

PETITIONER:
K. M. MANI ETC.

Vs.

RESPONDENT:
P. J. ANTONY AND OTHERS

DATE OF JUDGMENT 12/09/1978

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
FAZALALI, SYED MURTAZA

CITATION:
1979 AIR 234 1979 SCR (1) 701
1979 SCC (2) 221
CITATOR INFO :
R 1981 SC 8 (10)
RF 1986 SC1253 (17)
R 1991 SC1557 (16,28)

ACT:
Representation of the People Act 1951-Sec. 123(7)-
Allegation that Police officer addressed an election meeting
for furtherance of candidates election-Whether corrupt
practice.

Practice & Procedure-Election cases-Pleadings & Proof-
An allegation of corrupt practice to be established beyond
reasonable doubt-Addressing meeting-Allegation of corrupt
practice-No documentary evidence produced-Transcript, speech
or contemporaneous record of speech-If should be produced.

HEADNOTE:

Section 123(7) of the Representation of the People Act, 1951 provides, among others, that the obtaining or procuring by a candidate of any assistance (other than giving of vote) for the furtherance of the prospects of that candidate's election from any person in the service of the Government is a corrupt practice.

The appellant in Civil Appeal No. 99 of 1978 who was declared elected to the State Assembly in the General Elections of 1977 was a Minister of the State Government at the time of election. The appellant in Civil Appeal No. 79 of 1978 was a Police officer belonging to the Indian Police Service posted as Commissioner of Police at that time. The first respondent in both cases was an elector in the constituency. All the three were Roman Catholics.

In his election petition respondent No. 1 alleged that, at the instance of the first appellant or with his knowledge and consent, the Police officer assisted the convening of a meeting of the priests of the various parishes of the Roman Catholic Church at the Bishop's house which was presided over by the Bishop for the furtherance of the appellant's victory in the election. The Police Officer was alleged to have exhorted them to work for the appellant's victory as it was in the interest of the Church and community. The first appellant was also alleged to be at the meeting. The respondent alleged that this constituted a corrupt practice within the meaning of s. 123(7) of the Act.

The High Court declared the election void. In addition it declared that the Police officer was guilty of corrupt practice.

on appeal the appellant contended (i) that the High Court was in error in holding that the appellant had committed a corrupt practice within the meaning of the section and (ii) that the election petition was not maintainable for vagueness of the pleadings in paragraph 5 of the election petition.

Allowing the appeal:

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HELD: 1. There is no direct evidence to prove that the Police officer went to attend the meeting at the Bishop's house at the instance of the appellant and spoke there at his instance and as the circumstantial evidence produced was inadequate to reach that conclusion the High Court was wrong in holding that

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the appellant obtained and procured the services of the Police officer in furtherance of the prospects of his election and thereby committed a corrupt practice under s. 123 (7) of the Act.

[721B-C]

2 An allegation regarding the commission of a corrupt practice at an election is a very serious matter not only for the candidate but for the public at large as it relates to the purity of the electoral process.

[712H]

3 (a) An allegation regarding the commission of a corrupt practice is in the nature of a quasi-criminal proceeding which has to be established beyond reasonable doubt and not merely by preponderance of probabilities.

[719C]

3 (b) The election petitioner must exclude every hypothesis except that of nature on the part of the returned candidate or his election agent. The trial court erred in basing its finding on a mere probability.

[720F]

R. M. Seshadri v. G. Vasantha Pai [1969] 2 SCR 1019; Bhagwan Datta Shastri v. Ram Ratanji Gupta & Others AIR 1960 SC 200; Balwant Singh v Prakash Chand & Ors [1976] 3 SCR 335 referred to.

4. The High Court was right in holding that there was no sufficient evidence to substantiate the allegation that the Police officer went to the place of meeting at the appellant's instance to assist him in convening the meeting in furtherance of his prospects in the election. It therefore rightly considered the other question whether he addressed that meeting.

[710F-G]

5. The High Court was not justified in reaching the conclusion that the Police officer intentionally took; the great risk of committing an offence under s. 129(2) and of losing his job out of fear or favour of the appellant. Even if r; all the premises set up by the High Court were accepted as correct, it would not follow that they would establish a nexus between the two, for it may well be that the police officer did all that at the instance of some one else, or out of his own desire to curry favour with the appellant in the hope of some future advantage. The High Court erred in basing its finding on a mere probability.

Mohan Singh v. Bhanwarlal & Ors. AIR 1964 SC 1366; Samanand N. Balakrishna etc. v. George Fernandez & Others. [1969] 3 SCR 603 referred to.

6. It was established that the Police officer was

present after the meeting had commenced and said something there. But there was no satisfactory evidence to prove that the Police officer spoke anything at the meeting for furtherance of the appellant's electoral prospects or that he went there and (" spoke at his instance.

[712H; 719H]

7. Where an allegation relates to a charge that a candidate obtained the assistance of a Police officer for the purpose of addressing a meeting and exhorting those present to work for his victory, it is reasonable to expect that a transcript of his speech should be made available to the Court in support of the allegation. This would also give the candidate an opportunity of meeting a precise allegation. Where it is not possible to give a transcript it would be reasonable to expect that the petitioner would produce a contemporaneous record of the points made in the speech, or at least its substance.

[713A-C]

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In the instant case, no such record was made available. Even a gist was not furnished. The allegation may well have been the impression or the opinion of the petitioner on hearing what others told him about the speech because he was not present at the meeting.

[713D]

8. A Police officer is a citizen, and an elector and is entitled to have his own belief that a particular candidate would win and to express that belief with- out lending the impression that it was meant to assist him in the election in only manner. It would have been open to objection only if the Police officer had stated at the meeting that it was necessary for the benefit of the Christian community that a person like the appellant should win and become a Minister. to save them from the rigour of the Land Reforms Act. [714A-B]

9. Assuming that the Police officer's statement in his evidence that he had gone to the place of meeting to consult one of the priests on a personal matter was not quite satisfactory, his presence at the meeting or expression of his personal views there could not possibly amount to the commission of a corrupt practice under s. 123(7). [716H]

10. The Bishop stated in his evidence that there was a news items in a newspaper that the Catholic Church was silent about the election, that he (the Bishop) was against the appellant. and that some priests thought that such a wrong impression should be dispelled. He said that the meeting was convened by him for the purpose of clarifying his position. That evidence had been corroborated. Clearly, therefore, the meeting was held at the Bishop's own initiative. [712E-F]

11(a) There was nothing in the Bishop's statement to show that the Police Officer exhorted the audience to work for the appellant's victory. [713H]

11(b) The Bishop stated in his evidence that the Police officer said that he would give up his uniform and job if that was necessary. This statement can not be used for the purpose of proving the alleged corrupt practice. That was a statement regarding, his future course of action. It showed that he realised that without giving up his job it was not possible for him to assist the appellant in the election. When he was conscious of that limitation, it could not be believed that he would throw discretion to the winds, and then and there launch an exhortation for the appellant's success at the polls. The fact that no such impression was created will be clear from the Bishop's answer that he did

not know what for the witness mentioned his willingness to give up his job when necessary. [714C-E]

12. Taking an overall view of the evidence on record it must be held that the High Court erred in preferring the statements of the petitioner's witnesses to the testimony of the Bishop. [716D]

13. Assuming that the appellant was in or around the place of meeting and was attending one or the other of his election meetings, it would not necessarily follow that he visited the Bishop's house while the meeting was going on. The election petitioner did not venture to plead that the appellant attended the Bishop's meeting even though such a plea would have helped him in establishing a direct connection between the appellant and the meeting on the one hand and between the appellant and what was said by the Police officer on the other. [718D-E]

11-549 SCI/78

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14. The argument that the appellant was driven by the prospect of defeat to seek assistance of the Police officer openly on pain of losing his success at the hands of an elector has no force. What a candidate would do or how he would react in such circumstances essentially depends on his mental make up and his reaction in such a matter is really one of the imponderables of an electoral contest and cannot from the basis of definite finding one way or the other. At any rate the appellant was not new to the contest. He had won the elections on three earlier occasions. [720G-721A]

15(a) The appellant's contention that the allegation in paragraph 5 of the election petition which constituted the subject matter of the appeal was vague was clearly an after thought and should be rejected. He had not shown that it has prejudiced his defence. [708C-D]

15(b) The law in regard to the verification of election petition is contained in the proviso to s. 83(1) of the Act which requires that the affidavit should be in the "prescribed form". A reference to r. 94A and Form 25 of the Conduct of Election Rules 1961 shows that it would be enough for the election petitioner to say that the statements made in the petitioner paragraph were true to his "information". The election petitioner in the instant case had done this. [708E-F]

Virendra Kumar Saklecha v. Jagjiwan and Ors. [1972] 3 SCR 955 inapplicable.

15(c) The appellant cannot be heard to say for the first time in this appeal that he was not answerable for what the Police Officer was alleged to have stated at the meeting and that his case should be judged on the limited allegation that the Police officer lent his assistance to convene the meeting. The proper way to examine the controversy was to consider the substance of the allegation and not its form. The allegation should be read as a whole and not in a disjointed way or to tear a line here or a line there, from the context. the paragraph taken as a whole relates to the allegation regarding the commission or corrupt practice under s. 123(7). The allegation was rightly taken in the trial court to mean that the assistance of the Police officer was obtained or procured both for convening and addressing the meeting for the furtherance of the appellant's prospects in the election. [709C. H. D. F" G;

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal No. 99 and 79

of 1978.

From the Judgment and order dated 21-12-1977 of the Kerala High Court in Election Petition No. 17 of 1977.

A. K. Sen, Y. S. Chitale, P. Surendaran, P. B. Dadachanji J. K. John, C. K. Srivashanker Panicker, T. R. Raman Pillai and Manjul Kumar, for the Appellant (In C.A. 99/78).

Y. S. Chitale, Miss P. Nambiar and A. S. Nambiar for the Appellant in C.A. No. 79/78.

P. Govindan Nair. N. Sudhakaran, Mathew Zachariah and Mrs. Krishan for Respondent No. 1. (In both the Appeals)

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The Judgment of the Court was delivered by

SHINGHAL, J.-These two appeals are directed against two orders of the Kerala High Court dated December 21, 1977, in the election petition of respondent P. J. Antony, an elector of the Palai constituency (No. 94) of Legislative Assembly. P. J. Antony challenged the election of K. M. Mani in the general election of 1977 and prayed for a declaration that the other candidate N. C. Joseph, respondent No. 2, had been duly elected in that election. The High Court held that

K. M. Mani "obtained and procured the services of Joseph Thomas, a police officer," in furtherance of the prospects of his election and a corrupt practice was committed under sub-section (7) of section 123 of the Representation of the People Act, 1951, hereinafter referred to as the Act. It therefore declared K. M. Mani's election from the constituency to be void, with costs, but rejected the prayer for directing N. C. Joseph to have been elected. It made a separate order the same day naming K. M. Mani and Joseph Thomas as the persons who were guilty of the corrupt practice. While K. M. Mani has filed appeal No. 99 of- 1978 and will hereafter be referred to as the appellant, Joseph Thomas has filed appeal No. 79 of 1978.

Polling at the election was held on March 19, 1977, and the result was declared on March 20. The appellant obtained 39,664 votes. N.C. Joseph, who was the nearest rival at the election, obtained 24,807 votes and the other defeated candidate Joseph Cheriyan obtained 521 votes.

The appellant was a Roman Catholic and was working as the Finance Minister of the Kerala Government at the time of the election. He was the candidate of the Kerala Congress. which had entered into some sort of an election alliance with some other parties. N. C. Joseph, who was also a Roman Catholic, was an independent candidate. The contest was thus between Roman Catholics.

The election of the appellant was challenged with the allegations that he had committed corrupt practices under sub-sections (1), (2), (3), (4) and (7) of section 123 of the Act. But the election petitioner did not even allege the ground for the commission of any corrupt practice under sub-section (4) and did not press his case in regard to the commission of the corrupt practice under sub-section (3) of section 123. It is also not in controversy that he did not find it possible to prove his allegations under sub-sections (1) and (2). The trial court however found that the appellant had committed a corrupt practice under sub-section (7) of section 123 and, as has been stated, it named him and Joseph Thomas as the persons who had been proved

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at the trial to be guilty of that corrupt practice. We shall therefore confine ourselves to the question whether that corrupt practice was committed by the appellant and Joseph Thomas. In doing so we shall refer only to the pleadings and the evidence relating to it.

It was alleged in the election petition that a meeting of the priests of the various parishes of the Roman Catholic Church within the area of the Palai constituency and certain other leaders of the Catholic Community" was convened at the Bishop's house Palai, on March 12, 1977, at 8 p.m. which was presided over by the Bishop and was attended and addressed by Joseph Thomas who was an officer of the Indian Police Service and was posted as City Police Commissioner, Trivandrum. As the entire allegation in that respect has been stated in para graph 5 of the election petition, it will be convenient to extract it here, -

"5. The same meeting was attended and addressed by Shri Joseph Thomas, I.P.S., City Police Commissioner, Trivandrum. Addressing the meeting he exhorted the Parish Priests and leaders of Community assembled in that meeting to work for the success of Shri K. M. Mani Ist respondent- "as it was in the interest of the Church and Community". Shri Joseph Thomas went to Palai at the instance of 1st respondent Minister or with his consent and knowledge to k; assist the convening of the meeting of the Bishop and Priests for the furtherance of the prospect of the victory of the Ist respondent in the election. Shri Joseph Thomas actually addressed this meeting exhorting to work for the victory of the 1st respondent. The said Joseph Thomas is a member of the Police Force and a Gazetted Officer. The said Police officer is known for his antipathy towards the opposition Parties. Obtaining or procuring his services for the furtherance of the prospects of the 1st respondent's election is a corrupt practice falling within the mischief of Sec. 123(7) of the Representation of People Act, 1951."

The appellant filed a written statement in which he traversed the averments in the election petition and, in regard to the allegation in paragraph 5, he set up the following defence, -

"This respondent denies the averments in para 5 of the petition. This respondent does not know whether Shri Joseph Thomas attended or addressed the meeting as alleged in para 5 of the election petition. This respondent is not aware of any exhortation having been made by Shri Joseph Thomas as alleged in paragraph 5 of the petition. This respondent

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denies that Shri Joseph Thomas went to Palai at the instance A of this respondent. He has not gone to Palai with this respondent's consent and knowledge to assist the convening of any meeting of Bishop and Priests for furtherance of the prospect of the victory of this respondent in the election. This respondent is not aware as to whether Shri Joseph Thomas actually addressed the said meeting exhorting to work for the victory of this respondent. This respondent is not aware of Shri Joseph Thomas having any antipathy towards the opposition parties. This respondent has not obtained or procured his services for furtherance of the prospects of this respondent's election. This respondent is not guilty of any corrupt practice falling within the mischief of s. 123(7) of the Representation of Peoples Act."

A reply was filed by Joseph Cherian substantially supporting the election petition, but it has no bearing on the case.

The High Court framed three rather general issues raising the question: (1) whether the election petition was maintainable, (2) whether the election of the appellant was

initiated by all or any of the corrupt practices alleged in the petition, and (3) what costs and reliefs were admissible to the parties.

The High Court found that the election petition was maintainable and that Finding has not been challenged before us except in regard to the vagueness of the pleading in paragraph 5.

The allegations about the commission of the corrupt practices were set out in paragraphs 4, 5 and 6 of the election petition. Although the appellant specifically took the plea in his written statement that the averments in paragraphs 4 and 6 were vague, he did not take any such plea in regard to paragraph 5. This shows that the allegation in paragraph 5, which constitutes the subject matter of the present appeal, was not found to be vague and the appellant had no difficulty in setting out his defence thereto in paragraph 8 of his written statement. Realising that the appellant had not found it possible to raise any objection about the vagueness of the allegation in paragraph 5, his learned counsel invited our attention to paragraph 11 of the written statement where it was stated that the "allegations in the petition as well as the affidavit are too vague to be accepted and acted upon," and that "the averments in the petition and affidavit are purposely left vague with intent to fish out materials to fill up the lacuna."

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A reading of the whole of paragraph 11 shows, however, that it was essentially meant for the purpose of showing that the affidavit which had been filed along with the election petition did not conform to the requirements of the law and could not be acted upon, and it was in that context that the aforesaid averment was made about the vagueness of the allegations in the election petition as well as the affidavit. But even if we were to correlate that averment of paragraph 11 to the allegations in the election petition, we have no doubt that it could be said to relate only to the allegations in paragraphs 4 and 6 of the election petition regarding the commission of corrupt practices under sub-sections (2), (3) and (1) of section 123 of the Act which, as has been stated, have not been raised for consideration in these appeals. There is therefore justification for the argument of learned counsel for the respondent that the argument regarding the vagueness of the allegation in paragraph of the election petition is an afterthought and should be rejected as it has, at any rate, not been shown that it has prejudiced the defence.

It has also been argued that the election petition has not been properly verified as it has not been stated which of the averments in paragraphs 3 to 6 were true "according to the information received by the petitioner" and which were "believed" by him to be true. Our attention has in this connection been invited to a judgement of this Court in *Virendra Kumar Saklecha v. Jagjiwan and others*('). We find that the only objection which was taken in the written statement (paragraph 11) was that the "affidavit filed along with the Petition (was) not in conformity with the requirements of law". The law in that respect is contained in the proviso to section 83(1) which requires that the affidavit shall be in the "prescribed form". A cross reference to rule 94A and Form 25 of the Conduct of Elections Rules 1961, shows that it was enough for the election petitioner to say that the statements made in the relevant paragraphs (3 to 6) were true to his "information" and that is what he has done. The decision in *Saklecha* turned on the Rules of the High Court, but no breach of any

rule of the Kerala High Court has been brought to our notice.

It has then been argued that the allegation regarding the commission of the corrupt practice under sub-section (7) of section 123 was merely to the effect that Joseph Thomas went to Palai at the instance of the appellant to assist the "convening" of the meeting of the Bishop and priests for the furtherance of the appellant's prospects in the election, and that the further averment in paragraph 5 that Joseph Thomas "actually addressed" the meeting exhorting those present to work for

(1) [1972] 3 S.C.R. 955.

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the victory of the appellant, was not at the instance of the appellant and he was therefore not responsible for it even on the basis of the averment made in election petition. We are unable to uphold this argument for two reasons. Firstly, it was not the appellant's case in the written statement, or during the course of the trial, that the allegation against him was limited to Joseph Thomas's assistance to the "convening" the meeting at the Bishop's house and did not extend to his exhortation to those present to work for the appellant's victory in the election, and the argument that has now been addressed has been made up subsequently. The appellant cannot therefore be heard to say for the first time in this appeal that he is not answerable for what Joseph Thomas is alleged to have said at the meeting and that the case against him should stand or fall on the basis of the limited allegation that he lent his assistance to the convening of the meeting at the Bishop's house. Secondly, it is necessary, for the purpose of appreciating an argument of this nature bearing on the contents, nature and extent of an allegation recording the commission of a corrupt practice to read the allegation as a whole, and not to disjoint it, or to tear a line here or a line there, from the context. If this test is applied to the averment in paragraph 5 of the election petition, it will be quite clear that the paragraph taken as a whole relates to the allegation regarding the commission of the corrupt practice under sub-section (7) of section 123 of the Act in obtaining or procuring the assistance of Joseph Thomas not only for convening the meeting of the Bishop and the priests for the furtherance of the prospects of the appellants in the election but also his addressing that meeting and exhorting those present to work for that purpose. The mere fact that the allegation regarding addressing the meeting and exhorting the audience is contained in a separate sentence will not justify the argument that the allegation in paragraph 5 was confined to "convening" the meeting and not to addressing it. This is borne out by the sentences that precede and follow the allegation about convening the meeting where it has clearly been stated that the police officer's services were also obtained or procured for exhorting the priests to work for the furtherance of the prospects of the appellant's election. The allegation was therefore rightly taken in the trial court to mean that the assistance of Joseph Thomas was obtained or procured both for convening and addressing the meeting for the furtherance of the appellant's prospects at the election. The proper way to examine a controversy like this is to consider the substance of the allegation and not its mere form. It may be that a part of the allegation may be made in a separate sentence or sentences, and it may also be that it may appear to be disjointed from the earlier allegation because of inartistic drafting, but it is the substance of the alle-

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gation which is material and not its mere form. It is equally necessary the allegation should be read as a whole and construed properly so as to understand its true nature and content. On such an examination, we have no doubt that there is no force in the argument that the allegation regarding the corrupt practice under sub-section (7) of section 123 oft relate to the addressing of meeting by Joseph Thomas.

There is however justification for the argument of the learned counsel for the appellant that the allegation in paragraph 5 of the election petition is confined to the commission of the corrupt practice by the candidate, namely K. M. Mani, and not by his agent or by any other person with the consent of K. M. Mani or his election agent. The use of the words "or with his consent and knowledge" are therefore of no consequence and it is in fact not disputed before us that the allegation is confined to the obtaining or procuring of Joseph Thomas's assistance in convening and addressing the meeting at the Bishop's house by the appellant himself.

Before examining the controversy on the merits, it will be convenient to make a mention of those facts which are not in controversy before us. It is thus not disputed now that a meeting was called by Dr. Sebastian Vayalil (P.W. 2), Bishop of Palai Diocese, on March 12, 1977, at 8 p.m. at his residence. It was addressed by the Bishop and Joseph Thomas was present there. He was an officer belonging to the Indian Police Service and was posted as City Commissioner of Police, Trivandrum, in those days, so that he was a member of police forces within the meaning of clause (d) of sub-section (7) of section 123 of the Act.

It would be recalled that it was alleged, inter alia, in paragraph 5 of the election petition that Joseph Thomas went to Palai at the instance of the appellant to assist the convening of the meeting for furtherance of the appellant's prospects in the election. The trial court however found that sufficient evidence was not available to substantiate the allegation, and it therefore proceeded to consider the question whether he addressed that meeting as alleged in the election petition. That finding of fact of the High Court is quite correct and has rightly not been challenged before us.

We shall therefore examine the evidence in regard to the other two allegations that Joseph Thomas addressed the meeting at the instance of the appellant and exhorted those present to work for his victory in the election. In order to arrive at a decision, it will be convenient to examine why Joseph Thomas went to Palai, why he visited the Bishop's house and what exactly he said in the meeting there.

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It has been stated by Joseph Thomas, and has not been disputed before us, that he was posted in those days as City Commissioner of Police, Trivandrum, and no part of the Palai constituency fell within his jurisdiction. It is also not in controversy that his father was laid up with prolonged illness as an indoor patient in the hospital at Y at a distance of three miles from Palai where they belonged. Joseph Thomas's statement that he was sent on duty, by a written order, to Cannanore, that he took a half day's casual leave on March 12, 1977 on return to Ernakulam from Cannanore and went to Y hospital to meet his ailing father via Palai without stopping there and reached the hospital at 2.30 p.m.. has not been disproved by any evidence on the record. On the other hand, we find that Dr. Sebastian Vayalil (P.W.2), the Bishop of Palai, has also stated about

the illness of the father of Joseph Thomas for the preceding two or three years. The Bishop was in a position to know about it because he has stated that Joseph Vathavayalil, father of Joseph Thomas, was the legal adviser of the Bishop's house. He has further stated that he actually asked Joseph Thomas how his father was. Nothing thing has been brought on the record to disprove the testimony of Joseph Thomas (P.W. 6) and Dr. Sebastian Vayalil (P.W. 2) in this respect. In fact as Joseph Thomas's father was suffering from a prolonged illness in the Bharananganam hospital, it was nothing unusual for his son Joseph Thomas to visit him off and on, and he cannot be blamed if he took the opportunity of his presence near Bharananganam to take leave of absence for a few hours and go and meet him. Nothing could therefore possibly turn on the mere fact that Joseph Thomas was in Palai on March 12, 1977.

The question which however arises for consideration is why Joseph Thomas as went to the Bishop's house at a time when a meeting was being held there at about X p.m. An easy way of proving the allegation which had been made in this connection in the election petition was to establish that the meeting was convened at the instance of Joseph Thomas but, as has been stated, the election petitioner failed to establish at this was so. The Bishop (P.W. 2) has in fact left us in no doubt that he himself decided to hold the meeting, and that the way from Bharananganam to Palai was by the road which lay in front of his house. Dr. Joseph Pallikkaparambil (P.W. 7), who was the Auxilliary Bishop of Palai Diocese, has also stated that the decision to convene the meeting was taken by the Bishop. It was therefore imperative for the election petitioner to establish the remaining allegation. that Joseph Thomas went to the Bishop's house for the purpose of exhorting those present at the meeting to work for the appellant's victory in the election and that he actually did so.

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Joseph Thomas (P.W. 6) has stated that he left Bharananganam hospital at about 3.30 p.m. and went to the Bishop's house to see the Father Chancellor Madathilparambil in connection with his suggestion regarding the marriage of the sister of a priest with his (Joseph Thomas's) brother. He has stated further that he met the Bishop and the Father Chancellor together at about 3.45 p.m.. because the F Chancellor lived in the same premises. He left there after 4.15 p.m. for his house at Palai and returned to the Bishop's house at about 8 p.m. to inform Father Chancellor about his reaction regarding the proposal for his brother's marriage and there he learnt that he was in the dining room. He went there and found a number of persons. He met the Father Chancellor and returned soon after. We shall revert to Joseph Thomas's talk in the Bishop's house on that occasion but we find it difficult to reach the conclusion that he went there for the purpose of exhorting the audience to work for the appellant's success at the polls. It may be that Joseph Thomas's statement about the purpose of his visit to the Bishop's house is not very convincing, but it will not be possible for us to hold the appellant responsible for it in the absence of any evidence to that effect on the record.

Bishop Sebastian Vayalil (P.W 2) at whose instance and at whose house the meeting was held. has stated the reason for holding it Briefly stated, his version is that news items Ex. 1 appeared in the Indian Express on March 12, 1977, stating that the Catholic Church was silent, and he received some anonymous letters saying that he was against

Mani. As some priests also thought that such a wrong impression had been created, he thought it necessary to call the aforesaid meeting to clarify that he was not against the appellant. This statement of the Bishop has been corroborated by Father Joseph Chovvathukunnel (P.W. 7) who was the Auxilliary Bishop of the Diocese. We have therefore no hesitation in holding that the meeting was held at the Bishop's own initiative and for the purpose of making the clarification referred to by him. The Bishop has stated that he clarified that he was "not against Mani or any other candidate", that the exercise of franchise was important and that all should use it prudently. His statement to that effect has not been shaken in cross-examination and has not been disproved.

It has been established by the evidence on record that Joseph Thomas was present after the meeting had commenced and said some thing there. The question is what exactly did he say ?

An allegation regarding the commission of a corrupt practice at an election is 'I very serious matter not only for the candidate but for the public at large as it relates to the purity of the electoral process.

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Where therefore the allegation relates to the charge that a candidate obtained the assistance of a police officer for the purpose of addressing a meeting on the eve of the poll and exhorting these present to work for his victory. it is reasonable to expect that wherever possible, a transcript of his speech shall be made available to the Court in support of the allegation. Besides furnishing the precise material relating to the allegation to the election Court, it has the advantage of giving the respondent an opportunity of meeting a precise allegation. But it may be that this may not be possible in a given situation. In that case it will be reasonable and fair to expect that the election petitioner will produce a contemporaneous record of the points that were made in the speech, or at least its substance. But no such record has been made available in this case. Even a gist of what Joseph Thomas said at the meeting, has not been stated in the election petition and the election petitioner has contended himself by making the cryptic statement that Joseph Thomas "addressed this meeting exhorting to work for the victory of the 1st respondent". That may well have been the impression or the opinion of the election petitioner on hearing what others told him about the speech because he was admittedly not present at the meeting. All the same, some other witnesses have been examined about the purport of the speech, and we shall examine what they have stated.

Dr. Sebastian Vayalil (P.W. 2), the Bishop who called the meeting in his house, has stated that Joseph Thomas spoke at the meeting after his own speech was over and several priests and expressed their opinion. He said that Bishop had spoken about document Ex. 1 and the anonymous letters and that "there is nothing much to fear." The witness has further stated that Joseph Thomas said that his belief was that K. M. Mani will win. When he was asked whether Joseph Thomas said that for the benefit of migrated Christians who had lost their lands on account of the Land Reforms Act, 1964, persons like Mani who loved the Christian community should win and become a minister, the witness categorically stated that he "didn't say anything like that." When he was asked further whether Joseph Thomas said that he was prepared to give up his uniform for the sake of Mani's success, the witness stated that what Joseph Thomas said was that "If it is necessary I will give up my uniform

and job." When the witness was clearly asked whether that was said for the success of the appellant, he replied that he did not know what for. There is thus nothing in the statement of the Bishop, who was the prime mover of the meeting, to show that Joseph Thomas exhorted the audience to work for the victory of the appellant or rendered him any assistance for the furtherance of his prospects in that direction. Even a police officer whose assistance has

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been prohibited under sub-section (7) of section 123 of the Act, is nonetheless a citizen and an elector, and is entitled to have his own belief that a particular candidate would win, and to express that belief without lending an impression that it was meant to assist him in the election in any manner. It would have been open to objection if Joseph Thomas had stated at the meeting that it was necessary for the benefit of the Christian community that persons like Mani should win and become a Minister to save them from the rigour of the Land Reforms Act, but the Bishop has returned a categorical answer that Joseph Thomas did not say any such thing.

The remaining part of the statement of the witness relates to Joseph Thomas's statement that if it was necessary he would give up his uniform and job. That question was asked of the witness in the context of the appellant's success in the election but, even so, so reply, as stated by the Bishop, cannot be said to be open to objection. Accord that limitation, it cannot be believed that he would throw discretion job if that was necessary. That was a statement regarding his future course of action, and it shows that Joseph Thomas realised that without giving up his job it was not possible for him to assist the appellant in the election. When therefore Joseph Thomas was conscious of that limitation, it cannot be believed that he would throw discretion to the winds and then and there launch an exhortation for the appellant's success at the polls. The fact that no such impression was created from what Joseph Thomas said at the meeting, will be clear from the Bishop's answer that he did not know what for the witness mentioned his willingness to give up his job when necessary. We have no reason to disbelieve the statement of the Bishop, and we are unable to take the view that it can be used for the purpose of proving the alleged corrupt practice of obtaining or procuring the assistance of the police officer for furtherance of the appellant's prospects in the election.

Cherian J. Kappan (P.W.3) is another witness in this connection. He has no doubt stated that the person who was mentioned as City Commissioner of Police spoke thrice and said that Mani's success was a necessity and that if only he won then it will be possible to exclude the estates planted with rubber after 1964 from the operation of the Land Ceiling Act. The witness has further stated that Joseph Thomas said that it was therefore their need that the appellant should win and "therefore it does not matter if I lose my job and I came for this." We find however that in all these respects the statement of the witness has been contradicted by the statement of Dr. Sebastian Vayalil (P.W. 2). Thus the Bishop has not stated that Joseph Thomas spoke, thrice, and

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he has categorically stated that he did not say that Mani should win or that he should win for the benefit of the migrated Christians with reference to the Land Reforms Act, 1964. As regards Joseph Thomas's offer to give up his job,

the version of Dr. Sebastian Vayalil (P.W. 2) is substantially different from that of Cherian J. Kappan (P.W. 3), for while Cherian J. Kappan (P. W. 3) has stated as if Joseph Thomas was prepared to lose his job then and there and had come to address the meeting because of the need for the appellant's success, Dr. Sebastian Vayalil (P.W. 2) has merely said that he expressed a desire to give up his uniform and job if that became necessary in future. The overall statement of Cherian J. Kappan (P.W. 3) has been disproved by Dr. Sebastian Vayalil (P. W. 2) who has stated that he did not know whether Joseph Thomas at all spoke for the appellant's success in the election.

We have gone through the statement of Cherian J. Kappan (P.W. 3) and it appears to us that, to say the least, he was not friendly with the appellant and had his own reasons for running him down. The attention of the witness was drawn to document Ex. P.2 dated March 15, 1977 which showed some rivalry between him and the appellant, but he was unable to explain it away. At any rate we do not find it possible to accept the version of Cherian J. Kappan (P.W. 3) in preference to that of Dr. Sebastian Vayalil (P. W. 2).

Father Joseph Chovvathukunnel (P.W. 4) is the next witness in this connection. He was a Vicar of the Ramapuram Forane Church and he has clearly stated that the Bishop (P.W. 2) asked those present he has meeting to act according to their conscience in the matter of casting votes. When the witness was asked whose success was the object of the meeting, he categorically stated that the Bishop did not say who among candidates should succeed in the election. It is significant that although the witness stated that the City Commissioner of Police, Trivandrum, participated in the meeting, and all said about election matters, he was not asked whether Joseph Thomas said anything in the meeting which could be said to assist the appellant in the election.

Father Joseph Pallikkaparambil (P.W. 7) was the Auxiliary Bishop of the Palai Diocese. He attended the meeting for a while, but he was also not asked whether Joseph Thomas made any speech at the meeting and, if so, to what effect. This omission is also not without significance.

Father George Nellikattu (P.W. 8) was the Vicar of St. Joseph's Church, Paika. He has stated that City Commissioner of Police Joseph Thomas was present at the meeting and that he spoke as if

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participating in it. He has said further that he remembered Joseph Thomas speaking about the matter of Agrarian Bill and that he said that the presence of persons like Mani was essential in the Legislative Assembly to see that the Bill did not affect them adversely. The witness has stated further that Joseph Thomas stood and spoke three or four times. We have already pointed out that the statement of Dr. Sebastian Vayalil (P.W. 2) shows that there was no mention of the Agrarian Act or Bill in Joseph Thomas's talk, and that he did not say anything regarding the Land Reforms legislation or the desirability of the election of persons like Mani in that connection. Moreover the witness has not supported the version of Cherian J. Kappan (P.W. 3) that Joseph Thomas said that it did not matter if he lost his job and that he had come for the appellant's success.

Taking an overall view of the evidence on the record, which consists mainly of the statements of the petitioner's witnesses we have no hesitation in saying that the High Court erred in preferring the statement of Cherian J. Kappan (P.W. 3) and George Nellikattu (P.W. 8) to the testimony of Dr. Sebastian Vayalil (P. W.2) and Father Joseph

Chovvathukunnel (P.W. 4).

In arriving at this conclusion we have not so far taken into account the statement of Joseph Thomas (P.W. 6) who also has been examined on behalf of the election petitioner. He has said while he and the Chancellor Priest were talking, someone from the laymen asked for his own view about Mani's election and he said that he had heard that he would succeed. He has further stated that when another person asked him to say something as he was in the Police department, he said that if anything had to be said about it, he will have to give up his cap and uniform. This version Joseph Thomas (P.W. 6) is substantially in accord with the statement of Dr. Sebastian Vayalil (P.W. 2). We have no reason to discard it merely because it emanates from a person who has been named for the commission of the corrupt practice in the order under section 99 of the Act. Joseph Thomas was subjected to a very long cross-examination, but nothing has been elicited to shake his testimony. It may be that his explanation that he happened to be present at the meeting because he had gone there to have a talk with the Chancellor Priest about the proposal for his brother's marriage may not be quite satisfactory, but his mere presence at that meeting, or expression of his personal views there, to which reference has been made above, could not possibly amount to the commission of a corrupt practice under sub-section (7) of section 123 of the Act by the appellant.

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This takes us to the question whether Joseph Thomas went to attend the meeting and spoke there at the instance of the appellant. The High Court has also addressed itself to it and has gone to the extent of saying that it was perhaps the only real question for consideration.

There is no direct evidence to prove that Joseph Thomas went to attend the meeting and spoke there at the instance of the appellant, and this fact has been noticed by the trial court. It has however arrived at a decision against the appellant on the basis of the circumstantial evidence on the record. The court was led to that conclusion because of its finding, with which we have disagreed, that in the meeting which had been held at the Bishop's house Joseph Thomas "actively and vehemently canvassed all assistance on behalf of the 1st respondent," and has "also found that the explanation given by P.W. 6 in that respect cannot be accepted." The court has also found that Joseph Thomas was not a reliable witness and could not be believed when he said that he had gone to Palai to meet his ailing father. In reaching that conclusion the court has gone to the extent of pointing out that Joseph Thomas was not very careful in stating the facts even in the court, and has made a reference to his incorrect assertion in paragraph 21 of his objection petition dated December 8, 1977 in answer to the notice under section 99, that he had received the notice on December 3, 1977 when he had received it earlier on December 1, 1977. That, in our opinion could not be a sufficient ground for disbelieving the witness. The counsel for Joseph Thomas had in fact filed an affidavit on December 16, 1977 in the court in which he had made it quite clear that the notice was really served on December 1, 1977, and that it was inadvertently stated in the reply to the show cause notice that it was received on December 3, 1977. At any rate such a mistake could not possibly have justified the rejection of the testimony of Joseph Thomas altogether.

The trial court has in this connection referred to a "complaint" of the election petitioner that the priest of

Lalam Church could not be examined even though he was named as a witness and could give useful information about what had happened in the meeting. It has gone to the extent of saying that the conduct of the priest of the Lalam Church was somewhat abnormal, and he has been dubbed as the "absconding" priest. Here again, it is difficult to accept the reasoning of the trial court because there is nothing on the record to show that the priest had been kept away by the appellant or Joseph Thomas or that he had absconded. As it happened, his whereabouts were ascertained after some time, but the election petitioner did not move the court for giving him a chance to examine him as a witness. His evi-718

dence had no doubt been closed by then, but that would not have prevented the court from allowing his examination. The fact that priest of Lalam Church could not be traced at an early date, could not therefore lend credence to the case that Joseph Thomas went to the meeting at the instance of the appellant.

The trial court has examined the activities of the appellant on March 12, 1977, in reaching the conclusion that he was himself present at the meeting at the Bishop's house on that day, and has placed reliance on the statement of M. K. Raju (P.W. 5). Mr. Govindan Nair, learned counsel for the election petitioner, has pointed out that the appellant had fixed four meetings in or around Palai on March 12, 1977 and that it was most unlikely that he would have left them unattended and gone to Kottayam for the disposal of official work there, so that his explanation for his absence from Palai is quite unsatisfactory and deserved to be rejected. But even if it is assumed that the appellant was in or around Palai and was attending one or the other of his election meetings, it would not necessarily follow that he visited the Bishop's house while the meeting was going on there. It is significant in this connection that the election petitioner did not venture to plead that the appellant attended the Bishop's meeting, even though such a plea would have helped him substantially in establishing a direct causal connection between the appellant and the meeting and between him and what was said there by Joseph Thomas.

The trial court has based its finding about the appellant's presence in the meeting on the statement of M. K. Raju (P.W. 5). He was the car driver of Cholikara Mathai Chettan in those days and he claims to have driven his employer there. He has stated that he did not go inside the Bishop's house and went away to take coffee after leaving his employer there. He returned at about 12 in the night. He saw the appellant in the Bishop's courtyard, but did not see him returning. We have gone through the statement of Raju but we do not find it possible to accept it in the face of the statement of Dr. Sebastian Vayalil (P.W. 2) that the appellant did not come to that meeting. On further cross-examination the Bishop clarified that if Mani had come at all, he would have come to know of that fact. Moreover if the appellant had really been present at the meeting, the election petitioner would have examined Cholikara Mathai Chettan himself, who was driven there by M. K. Raju (P.W. 5), and would not have relied merely on the statement of the driver who did not even go inside the house.

The election petitioner has examined a number of other witnesses about what transpired at the meeting, but none of them has stated that the appellant was present there. Even Cherian J. Kappan (P.W. 3)

has not stated that the appellant was present at the meeting, and we have no doubt that the High Court erred in taking a contrary view merely on the basis of the evidence of M. K. Raju (P.W. 5) and the appellant's programme of addressing some meetings in the vicinity of Palai.

A reading of the impugned judgment shows that the trial court could go on further than saying that the version of M. K. Raju (P.W. 5) that he saw the appellant going to the Bishop's house was "quite probable". In taking that view the trial court lost sight of the requirement that the allegation regarding the commission of a corrupt practice is in the nature of a quasi criminal proceeding which has to be established beyond reasonable doubt and not merely by preponderance of probabilities. In making the appellant's presence at the meeting a basis of the finding against him, the trial court therefore committed an obvious error of law which by itself is sufficient to vitiate it.

The trial court has also taken Joseph Thomas's activities into consideration, along with the facts that he was a police officer working at Trivandrum, he went to the Bishop's house on March 12, 1977 and addressed a meeting there, and "openly" canvassed for the appellant who was a Minister of the State Government at that time. The High Court has noticed the further fact that Joseph Thomas was the seniormost Superintendent of Police and he would not have been unaware that his conduct amounted to an offence under section 129(2). On these premises the High Court has built up its finding that as Joseph Thomas took a very great risk, and declared that he was prepared to lose his job, the normal conclusion would be that "in all probability P.W. 6 faced the risk out of fear or favour, and either of which could have emanated only from the 1st respondent because it was the 1st respondent alone who was benefited by the impugned activities of P.W. 6." To these circumstances Mr. Govindan Nair has added the further argument that as the Bishop wanted to remove the incorrect impression that he was against the appellant, it must follow that as the meeting was convened to remove that impression it was held for furtherance of the prospects of the election and any speech delivered by Joseph Thomas must be presumed to have that object.

But as has been shown earlier, there is no satisfactory evidence to prove that Joseph Thomas spoke anything at the meeting for furtherance of the appellant's electoral prospects or that he went there and spoke at his instance. It will be recalled that the Bishop has categorically stated that he never said to whom votes should be cast and he did not even intend that votes should be cast for the appellant.

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Dr. Joseph Chovethukunnel (P.W. 4) has also stated that the Bishop did not even say who among the candidates (who were all Roman Catholics) should succeed. The trial court was not therefore justified in reaching the conclusion that Joseph Thomas intentionally took the great risk of committing an offence under section 129(2) and of losing his job out of fear or favour of the appellant. But even if all the premises set up by the trial court in this connection were accepted as correct, it would not follow, as an inevitable conclusion, that they would establish a nexus between the two, for it may well be that Joseph Thomas did all that at the instance of someone else, or out of his own desire to curry favour with the appellant in the hope of some future advantage some time. At any rate that possibility could not be excluded, and the trial court erred in basing its finding

on a mere probability. It will be enough to make a reference to Mohan Singh v. Bhanwarlal and others and Samant N. Balakrishna etc. v. George Fernandes and others etc. in this connection. In Mohan Singh's case it has been held that the onus of proving the commission of a corrupt practice is not discharged on proof of mere preponderance of probability as in a civil suit, and it must be established beyond reasonable doubt by evidence which is clear and unambiguous. In Balakrishna it has been held that while consent may be inferred from circumstantial evidence, the circumstances must point unerringly to the conclusion and must admit of no other explanation, for a corrupt practice must be proved in the same way as a criminal charge. Out of the other decisions of this Court to the same effect reference may be made to R. M. Seshadri v. G. Vasantha Pai Bhagwan Datta Shastri v. Ram Ratanji Gupta and others and Balwant Singh v. Prakash Chand and other. The election petitioner must therefore exclude every hypothesis except that of guilt on the part of the returned candidate or his election agent, and the trial court erred in basing its finding on a mere probability.

We have, in this connection, taken into consideration the other argument of Mr. Govindan Nair that the appellant was in dire need of the help of Joseph Thomas because of the stiff contest with N.C. Joseph and the facts and circumstances mentioned in Ex. 1. What a candidate will do or how he will react in such circumstances essentially depends on his mental make up, and his reaction in such a matter is really one of the imponderables of an electoral contest and cannot form the basis of a definite finding one way or the other. At any rate

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the appellant was not new to that contest and had won the elections on three earlier occasions. It is therefore difficult for us to uphold the argument that he was so driven by the prospect of defeat as to seek the assistance of a police officer openly, on pain of losing his success at the hands of any 'elector' who may charge him of the commission of that corrupt practice.

So as there is no direct evidence to prove that Joseph Thomas went to attend the meeting at the Bishop's house at the instance of the appellant and spoke there at his instance, and as the circumstantial evidence referred to above was inadequate to reach that conclusion, we are constrained to set aside the finding of the trial court that it was the appellant who "obtained and procured the services of P.W. 6, a police officer, in furtherance of the prospects of the election of the 1st respondent, and the corrupt practice set out in sub-section (7) of section 123 of the Act has been established beyond any doubt." We have given our reasons for differing with the trial court about what was said by Joseph Thomas in the meeting at the Bishop's house.

The appeals are allowed with costs, the impugned orders of the High Court dated December 21, 1977, under sections 98 and 99 of the Act are set aside and the election petition is dismissed. N.V.K. Appeals allowed.

N.V.K.

Appeals allowed.

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