1964] 5 SCR 12; *Kultar Singh* v. *Mukhtiar Singh*, [1964] 7 SCR 790; *D. Venkata Reddy* v. *R. Sultan*, [1976] 3 SCR 445; *Daulat Ram Chauhan* v. *Anand Sharma*, [1984] 2 SCC 64; *Laxmi Narayan Nayak* v. *Ramratan Chaturvedi*, [1990] 2 SCC 173 = [1985] 2 SCR 159 and *Ram Singh and Others.* v. *Col. Ram Singh*, [1985] Suppl. 2 SCR 399, referred to.

Nangthombam Ibomcha Singh v. *Leisanghem Chandramani Singh*, [1977] 1 SCR 573; *Mohd. Yunus Saleem* v. *Shiv Kumar Shastri*, [1974] 3 SCR 738; *Prahladdas Khandelwal* v. *Narendra Kumar Salve*, [1973] 2 SCR 157 and *Shri Shreewant Kumar Chodhary* v. *Baidyanath Panjiar*, [1973] 10 SCC 95, also referred to.

2. The tipans and notings being the basis of the reports published in the newspapers, requires to be considered for ascertaining whether reports and depositions were consistent with the notings made at the time of listening to the speeches by the authors of the report. The Court should draw adverse inference against the authenticity of the gist of the speeches since published in the newspapers for non-production of the said noting. [411-B]

Manmohan Kalia v. *Yash*, [1984] 3 SCC 499, followed.

A *Samant N. Balakrishna* v. *George Fernandez*, **[1969] 3 SCR 603**; *Ziyauddin Burhanuddin Bukhari* v. *Brijmohan Ramdass Mehra*, **[1976] 2 SCC 17**; *Haji C.H. Mohammad Koya* v. *T.K.S.M.A. Muthukoya*, **[1979] 2 SCC 8**; *Laxmi Raj Shetty* v. *State of Tamil Nadu*, **[1988] 3 SCC 319**; *Qamural Islam* v. *S.K. Kanta*, **AIR (1994) SC 1733** and *Laxminarayan* v. *Returning*
B *Officer*, **[1974] 1 SCR 822, referred to.**

3. The Court has not only a duty to name the collaborators by following the appropriate procedures but a final decision of corrupt practice should not be made without giving collaborators an opportunity of being heard if corrupt practice by a party to the election has been resorted
C **to not by his own act directly but by acts of the collaborators. Since even prima facie such finding of corrupt practice cannot be made the question of remitting the matter to High Court does not arise. [412-G, 413-B]**

D.P. Mishra v. *Kamal Narayan Sharma*, **[1971] 1 SCR 8** and *Rahim Khan* v. *Khurshid Ahmed*, **[1974] 2 SCC 660, referred to.**
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2227 of 1991 Etc.

From the Judgment and order dated the 20th April, 1991 of the High Court of Bombay, Aurangabad Bench at Aurangabad in Election Petition
E No. 7 of 1990.

Dr. N. M Ghatate, Pramit Saxena and S.V. Deshpande for the Appellant in C.A. No. 2227/91

V.N. Ganpule, S.K. Agnihotri and Punam Kumari for the Appellant
F in C.A. No. 2571 of 1991.

P.S. Poti and K.M.K. Nair for the Respondents in both the appeals.

The Judgment of the Court was delivered by

G **G.N. RAY, J.** In both these appeals, the decision of the Bombay High Court (Aurangabad Bench) dated April 20, 1991 in Election Petition No. 7 of 1990 is under challenge. The election petitioner Sri Bhaguji Nivrutti Satpute had questioned the election of the appellant in C.A. No. 2227 of 1991 Dr. (Mrs.) Vimal Nandkishore Mundada to the Maharashtra State
H Legislative assembly from 201 Kaij (Scheduled Caste) Constituency held in

1990 by filing a petition under the Representation of the People Act 1950 (hereinafter referred to as the Representation Act) before the Bombay High Court *inter alia* on the grounds that Sri Ere Maruti Nivirutti was a Lingayat by caste but he filed his nomination as Lingder, that Manegsh Pralhadrao Ranjankar the appellant in Civil Appeal No. 2571 of 1991 was Kalal by caste but he filed his nomination as Khatik, that appellant Dr. Vimal Mundada had although embraced Jainsm after her marriage, but filed her nomination as Chambhar but convassed for vote as Jain (Hindu) and Dr. Vimal also convassed for votes on the ground of religion and promoted communal hatred between two classes of citizen and thereby committed corrupt practices under Section 123 of the Representation Act. It may be stated here that the result of election to the Maharashtra Legislative Assembly from the said 201 Kaij Constituency (S.C.) held on 27.2.1990 was declared on 1.3.1990 and the appellant *Dr. Vimal Mundada* having secured 35957 votes was declared elected from the said constituency. The election petitioner Sri Bhaguji secured 25736 votes and the other appellant Sri Manegsh Ranjankar secured 15260 votes in the said election. Both the appellants namely Dr. Vimal and Sri Manegsh filed their written statements in the election petition before the High Court and disputed the correctness of the allegations made against them by the election petitioner. The allegation and counter allegations regarding other candidates in the said election petition need not be referred to for the disposal of these appeals.

The appellant *Dr. Vimal Mundada* in her written statement (Ext.18) denied the allegations made against her regarding caste, community, promotion of hatred between two classes of citizens and resorting to corrupt practice as alleged. She also stated that Sri Ere Maruti Nivrutti belonged to Lingder community and simply because he was described as Wani, he did not cease to be a Lingder. It was also contended by Dr. Vimal that the election petitioner had never objected to the caste certificate of Sri Ere Maruti. She also contended that Sri Mangesh Ranjankar belonged to Khatik community and the caste certificate was issued in 1990 by a competent authority on the basis of relevant documents. Hence the nominations of Sri Ere Maruti and Sri Mangesh as scheduled caste candidates were correctly accepted by the returning officer. The appellant *Dr. Vimal* also contended that the voters of Kaij constituency was against Congress-I party and hence votes cast in favour of Sri Maruti or Sri Mangesh would have never gone in favour of the election petitioner. It was

A also stated that in the Parliamentary constituency of which Kaiz constituency was one of the segments, the Congress I candidate got defeated by Janta Dal Candidate. That apart, the election petitioner lost his reputation as M.L.A. Although he contested the previous election as an independent candidate and had criticised the policies and achievements of Congress I party, he joined Congress I party later on and he had also enemies within his own party and he had failed to develop public relation.

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Dr. Vimal in her written statement specifically denied that she had posed herself as Marwari Community woman and having married Sri Nand Kishore Mundada had presented herself as Jain to the voters. She stated that by marriage she had not lost her caste or religion more so when marriage was performed according to vedic rites. She also stated that she had not published posters or banners nor did she subscribed the news paper publication. Posters or banners were also not displayed with her consent. She had appealed to the voters according to manifesto of B.J.P. and criticised the policies of the Ruling Party or various aspects of national life.

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Sri Mangesh in his written statement also denied the allegations made against him in the election petition. He stated that he obtained a caste certificate as 'Khatik' and the said caste Khatik was a recognised scheduled caste. Such caste certificate was issued as far back as on 29.2.1990 and such certificate had been correctly issued by the Executive Magistrate Kaiz on the basis of relevant documents. He also stated that although the caste of his brother was shown as 'Kalal' such description of caste of his brother was not made on the statement of their father and the caste of the brother was wrongly mentioned. Sri Mangesh stated that persons belonging to Khatik caste also engaged themselves in toddy business on contract and they were denoted as 'kalals' although they factually belonged to Khatik caste. He also denied that the vote caste in his favour or in favour of Ere Maruti would have gone in favour of the election petitioner. He also stated that the election petitioner had failed to keep contact with his constituency and became unpopular.

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In the election petition No. 7 of 1990 before the Aurangabad Bench of the Bombay High Court, several issues were framed for adjudication. Several issues including issues No. 5 and 9 related to the illegal acceptance of nomination papers of both the appellants and of the said Ere Maruti even though they did not belong to scheduled caste thereby adversely

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affecting the voting prospect of election petitioner and rendering the said election of 201 Kaij S.C. constituency as illegal and void. In respect of *Dr. Vimal Mundada* issues No. 4, 6, 7, 8 and 9 were framed for deciding as to whether *Dr. Mundada* and her election agents acted in projecting her as a member of Marwari Community for securing Marwari votes of about 7 to 8 thousands and whether they resorted to publication of posters banners and news paper items as detailed in paragraphs 56 to 63 of the election petition attacking the personal character of election petitioner and whether they had also resorted to corrupt practice on account of delivering speeches by Sm. Jayantiben Mehta and Sri Promod Mahajan with the consent of Dr. Vimal in the electoral constituency on the ground of religion and also with a view to promote communal hatred as stated in paragraphs 64 to 70 of the election petition.

By the impugned judgment, a Single Bench of the Bombay High Court (Aurangabad Bench) held *inter alia* that Sri Ere Maruti and Sri Mangesh Ranjankar who is the appellant in Civil Appeal No. 2571 of 1991, were not the members of the scheduled caste and acceptance of their nomination forms as contestant in the said election in 201 Kaiz constituency was illegal. The High Court however held that the contest by the said Sri Ere Maruti and Sri Mangesh did not materially affect the election result of Dr. Vimal. The High Court also held that the declaration that Dr. Vimal got elected from the said 201 Kaiz Constituency was void. The High Court also answered the issue No. 7 relating to resorting of corrupt practice adopted by Dr. Vimal and her supporter in making propaganda on the score of religion and prompting communal hatred between two communities through speeches delivered by Sm. Jayantiben Mehta and Sri Promod Mahajan in the affirmative.

In her appeal before this Court, *Dr. Vimal Mundada* has challenged the decision of the High Court declaring his election from the 201 Kaij constituency as illegal and void and holding him guilty of corrupt practice under Section 123 of the Representation Act for making propaganda to the voters on the score of religion and promoting hatred between two communities through the speeches delivered with her consent by Smt. Jayantiben Mehta and Sri Promod Mahajan. In the other appeal, Sri Mangesh Ranjankar has challenged the decision of the High Court that Sri Mangesh was not a member of the scheduled caste and acceptance of his nomination paper for the said reserved constituency for scheduled caste

A candidate in 201 Kaij constituency was illegal.

Coming to the question of invalidity of the election of the appellant *Dr. Vimal,* we may indicate that Issue No. 3 as to whether election petitioner had proved that Dr. Vimal ceased to be a Scheduled Caste candidate on her marriage with Sri Nand Kishore Mudanda who is a Jain, B has been answered in the negative by the High Court. Similarly, the High Court has also answered in the negative Issue No. 4 as to whether the election petitioner had proved that Dr. Mundada got 35957 votes on account of her propaganda that she was a Marwari by caste and such action on her part amounted to corrupt practice. Although issue No. 5 has been C answered in the affirmative to the extent that nomination of Ere Maruti Nivrutti and Sri Mangesh the appellant in the other appeal had been wrongly accepted, the High Court has specifically held that the result of wrong acceptance of the nomination of the said persons as members of Scheduled Caste has not adversely affected the election of the election D petitioner. The High Court has also answered in the negative Issue No. 6 as to whether the election petitioner had proved that Dr. Mudanda, her agents and other supporters with the consent of Dr. Mudanda published poster, banners and newspaper items attacking the personal character and conduct of the election petitioner as detailed in para 26 of the election petition. The High Court has also answered in the negative Issue No. 10 E as to whether the election in question was void on account of the improper acceptance of the nominations of Dr. Mudanda, Sri Ere Maruti Nivrutti and Sri Mangesh and Scheduled Castes. The High Court has, however, answered in the affirmative Issue No. 7 as to whether the election petitioner had proved that Smt. Jayantiben Mehta and Sri Promod Mahajan with the F consent of Dr. Mudanda, had delivered speeches in the electoral constituencies on the ground of religion and also with a view to promote communal hatred as stated in paras 64 to 70 of the election petition. It is because of such decision on Issue No. 7 that the High Court has declared that the election of Dr. Mudanda was void and the election petitioner having secured the next highest vote was entitled to be declared as elected.

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It is, therefore, necessary to consider whether the allegations of corrupt practice alleged to have been resorted to by Dr. Mudanda because of her appeal to the voters on the ground of religion through the speeches delivered with her consent by Smt. Jayantiben Mehta and Sri Promod H Mahajan in the electoral constituencies for promoting communal hatred

between two classes of citizens as stated in paragraphs 74-77 of the election petition since found to be correct by the High Court have been properly established. A

Dr. Ghatate, learned senior counsel appearing for Dr. Vimal has contended that the only material on the basis of which the High Court has found that the appellant Dr. Mudanda had committed corrupt practice under Section 123 (3) and 123 (3A) of the Representation Act is the report of speech said to have been delivered by Smt. Jayantiben Mehta on February 14, 1990 as published in Maratha Sathi on February 15, 1990. The report of the speech said to have been delivered by Sri Promod Mahajan was published in the daily Ambajogal Times on February 19, 1990. The evidence of Sri Sudarshan Rapatwar, P.W. 14, Reporter of Maratha Sathi and the evidence of Ishwar Chand Gupta P.W. 24, the Reporter of daily Ambajogal Times have been accepted by the High Court. Dr. Ghatate has submitted that the High Court has not placed any reliance on the evidence of the election petitioner and P.W. 9, Sri Sambhajirao Jogand and P.W. 10 Sri Banshi N. Jagand. Dr. Ghatate has submitted that the High Court has committed a grave error in holding that the speeches of Smt. Mehta as reported in Maratha Sathi amounts to corrupt practice under section 123(3) and 123(3A) of the Representation Act in view of the fact (a) complete verbatim speech was not produced to ascertain whether the extract publication were out of context or not (b) because even the reporter Sri Rapatwar deposed that the extract of the said speech of Smt. Mehta was in his language and not in verbatim. Admittedly, 'Tipan' that is the notes of the speech were made by D.W.14 when the speech was delivered but such Tipan had not been produced before the Court so as to ascertain whether the publication was even in accordance with the Tipan. Dr. Ghatate has also submitted that the maker of speech was not produced but the maker of the reports of the speeches who admittedly reported some parts of the speeches in their own language were examined. Dr. Ghatate has submitted that P.W.14 in his deposition stated categorically that "there is a political movement to create vote bank on the basis of religion. Her approach to religion was from point of view of politics." Dr. Ghatate has stated that the aforesaid statement by P.W. 14 is his personal assessment of the speech delivered by Smt. Mehta and because of his assessment of the said speech of Smt. Mehta he published the report according to his own idea of the speech and it is not at all unlikely that the extract of the speech as published was out of context. Dr. Ghatate has also submitted B C D E F G H

A that the newspaper report appears to be factually wrong because Smt. Mehta could not have said that BJP Shiv Sena alliance would from the Government of Madhya Pradesh, Himachal Pradesh, Gujarat and Rajasthan as reported in the publication because such alliance of BJP and Shiv Sena was only confined to the State of Maharashtra.

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Coming to the speech of Sri Mahajan as reported in Ambajogai Times, Dr. Ghatate has submitted that such speech was also not extracted in verbatim. The maker of the speech was no examined and the reporter in his own language reported the contents of the speech and even his notes on the basis of which the publication was made about the said speech was C also not produced. He has submitted that the said reporter according to the subjective understanding of the effect of the said speech published the said report and no reliance should be placed on such report based on subjective assessment of the speech. Dr. Ghatate has also submitted that P.W. 24, Ishwarchand Gupta admitted in his deposition that he had D recorded necessary items and not the whole speech and recorded those points which according to him were relevant and important. Dr. Ghatate has submitted that on the face of such submission it is quite evident that report also suffered from subjective assessment of some parts of the speech which in the opinion of the reporter were important and it was not unlikely that such report had been made about portions of the speech taken out of E their context thereby creating a wrong impression. Dr. Ghatate in the connection has referred to a decision of this Court in *Samant N. Balkrishna Etc.* v. *George Fernandez and Ors. Etc.*, [1969] 3 SCR 603 at 636- 638), Ziyauddin Burhanuddin Bukhari v. *Brijmohan Ramdass Mehra and others*, [1976] 2 SCC 17 para 17, *Haji C.H. Mohammad Koya Etc.* v. *T.K.S.M.A.* F *Mathukoya*, [1979] 2 SCC 8 para 35-38. Dr Ghatate has submitted that the newspaper report or evidence of the reporter was only hearsay evidence and Section 78 of the Evidence Act does not refer to the newspaper report. In this connection, Dr. Ghatate had relied on a decision of this Court in *Laxmi Raj Shetty and another* v. *State of Tamil Nadu*, [1988] 3 SCC 319 para 25-26 and *Manmohan Kalia* v. *Yash and Others*, [1984] 3 SCC 499 G paras 4 and 7 and *Qamural Islam* AIR (1994) SC 1733 para 44, 46, 47 and 48. Dr. Ghatate has submitted that it is very difficult to interpret a part of the speech with certainly that it is not reported out of context as has been indicated by this Court in Mohammed Koya's case (ibid). He has also submitted that in any event, the notes of speech must be produced to show H that the report was according to the notes and not tainted. For this

contention, Dr. Ghatate has relied on the decision of this Court in *Laxminaryan and another* v. *Returning Officer and Others*, [1974] 1 SCR 822 at 841-842. It has been contended by Dr. Ghatate that even if a person is not a member of political party, he may not necessarily be an independent witness. It is not unlikely that such person may have his own political ideas close to the ideas of any political party. Dr. Ghatate, has submitted that it is quite apparent from the deposition of Sri Rapatwar that he evalued the election speeches delivered by Smt. Mehta from political angle according to his own understanding. Dr. Ghatate has submitted that even on the basis of alleged speech delivered by Smt. Mehta and Sri Mahajan as published, there was no occasion for the High Court to come to a finding that such speeches, delivered with the consent of the appellant could be held to be corrupt practice under Section 123(3) and 123(3A) of the Representation Act. Dr. Ghatate has submitted that the statement attributed to Smt. Mehta that "the spark of 'Hindutwa' be lit in Maharashtra and should be made to march upto Delhi'" and reference to Hindutwa in two more places must be held to be out of context because of the categorical admission of Sri Rapatar in his deposition - "I cannot say whether Hindutwa is a symbol of culture and not necessarily a symbol of religion." Dr. Ghatate has submitted that 'Hindutwa" has been derived from the words 'Hindu and 'tatwa' which means Hindu Logic or philosophy and such 'tatwa' is different from Hindu religion. Referring to the passage about the alleged speech of Smt. Mehta regarding Kashmir, Dr. Ghatate has submitted that it is attributed that Smt. Mehta has said that Kashmir was indivisible part of India and we would not allow Kashmir to be separated in any situation. Such statement does not offend any religion and cannot be said to have caused even remotely hatred between two classes of religion. The alleged speech of Smt. Mehta to the effect that present situation in Kashmir wherein the slogans in favour of 'Pakistan was raised and burning of Indian national flag on August 14 had taken place and insult of Hindu Temples in Anant Nag had been witnessed were consequences of wrong policies of Congress I party cannot be said to be a propaganda on the score of any religion or intended to cause any hatred between different classes of religion. Dr. Ghatate has submitted that terrorism and anti national movements in the state of Jammu and Kashmir are being questioned and analysed by all the political parties and people in general and criticism of the state of affairs in Jammu and Kashmir cannot be held to be propaganda on the score of religion or a propaganda for causing hatred between different communities and

A B C D E F G H

A religious groups.

Coming to the statement attributed to Sri Mahajan Dr. Ghatate has submitted that Sri Mahajan according to the report had stated that if his political party would be given an opportunity to hoist safron flag in Vidhan Sabha, it would also be hoisted in Islamabad within five years and the internal rift in the Congress party was going to benefit the BJP-Shiv Sena alliance and people would see safron flag hoisted in Vidhan Sabha. Dr. Ghatate has submitted that safron flag is the colour of the flag of Shiv Sena which was a partner of the said alliance. The flag of BJP is safron and green and the flag of Congress party is safron, white and green. Dr. Ghatate has submitted that hoisting of safron flat in Vidhan Sabha is the symbolic victory of the said BJP-Shiv Sena alliance. The undivided India was partitioned in 1947 and the desire that again both the countries would become united through the political efforts of BJP-Shiv Sena alliance within a period of five years thereby making it possible to hoist the said safron flag in Islamabad does not in any way appeal the voters on the ground of religion or such statement was neither intended nor had brought into effect or likely to bring into effect any hatred between different communities and religions. Dr. Ghatate has submitted that there is no evidence before the Court which is clear, cogent, satisfactory, credible and positive to establish the charge of corrupt practice. Since such charge is quasi-criminal in nature and entails criminal liability apart from civil liability to loose the right to contest election in future the scrutiny of the allegation of corrupt practice under section 123 (3) and 123(3A) must be very critical and until and unless the evidences being absolutely credible and positive can stand the test of scrupulous scrutiny and would lead to only one irresistible conclusion and unimpeachable result that corrupt practice under Section 123(3) and 123(3A) was committed, the Court should desist from making any finding of corrupt practice. In this connection, Dr. Ghatate has relied on the decision of this Court in *Mohan Singh* v. *Bhanwarlal and Others*, [1964] 5 SCR 12 at 20, *Kultar Singh* v. *Mukhtiar Singh*, [1964] 7 SCR 790 at 791-794, *D. Venkata Reddy* v. *R. Sultan and Others*, [1976] 3 SCR 445 at 445-447. Dr. Ghatate has submitted that there is no room for inference or conjecture for making a finding of corrupt practice. Dr Ghatate has also submitted that the evidence about the corrupt practice must be of such unimpeachable character that it will lead to only one conclusion that corrupt practice has been committed and if any other inference is also possible, benefit must go to the returned candidate

B C D E F G H

and courts should be slow to interfere with the verdict of the electorate. In this regard, Dr. Ghatate has relied on the decision of this Court in *Daulat Ram Chauhan* v. *Anand Sharma*, [1984] 2 SCC 64 at 14, 15, 18, 19 and 20 and the decision in *Laxmi Narayan Nayak* v. *Ramratan Chaturvedi and Others*, [1990] 2 SCC 173 para 5.

Dr. Ghatate has also submitted that Section 99 of the Representation Act is mandatory in nature. He has submitted that even assuming that the appellant Dr. Vimal gave consent to the speeches delivered by Smt. Mehta and Sri Mahajan, the High Court, in view of the Section 98 read with Section 99 of the Representation Act, cannot set aside the election before naming the collaborators after giving the collaborators opportunity to lead evidence and to cross-examine the witnesses examined to prove that they were not guilty of corrupt practice as alleged. Dr. Ghatate has submitted that it has been held in *D.P. Mishra* v. *Kamal Narayan Sharma and another*, [1971] 1 SCR 8 at 28 nd 29 that it is duty of the Court to name the person committing corrupt practice. If the Court fails, the case has to be remanded. He has also referred to another decision of this Court in *Rahim Khan* v. *Khurshid Ahmed and others*, [1974] 2 SCC 660 at 685 wherein it has been held by this Court that when the Court found that the returned candidate and his one of the supporters had committed corrupt practice, it was under statutory duty to name all those who were guilty of corrupt practices under Section 99 (a) (ii) after following the prescribed procedure. Dr. Ghatate has submitted that if the Court comes to the conclusion that *prima facie* corrupt practice had been committed by returned candidate with the aid of Collaborators it becomes bounden duty of the Court to name the collaborators after giving them opportunity to disprove the allegations before setting aside the election of the victorious candidate. Dr. Ghatate has also submitted that without giving opportunity to the collaborators before naming the as guilty of corrupt practice along with the candidate in an election, no final finding about corrupt practice should be made. He has submitted that if without giving opportunity to the collaborators, a firm finding about corrupt practice resorted to by a candidate is made and on that basis the election is set aside, and if for naming the collaborators subsequently steps are taken by the Court, it is not unlikely that a very anamolous situation may arise if the collaborators on getting such opportunity satisfy the Court that they had not committed any corrupt practice. Dr. Ghatate has, therefore, submitted that in the aforesaid facts and circumstances, the finding of the High Court that Dr. Vimal Mudanda

A is guilty of corrupt practice under Section 123 and 123(3A) of the Representation Act is wholly unjustified and must be struck down. He has submitted that Dr. Vimal was declared elected by a convincing margin over her nearest rival namely the election petitioner and the mandate of the electorate should not have been frustrated by making the said finding in the absence of cogent, specific, reliable and admissible evidence about B resorting to corrupt practice by Dr. Vimal on account of speeches delivered by Smt. Mehta and Sri Mahajan. He has, therefore, submitted that the appeal by Dr. Vimal should be allowed and she should be declared to have been elected in the aforesaid election held in 1990.

C Mr. Poti, learned senior counsel appearing for the respondent No.1, namely election petitioner Sri Bhaguji has submitted that though several grounds were urged by the said election petitioner, the High Court accepted only on as sufficient to set aside election of Dr. Vimal on the ground that Section 123(3) and 123(3A) of the Representation Act had been D infringed. Such finding has been made in view of the speeches made at election meetings of the appellant. The first of such meeting was held on February 14, 1990 and the second was held on February 19, 1990. P.W. 14 has deposed about the meeting held on February 14, 1990 at Nagar Parishad ground and P.W. 24 has deposed about the meeting held at Municipal ground on February 18, 1990. The English translation of the E report of the speech by Smt. Mehta was published in Maratha daily Sathi on February 15, 1990 and the report of the speech of Sri Mahajan was published on February 19, 1990 in Ambajogai Times. Mr. Poti has also submitted that speeches were not reported in full. The reporter who made the reports had deposed that they had attended the respective meeting and they had reported the gist of the speeches to the newspaper publishing such F reports. P.W. 14 is the reporter of Sathi and P.W. 24 is the Editor of Ambajogai Times. Mr. Poti has submitted that the primary evidence is the testimony of the speeches and the testimony is supported by the newspaper reports. It has been contended by Mr. Poti that the credibility of the evidence will depend upon other facts and circumstances including the case G attempted to be suggested in the cross examination. It also depends upon the oral testimony of the parties which may disclose what their cases are in regard to the evidence of the said two witnesses. Mr. Poti has submitted that no suggestion worth consideration had been made in the cross examination of P.W. 14 and P.W. 24 which would suggest that particular part of their reports or their depositions were not true. There is no serious H dispute about making of speeches by Smt. Mehta and Sri Mahajan in the

presence of the appellant at the election meetings. The High Court has, therefore, rightly held that the contents of the speech do not appear to be in dispute. Even then, the election petitioner proved the contents of the speech by examining the relevant witnesses. Mr. Poti has submitted that the election petitioner has pleaded to his election petition the facts relating to the meetings, the speeches made in the meetings and constructive liability of the appellant Dr. Vimal for such speeches in clear and specific terms. In reply to such averments made in paragraphs 63-70 of the election petition, the appellant in her written statement has not indicated a categorical denial of such statement. The holding of the meeting and participation of Smt. Mehta and Sri Mahajan has been admitted. The presence of the appellant in such meeting has also been proved by leading reliable and convincing evidence. There is no session, therefore, to pretend that such speeches had been delivered without her approval. Mr. Poti has also submitted that there is no specific denial that each one of the particular statements attributed to the said speakers was not made. He has submitted that the only submission to the witnesses was to the effect that such speeches were on party lines. Mr. Poti has submitted that according to the rules of pleadings, there must be specific denial in clear and unambiguous terms. If there is no specific denial of the averments made about the corrupt practice as contained in paragraphs 62-70 of the election petition, any attempt of vague and evasive denial will be of no consequence according to the well established principles of pleadings and the provisions of the Code of Civil Procedure relating to pleadings of the parties in a lis. Mr. Poti has submitted that there is no doubt that the plea of corrupt practice requires a high standard of proof considering the serious consequences involved in a decision on the question. But facts relating to corrupt practice are to be proved in an election petition in the same manner as facts in the other case are proved and there is no doubt standard of such proof. For this contention he has relied on a decision of this Court in *Ram Singh and Others* v. *Col. Ram Singh*, [1985] Supp.l. 2 SCR 399 at 481-482. Mr. Poti has submitted that the learned counsel for the appellant has referred to various decisions of this Court including the decision made in George Fernadez's case (ibid) relating to Madhu Limaye's speech that news paper reports are not evidence by themselves. He has submitted that it is now well settled that newspaper reports by themselves are not evidence but in the facts of the case, such decisions have no manner of application. Mr. Poti has submitted that publication of a newspaper report only shows that such news item has been published but standing by itself it is of very little evidentiary value. Mr. Poti has submitted that it is, therefore, necessary that

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A the contents of the speech should be proved by one of the known methods either by examining the reporter or by proving the contemporaneous record of the report or by such other evidence as may be considered relevant or material. Evidentiary value of the newspaper reports will ultimately depend upon how and in what manner the report is sought to be proved. Mr. Poti has submitted that in the instant case, the newspaper B reports are not the primary evidence but the secondary evidence in the sense that they corroborate the evidences of P.W. 14 and P.W. 24. Mr. Poti has submitted that even without newspaper reports, speeches made by persons at a meeting could be proved by those who listened to those speeches. Mr. Poti has submitted that where there are no press reports, C the only way of proving the speeches is by oral evidence of those who listened to the speeches. It is not expected that a witness will be in a position to recollect the speeches in full and reproduce the same verbatim in Court particularly when the speeches are long. The gist of the points which go home will be spoken by such witnesses. The acceptance of such D evidences will depend upon various circumstances including the power to recall the speeches at the distance of time when they are examined. In a case where it is undisputed that the speeches were made and it is further proved that it was listened to by gentleman professionally trained to get at the gist of the speeches then unless there is strong reason to disbelieve their E evidence or there is strong evidence in rebuttal, the depositions about the gist of the speech would normally be accepted. Mr. Poti has submitted that it is also an important fact that the said witnesses were able to recall from the speeches because of the newspaper publications were based on their own reports. Mr. Poti has also submitted that the conduct of the appellant Dr. Vimal is of considerable significance in the facts of the case. Apart F from the vague pleadings and evasive denials in her written statement, the appellant who was declared elected and whose election was challenged, did not choose to enter the witness box and honestly place her version of the matter before the Court. Her failure to examine herself should not place her at an advantage over a party who enters the witness box and G speaks about his case and stand to cross examination. Mr. Poti has submitted that in the instant case the appellant has not deposed that P.Ws. 14 and 24 did not attend the respective meetings or they had not stated what exactly was spoken at the meetings in question. The appellant has also not made any statement by examining herself as to what was the actual gist H of the speech and whether the gist of the speech reported was incorrect or

quoted out of context. Even in the cross examination of P.Ws. 14 and 24, there is no suggestion to the said witnesses that the particular portions of the speech as reported were made in different form or had not been made at all. Coming to the scope of appreciation of question of finding of fact in an appeal before this Court arising from a decision rendered by the High Court in an election petition, Mr. Poti has submitted that it is well settled that though an appeal lies on a question of law and fact from a decision rendered in an election petition, this Court does not by convention interfere with the finding of fact unless there is a clear infirmity against the judgment. For the said contention Mr. Poti referred to the decision of this Court made in *Nangthombam Ibomcha Singh* v. *Leisanghem Chandramani Singh and others*, [1977] 1 SCR 573. It has also been held by this Court in *Mohd. Yunus Saleem* v. *Shiv Kumar Shastri and Others*, [1974] 3 SCR 738 that unless there are convincing and clinching reasons to take a different view, the finding arrived at by the High Court should not be interfered with. In *Prahladdas Khandelwal* v. *Narendra Kumar Salve*, [1973] 2 SCR 157 it has been held that no interference to the findings of fact by this Court is called for unless there is grave error in the of the facts of the case. In *Shri Shreewant Kumar Chodhary* v. *Shri Baidyanath Panjiar*, [1973] 1 SCC 95 it has been indicated by this Court that this Court does not reappreciate the case specially in the matter of corrupt practice.

Coming to the conclusion as to whether the gist of the speeches if correctly reported justified the finding of corrupt practice under Section 123 (3) and 123 (3A) of the Representation Act, Mr. Poti has submitted that before assessing the impact of the speeches, it is necessary to notice the object of these two sections as well as certain principles laid down by this Court in the matter of appreciation of evidence. In *Z.B. Bukhari's* case (ibid) this Court has dealt with the object of Section 123 (3) and 123(3A) of the Representation Act relating to the question of disqualification on account of corrupt practice. This Court has indicated that our political history makes it particularly necessary to ensure that differences on the basis of religion, culture and creed do not deprive the people of their rational though and action. In the case reported in (1985 (2) SCR 159) Justice Sabyasachi Mukherjee (as His Lordship then was) has indicated that :

"Every citizen must remember that while he has a fundamental

A right to speak he cannot speak at an election meeting what he speaks at a political meeting. So long as the political parties based on religion are not banned in this country, it may be open to them to organised themselves on the basis of religion and avowdly promoting, what they consider true faith namely their religious faith. But so long as their activities transgress the provisions of Penal Law intended to preserve peace and communal harmony, their fundamental right of speech will not be protected. Section 123 (3A) carves out an area out of this freedom and restricts such freedom during such election campaign. Section 123 (5) and 124 (5) as they stood at the relevant time where challenged as ultra vires as offending the fundamental right of freedom of speech. The Court said "these laws do not stop a man from speaking. They merely prescribe condition which must be observed if you want to enter Parliament vide [1955] 1 SCR 608 para 5. Therefore, a speaker speaking at an election meeting must alert himself that his speeches do not fall within the provisions of the concerned sections....."

Mr. Poti has also submitted that it is now well settled that the Court is required to consider the effect of speech in the mind of the voter. It is not the statement here or another statement there but the total effect of the speech in the mind of the voter which calls for assessment to be considered before the Court. Mr. Poti has submitted that it is evident from the speech delivered by Smt. Mehta that an appeal to the hindu voters to unite and vote in support of the appellant Dr. Mudanda was made so that the sparks of 'Hinduism' could be lit not only in Maharashtra but there would be a march of such Hinduism upto the seat of power. In the speech there was no appeal to vote only for the BJP candidate or a candidate of the BJP - Shiv Sena alliance so that ideologies of the said political parties are implemented. Smt. Mehta addressed the voters to the effect that the voters as hindus would support the candidate of BJP so that success of the candidate was ensured. Mr. Poti has submitted that the very approach that the hindus alone shall be in power and election speeches made on that basis is bound to create in the mind of hindu voters uncommitted so far that Hindus should rule and for that purpose they should vote for 'Hinduism'.

Mr. Poti has submitted that the Representation Act provides for

issue of notice for taking action against the collaborators for giving them an opportunity of being heard if the Court comes to the finding that corrupt practice was resorted to with the help of the collaborators. Mr. Poti has submitted that although it is the duty of the Court to name the collaborators by giving them an opportunity of being heard, it cannot be contended that a party who has committed corrupt practice has right to insist upon naming the collaborators. He has submitted that commission of offence by the party to election petition has been found on cogent evidence and so far as the said party is concerned such finding is complete. He has also submitted that though the Court is concerned for taking action against the collaborators of a corrupt practice the decision rendered against the appellant about resorting to corrupt practice must be held to be final and the matter should not be kept pending for making a finding against the collaborators. Mr. Poti has submitted that although the Court has the duty to name the collaborators of corrupt practice, since the Court has not chosen to name the collaborators in the facts of the case, there is no compelling reason for this Court to interfere with the decision made against the appellant by issuing notice under Section 99 of the Representation Act to the collaborators and to defer the decision against the appellant until the collaborators are given opportunity of being heard for being named as collaborators of corrupt practice. Mr. Poti has submitted that even if the Court is of the view that action under Section 99 should be taken for naming the collaborators, this Court should make only a limited remand for the purpose of naming the collaborators by following the procedures for such naming without disturbing the finding made against the appellant and his appeal before this Court should be dismissed.

After giving our anxious consideration to the facts and circumstances of the case and the submissions of the respective counsel for the parties it appears to us that the appellant Dr. Vimal was declared elected from 201 Kaij Constituency by securing highest votes. She had secured 9221 votes more than her nearest rival, the election petitioner Sri Satpute. The High court has held that Sri Maruti Nivrutti and Sri Mangesh were not members of scheduled caste and their nomination papers were wrongly accepted but the High Court has also held that the contest by them had not affected the polling prospect of the election petitioner. The allegations of unfair practice adopted by the appellant Dr. Vimal and her election agents and supporters in presenting herself as 'Marwari' for securing Marwari votes and publishing banners, posters and also making newspaper publications

A imputing the character of the election petitioner and attempting to humiliate him and lowering him down in the estimate of voters in the constituency to gain advantage in the election prospect have not been accepted by the High Court and issues on such contentions have been answered in the negative. It is only on the ground that Dr. Vimal had canvassed on the B score of religion and had attempted to spread hatred of one community against the other community thereby adopting corrupt practice under Section 123 and 123(3A) of the Representation Act in view of speeches made by Smt. Mehta and Sri Mahajan with her consent that the election petition was allowed by declaring that election of Dr. Vimal was void and the election petitioner having secured next highest vote, should be declared C elected from the said 201 Kaij Constituency. It appears to us that the said Smt. Mehta and Sri Mahajan addressed election meetings of Dr. Vimal on two dates. Such election meetings were addressed by the said two speakers for the benefit of Dr. Vimal in the election. We agree with the finding of the High Court that they addressed such meetings with consent of Dr. D Vimal. In our view, there is force in the contention of Mr. Poti, the learned Senior Council of the respondent No. 1 that although reports published in Maratha Sathi and Ambajogal Times about the contents of the speeches of Smt. Mehta and Sri Mahajan by themselves are not admissible and they may at best be secondary evidence but direct evidence about the speeches E by the two reporters P.W. 14 and P.W. 24 being primary evidence about the contents of the speeches delivered by the said two speakers, need be taken into account for deciding whether such speeches amounted to corrupt practice under Section 123 and 123 (3A) of the Representation Act. There is also force in the contention of Mr. Poti that even if there was not F publication of the speeches, the contents of such speeches could be proved by examining the persons who had attended the meeting and heard the speakers. Both P.W. 14 and 24 have stated that they attended the respective meeting and noted the portions of the speech which according to their assessment appeared to be important and relevant. It is true that both P.Ws. 14 and 24 are reporters and it is quite likely that they have some G expertise in noting down the gist of the speeches or statement made by others for the purpose of effectively reporting the contents of such speeches or statements for publication in the newspapers. Both the said witnesses have stated that the speeches were long and the speeches could not be recorded verbatim but gist of portions of speeches as appeared to H them important and relevant were noted by them. Such notings or 'tipans'

therefore become very relevant because admittedly on the basis of notings made at the spot, the reports were prepared by the said reporters and such reports were published in the newspapers. Unfortunately, such notings or tipans have not been produced for inexplicable reasons. Such tipans and notings being the basis of the reports published in the newspapers, requires to be considered for ascertaining whether reports depositions were consistent with the notings made at the time of listening to the speeches by the authors of the report. In our view, the Court should draw adverse inference against the authenticity of the gist of the speeches since published in the newspapers for non production of the said noting. It may be indicated here that the authors of the report did not take down the speeches or even parts of such speeches in the language in which they were expressed. Admittedly, the notes were prepared in the language of the authors of the notes and such portion of the speeches were highlighted in the notes in their own language as appeared to the authors of the reports important or relevant. In such circumstances, even though the authors of the reports were reporters to newspapers by profession, chances of misquoting or quoting some portions of speech out of their context cannot be ruled out. The said reporters deposed about the contents of the speech but such depositions were made at a later date when chances of not fully remembering the speeches in their proper context cannot be ruled out.

Reliance to the depositions of the reporters was made by the High Court because having attended the meetings for the purpose of reporting they were likely to remember the portions of speeches since noted by them. In our view, in such circumstances, it becomes all the more important to look to the notings made so as to ascertain whether oral depositions are consistent with the noting so that oral depositions may be held reliable. In *Manmohan Kalia's* case [1984] 3 SCC 449, this Court has indicated as a note of caution that unless oral evidence about the corrupt practice is satisfactory, the Court should not rely on such evidence. This Court has held that :

> "It is very difficult to prove charge of corrupt practice merely on the face of oral evidence because in election case it is very easy to get the help of interested witnesses, but very difficult to prove charges of corrupt practices."

We, therefore, feel hesitant in finding the appellant guilty of corrupt

practice under Section 123 and 123(3A) of the Representation Act for want of reliable and unimpeachable evidence. The finding of fact made by the High Court in an election petition normally should not be tinkered with unless there are good reasons to take a different view. As it appears to us that the evidence about the foundation of corrupt practice alleged against the appellant Dr. Vimal, is not clinching and unimpeachable, we feel that the finding of corrupt practice against the appellant having serious civil and criminal import is not warranted in the facts and circumstances of the case. In view of such finding, it is not necessary to consider, whether the speeches are only related to 'Hindu Tatwa' or Hindu philosophy and not an appeal to only hindus on the score of religion to vote in favour of the appellant but on the contrary, such speeches were intended to whip out communal passion and raise hatred between two classes of citizens. We may only indicate here that in earlier decisions, this Court has sounded a note of caution that finding about corrupt practice should be made on the basis of clear, cogent and reliable evidence because such finding entails serious consequences both civil and criminal against the person concerned. We may also indicate here that in order to maintain national integrity and amity amongst the citizens of the country and to maintain the secular character of the pluralistic society to which we belong section 123 and 123(3A) of the Representation Act have been incorporated. For maintaining purity in the election process and for maintaining peace and harmony in the social fabric, it becomes essentially necessary not only to indict the party to an election guilty of corrupt practice but to name the collaborators of such corrupt practice if there be any. Precisely, for the said reason, provisions have been made in the Representation Act to give notices to the collaborators on the basis of the *prima facie* finding against them so that after giving them an opportunity of being heard a firm finding against the collaborators can be made and such collaborators are named. In our view, Dr. Ghatate has very justly contended that the Court has not only a duty to name the collaborators by following the appropriate procedures but a final decision of corrupt practice should not be made without giving collaborators an opportunity of being heard if corrupt practice by a party to the election has been resorted to not by his own act directly but by act of the collaborators. It will indeed be an anamolous position if on the basis of misdeeds of the collaborators a finding of corrupt practice is finally made against a party to the election but later on the Court after hearing the collaborators for the purpose of naming them comes to a different

finding namely the collaborators had not done anything on the basis of which ia finding of corrupt practice should be made. We would have inclined to remit the case back to the High Court for making the finding about corrupt practice only after following the appropriate procedures of giving opportunity to the alleged collaborators of being heard. But as we have indicated that even prima facie such finding of corrupt practice cannot be made for want of convincing and unimpeachable evidence, the question of remitting the matter to High Court does not arise. For the aforesaid reasons, we allow the appeal of *Dr. Vimal Mudanda* being Civil Appeal No. 2227 of 1991 and set aside the judgment so far Dr. Mudanda is concerned.

In the other appeal i.e., Civil Appeal No. 2571 (NCE) of 1991 the appellant Sri Mangesh who was 'respondent No. 17 in the election petition before the Aurangabad Bench of Bombay High Court has challenged the finding of the High Court so far as his caste is concerned. The High Court has held that Sri Mangesh was 'Kalal' by caste which is not Scheduled Caste in the State of Maharashtra. The High Court has referred to in great detail in paragraphs 71 to 91 of the impugned judgment evidences documentary and oral adduced by both the parties in support of the rival contention about the caste of Sri Mangesh. The High Court has noted that the caste certificate was not issued to Sri Mangesh in a proper manner after adverting to relevant documents. The revenue records and school leaving certificate are required to be looked into for deciding the caste of the person concerned. It has been indicated by the High Court that the grand father of Sri Mangesh had affirmed affidavit declaring him as 'kalal' by caste and not 'Khatik' as claimed by Sri Mangesh. Such affidavit had been affirmed long back. In the school leaving certificate of the brother of Sri Mangesh, such brother's caste has been mentioned as 'kalal'. Considering revenue records and other materials produced before the High Court, the High Court has come to the finding that the caste certificate issued in favour of Sri Mangesh does not depict the caste of Sri Mangesh correctly. After elaborate analysis of the evidences oral and documentary, the High court has held that Sri Mangesh is 'Kalal' by caste and not 'Khatik' and 'Kalal' is not a Scheduled Caste in the State of Maharashtra. We have been taken through the said paragraphs 71 to 91 of the Judgment and after considering the same, we do not find any reason to take a contrary view. The counsel for the appellant has very strenuously contended that the finding of the High Court that Sri Mangesh does no belong to scheduled caste not only

A affects his chance to contest in the constituency reserved for schedule caste but it also affects him prejudicially in various other matters. He is going to be deprived of all the benefits available to a manner of scheduled caste. As it appears to us that the High Court on the basis of materials placed before it has come to a proper conclusion that Sri Mangesh could not be held to be a 'Khatik' by caste but 'Kalal' by caste, we do not intend to B interfere with such finding. It will, however, be open to Sri Mangesh to have his caste redetermined on the basis of further materials relevant for such determination of caste. With the above observations, this appeal is dismissed.

S.M. Appeal dismissed.