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kugq - hzsy - cif7	4918/2026	09-03-2026	607	Private	LAW003009032026011833
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NEUTRAL CITATION NO. 2026:MPHC-GWL:8025



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**EP. No. 24 of 2024**

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE  
HON'BLE SHRI JUSTICE G. S. AHLUWALIA**

**ELECTION PETITION No. 24 of 2024**

**RAMNIWAS RAWAT**

*Versus*

**MUKESH MALHOTRA AND OTHERS**

**Appearance:**

*Shri M.P.S.Raghuvanshi, Senior Advocate with Shri Sanjay Dwivedi, Shri Sankalp Sharma, Shri Nipun Saxena, Shri Dharmendra Dwivedi, Ms.Sonam Mittal, Mohd. Amir Khan, Shri Manish Singh Gurjar, Ms.Deepali Dabas, Ms.Aadya Pandey, Ms. Tanya Agrawal, Shri Dev Nagar, Ms.Namrata Tomar, Shri Joyjeet Kumar Das, Shri Harshit Raghuvanshi - Advocates for petitioners.*

*Shri Vivek K. Tankha, Senior Advocate with Shri PratipVisoriya, Shri Siddhant Gupta, Shri Inder Dev Singh, Shri Abhishek Singh Chauhan, Shri Vishesh Dwivedi and Ms.Ayushi Sharma - Advocates for respondent No.1.*

*Shri Ravindra Sharma - Advocate for respondents No.2,3, 5 to 9.*

*Shri Navnidhi Parharya - Advocate for respondent No.4.*

*Shri Priyanshu Yadav - Advocate for respondent No.10.*

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**Reserved on : 26.02.2026**

**Pronounced on : 09.03.2026**

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## **JUDGMENT**

1. This Election Petition under Section 80/81 of Representation of the People Act has been filed seeking the following reliefs:

It is, therefore, humbly prayed that this Hon'ble Court may kindly be pleased to allow this petition and may further be pleased to grant following relief to the petitioner :

- (i) The Hon'ble Court may kindly be pleased to declare the election of respondent no.1 from Assembly Constituency 02 Vijaypur vide election certificate dated 23-11-2024 (Annexure P/11) is void;
- (ii) The Hon'ble Court may further declare that the petitioner is duly elected from Assembly Constituency 02 Vijaypur;
- (iii) Any other suitable direction which this Hon'ble Court deems fit in the fact and circumstances of the case may kindly be passed ;
- (iv) Cost of petition may kindly be awarded.

2. The facts necessary for disposal of present election petition in short are that Election Petitioner was the Member of Legislative Assembly (in short MLA) for the terms of 1990-93, 1993-1998, 2003-2008, 2008-2013 and 2013-2018. Election Commission of India (in short ECI) issued Press Note dated 9-10-2023 thereby notifying and declaring the General Election of Legislative Assemblies of Madhya Pradesh. The Election Petitioner contested the said election on the ticket of Indian National Congress and was declared elected for the 16<sup>th</sup> Assembly of the State of M.P. from Assembly Constituency 02 Vijaypur, Distt. Sheopur. Thereafter, the Election Petitioner submitted his resignation and joined Bhartiya Janta Party, as a result the seat of MLA Assembly Constituency 02 Vijaypur, Distt. Sheopur fell vacant. Accordingly, ECI vide its Press Note dated 15-10-2024 declared bye-election for the said seat. The date of Polling was 12-11-2024 and date of Counting was 23-11-2024. The

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Election Petitioner filed his nomination for Assembly Constituency 02 Vijaypur, Distt. Sheopur on the ticket of BJP, whereas the respondent no.1/Mukesh Malhotra also submitted his nomination paper on the ticket of Indian National Congress. The other respondents also submitted their nomination papers. The respondent no.1/Mukesh Malhotra was declared elected and certificate of election was issued to him.

3. The present Election Petition has been filed mainly on the ground that in the affidavit which is to be filled in as per form 26, was not completely filled up by the respondent no.1/Mukesh Malhotra and vital informations were suppressed. Total 6 criminal cases were registered against the respondent no.1/Mukesh Malhotra but he disclosed incomplete information about two cases only. The Election Petitioner has bifurcated the information given by respondent no.1/Mukesh Malhotra in respect of his criminal cases in two categories which are as under :

**Group 1 : Cases which are disclosed but without giving full details about them :**

- (i) Case registered in Police Station Karahal at crime no. 2/2022 for crime under Section 323,294,506,and 34 of IPC. The case is pending in the Court of JMFC, Sheopur in RCT No. 972/2022;
  - (ii) Case registered in Police Station Karahal at crime no. 93/2023 for crime No. 341,323,294,506 and 34 of IPC and is pending before JMFC, Sheopur in RCT No. 1051/2023.
- (a) It is the case of the Election Petitioner that the respondent no.1/Mukesh Malhotra did not disclose in his affidavit that charges in RCT No. 972/2022

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were already framed on 14-12-2022 and gave a false information that no charges have been framed.

(b) Similarly in respect of crime no. 93/2023/RCT No. 1051 of 2023, a false information was given that no charges have been framed whereas charges were already framed on 17-10-2023.

**Group 2 : Criminal cases which were not disclosed at all**

(i) Forest Crime No. 32773/2014 was registered against the respondent no.1/Mukesh Malhotra for crime under Sections 26(1)(a)(g),66(i) of Indian Forest Act. In this case, the respondent no.1/Mukesh Malhotra was convicted vide judgment dated 28-2-2020 passed by CJM, Sheopur in case no. 601022/2014 and was punished with fine of Rs. 7,000/- with default imprisonment of one month.

(ii) Crime No. 32/2011 was registered against the respondent no.1/Mukesh Malhotra in Police Station Karahal for offence under Sections 323,294,332,252, and 186 of IPC and vide judgment dated 30-6-2015 passed by JMFC, Sheopur in RCT No. 1407 of 2011, he was convicted under Sections 332 and 294 of IPC and was sentenced for 6 month's RI and fine of Rs. 500/- with default imprisonment of 15 days.

(iii) Crime no. 2/2013 was registered at Police Station Karahal, for offence under Sections 323,294 of IPC and by judgment dated 30-11-2013, the said case was disposed of by JMFC, Sheopur in RCT No. 157/2013, but that fact was not disclosed.

(iv) Crime No. 2/2020 was registered at Police Station Karahal, for offence under Section 505(2) of IPC. The respondent no.1/Mukesh Malhotra was acquitted by Judgment dated 11-3-2023.

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4. Thus, it is the case of the Election Petitioner, that the respondent no.1/Mukesh Malhotra did not disclose his criminal antecedents in clause 6 and did not disclose complete information in clause 5 of his affidavit filed under form 26, and thus withheld vital informations from electorate which amounts to corrupt practice in terms of provisions of Section 100(1)(b) and 123(2) of Representation of the People Act.

5. It is also the case of the Election Petitioner that he got 46.95% of total votes whereas the respondent no.1/Mukesh Malhotra got 50.66% of total votes and the remaining contesting candidates got 2.39% of total votes (each of the respondents no. 2 to 10 got even less than 1% of total votes).

6. The respondent no.1/Mukesh Malhotra filed an application under Order 7 Rule 11 CPC which was dismissed by this Court by order dated 23-4-2025 which reads as under :

“Heard on I.A. No.2228/2025 and IA.No.2527/2025.

**IA. No.2527/2025:**

2. It is submitted by counsel for petitioner that the copy which was sent along with the notice is not in conformity with the provisions of Section 81(3) of Representation of People Act, 1951. The petition does not contain the impression of seal, name, affirmation and endorsement by the notary. To buttress his submission, learned counsel has relied upon judgment passed by Supreme Court in the case of **Dr. (Smt.) Shipra etc. Vs. Shanti LalKhoiwal etc.** reported in **AIR 1996 SC 1691**. It is further submitted that Supreme Court by judgment passed in the case of **Anil R. Deshmukh Vs. Onkar N. Wagh and others** reported in **AIR 1999 SC 732** has held that if notice did not contain endorsement of attestation and stamp of seal of the attesting officer and if true copies of affidavit containing endorsement of verification etc. is supplied at a later stage i.e. long before stage of argument, then defect in non-supply of true copy is curable. It is

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further submitted that thereafter both the judgments were considered by Constitutional Bench of Supreme Court in the case of **T.M. Jacob Vs. C. Poulse and others** reported in **AIR 1999 SC 1359** and held that both the judgments are correct under the facts and circumstances of the respective cases. Thus, it is submitted that the copy of notice which was sent does not contain any impression of notarial act, therefore, the only consequence is the dismissal of Election Petition under Section 86 of Representation of People Act. Furthermore, it is submitted that later on, on 24.03.2025, the election petitioner has supplied a copy of election petition which was downloaded from the official website of the High Court “ERP”. This notice also contains the endorsement made by the Judicial Registrar as well as the presenting officer which clearly means that the copy which was supplied on 24.03.2025 was not the true copy of the election petition which was presented on 30.12.2024 and accordingly, the said copy cannot cure the defect. It is further submitted that even otherwise, the corrected copy was supplied to the returned candidate only and no copy was supplied to any of the other contesting respondents. It is submitted that since the election petitioner has also sought that he be declared as successful candidate therefore all the contesting candidates are necessary party and are entitled to true copy of election petition, accordingly, relied upon the judgments of Supreme Court in the case of **Smt. Sahodrabai Rai Vs. Ram Singh Aharwar and others** reported in **AIR 1968 SC 1079**, **M. Karunanidhi Vs. H.V. Handa and others** reported in **AIR 1983 SC 558** and **Mulayam Singh Yadav Vs. Dharampal Yadav and others** reported in **AIR 2001 SC 2565**.

**I.A. No.2228/2025:**

3. It is submitted by counsel for respondent No.1 that no cause of action has arisen and accordingly the election petition is liable to be dismissed under Order VII Rule 11 CPC. Election Petition has been filed on solitary ground of suppression of criminal antecedents. It is submitted by counsel for respondent No.1 that Section 33 A of Representation of People Act requires that only those cases i.e. (i) where the trial is pending and charges have been framed (ii) where a person has been convicted for more than one year's RI are mandatorily required to be disclosed. However, in two cases the returned candidate was punished for less than one year, therefore, in the light of Section

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33 A of Representation of People Act, non-disclosure would not invite the corrupt practice. So far as other two cases which are pending against the returned candidate are concerned, the same were disclosed in the affidavit. It is submitted that although in front of description of those two criminal cases, returned candidate had mentioned “लागू नहीं होता” but that declaration by itself would not mean that the respondent had suppressed the pendency of two criminal cases. It is further submitted that there is no averment in the election petition that non-disclosure or incorrect disclosure of criminal cases has materially affected the result of election. Furthermore the affidavit filed in support of corrupt practice is not in accordance with Form 25 prescribed under the Representation of People Act and the election petitioner has also not disclosed the source of information in his affidavit. To buttress his contention, counsel for returned candidate has relied upon the judgments passed by the Supreme Court in the case of **C.P. John Vs. Babu M. Palissery and Others** reported in **AIR 2015 SC 16**, **Kanimozhi Karunanidhi Vs. A. Santhana Kumar & Others** reported in [2023] 4 S.C.R. 798, **Karikho Kri Vs. Nuney Tayang and another** reported in [2024] 4 S.C.R. 394, **Karim Uddin Barbhuiya Vs. Aminul Haque Laskar & Others** reported in [2024] 4 S.C.R. 523, **Ravi Namboothiri Vs. K.A. Baiju and others** reported in **AIR Online 2022 SC 883** and **L.R. Shivaramagowda etc. Vs. T.M. Chandrashekar etc.** reported in **AIR 1999 SC 252**. It is further submitted that material facts have not been pleaded and relied upon the judgments passed by the Supreme Court in the case of (2001) 8 SCC 233, **Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar** reported in **2009 AIR SCW 6812** and **Ravinder Singh Vs. Janmeja Singh and others** reported in **AIR 2000 SC 3026**.

4. Per contra, both the applications are vehemently opposed by counsel for election petitioner.

5. So far as the compliance/non-compliance of provisions of Section 81(3) of Representation of People Act is concerned, it is submitted by counsel for election petitioner that the Supreme Court in the case of **T. Phungzathang Vs. Hangkhanlian and others** reported in (2001) 8 SCC 358 has held that even if the copy supplied to respondent does not bear the endorsement of affirmation or seal or name of the notary, would not be fatal requiring dismissal of election petition as long as the original affidavit is in accordance with law. So

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far as the contention raised by counsel for respondent No.1 as regards the lack of material fact is concerned, it is submitted by counsel for the election petitioner that suppression of criminal antecedents by itself is sufficient to hold that the returned candidate was guilty of corrupt practices. Furthermore, the election petitioner has specifically pleaded in the election petition that immediately after the result was declared, when the general public came to know about pendency of criminal cases, then they were shocked and the margin of votes received by the election petitioner and the returned candidate was only 7,000/- and the corrupt practice played by returned candidate has materially affected the election result. It is submitted that merely because words “materially affected” have not been used in the election petition would not mean that the pleadings made in respect of the effect of suppression of criminal antecedents can be ignored. It is submitted that only facts are to be pleaded and not the law. Furthermore, it is submitted that it is for the High Court to decide as to whether the material available on record has materially affected the election or not as required under Section 100(1) of Representation of People Act.

6. Heard learned counsel for the parties.

7. The Supreme Court in the case of **T. Phungzathang (supra)** has held as under:

17. In the above-declared legal position, if we examine the case in hand, we notice that the only lacuna pointed out by the contesting respondent in his application in Civil Miscellaneous Election Case No. 3 of 2000 is that the copy supplied to him did not contain the verification or affirmation made by the Oath Commissioner or the prescribed authority as required in Form 25 and Rule 94-A of the Conduct of Elections Rules, 1961. It is not the case of Respondent 1 that the original affidavit filed along with the election petition in Form 25 did not contain such verification or affirmation. On the contrary, it is an admitted fact that such affirmation or verification was made in the original affidavit filed before the High Court. Therefore, the question arising in this appeal is: would this omission as pointed out by the respondent in his petition, ipso facto entail dismissal of the election petition under Section 86(1) of the Act? In view of the law laid down in Jacob case [(1999) 4 SCC 274] the answer then

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should be “no” because by such omission the copy supplied will not cease to be a “true copy” and there is no possibility of any prudent person being in any manner misled in defending himself or being prejudiced in the defence of his case. Further, such omissions are only curable irregularities.

18. In this appeal, it is also to be noted that on coming to know of the omission pointed out by the respondent, the appellant had, on 6-6-2000, a few days before the starting of the arguments supplied fresh copies of the affidavit containing the verification as found in the original affidavit in its entirety, hence, as was laid down in the case of Deshmukh [(1999) 2 SCC 205] it should be held that the defects pointed out in the petition being curable, have been cured.

19. Having come to the conclusion that the facts of the present appeal are fully covered by the Constitution Bench judgments of this Court in Jacob case [(1999) 4 SCC 274] and Deshmukh case [(1999) 2 SCC 205] we will now discuss the applicability of Harcharan Singh Josh case [(1997) 10 SCC 294] to the facts of this case bearing in mind that the High Court has relied on this case also to dismiss the election petition. It is true that in Josh case [(1997) 10 SCC 294] this Court extended the principle laid down in DrShipra case [(1996) 5 SCC 181] but then this Court in Jacob case [(1999) 4 SCC 274] in clear terms held that the application of the principle found in DrShipra case [(1996) 5 SCC 181] is confined only to the facts of that case; meaning thereby that it is applicable only in cases where the original affidavit filed before the High Court contained the omissions and not to copies of the affidavit supplied to the respondents. Therefore, it is clear that the application of the principle in DrShipra case [(1996) 5 SCC 181] to the facts of Josh case [(1997) 10 SCC 294] is clearly impermissible. In that view of the matter, the decision in Josh case [(1997) 10 SCC 294] being contrary to Jacob case [(1999) 4 SCC 274] the same cannot be construed as a good law any more. Therefore, the High Court in the instant case could not have relied on Josh case [(1997) 10 SCC 294] to dismiss the election petition.

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20. Before we conclude, we must note that the appellant had in support of his argument raised an additional contention to the effect that assuming that irregularities pointed out by the respondent in the copy of the affidavit supplied to him is an incurable defect, even then the election petition could not have been dismissed in its entirety because it had raised other substantial grounds questioning the declaration of result in favour of Respondent 1. In our opinion, it is not necessary for us to express any opinion on this issue because of the view expressed on the main contention argued in this appeal.

21. For the reasons stated above, this appeal succeeds and the same is allowed. The impugned judgment and order is set aside and the matter is remanded to the High Court for disposal of the election petition on merits. No costs.

R.C. LAHOTI, J. (concurring)— I am in respectful agreement with the order proposed by my learned Brother N. Santosh Hegde, J. and place on record my concurrence with the reasoning and conclusion arrived at by him. However, I propose to assign additional reasons in support of the view taken by my learned Brother.

23. The relevant facts have been succinctly stated and relevant provisions of law quoted by my learned Brother, yet a quick recap of the facts and relevant statutory provisions, as a prologue to this opinion of mine, would be in order. It is undisputed that the election petition filed by the appellant, putting in issue the election of Respondent 1, alleges commission of corrupt practice by Respondent 1 and also pleads grounds other than commission of corrupt practice, in support of the relief for declaring the election of the returned candidate to be void. The election petition is signed and verified by the petitioner in the manner laid down in the Code of Civil Procedure for the verification of pleadings. The petition is accompanied by an affidavit in Form 25 as required by proviso to sub-section (1) of Section 83 of the Representation of the People Act, 1951 (hereinafter “the Act”) and Rule 94-A of the Conduct of Elections Rules, 1961 (hereinafter “the Rules”). The affidavit so filed has been sworn before a Commissioner of Oaths and bears, to that effect, an endorsement, signature and rubber

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stamp of the Oath Commissioner administering oath to the deponent in the manner and form contemplated by Form 25. It is also not disputed that the set of the copies which accompanied the election petition at the time of filing and which was delivered to Respondent 1 along with the writ of summons was complete in all respects excepting that the endorsement made by the Oath Commissioner attesting the affidavit to have been sworn by the deponent before him, his signature and rubber stamp do not appear on the copy of the affidavit delivered along with the copy of election petition to Respondent 1. On 22-5-2000 an application was filed by Respondent 1 before the learned Designated Election Judge under Sections 83 and 86 of the Act calling for dismissal of the election petition on the ground that the verification on the election petition was defective and material facts and particulars as to the alleged corrupt practice were not given but therein no grievance was raised that the copy delivered to Respondent 1 was not in conformity with the original and, therefore, Respondent 1 was prejudiced in his defence. On 5-6-2000 another application was filed by Respondent 1 wherein such an objection was taken. Soon on receipt of the copy of the application, served on the petitioner out of the court, the counsel for the election petitioner delivered another set of copies of election petition with affidavit which had the endorsement and rubber stamp of the Oath Commissioner as it was on the original and this was done before the application came up for hearing before the learned Designated Election Judge. However, the learned Judge felt that there was non-compliance with Section 83(1)(c) proviso read with Section 81(3) and hence the petition was liable to be dismissed under Section 86(1) of the Act.

24. Section 83(1) of the Act requires an election petition to plead material facts setting forth full particulars of alleged corrupt practice and to be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. The proviso enacted to sub-section (1) requires that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Rule 94-A (introduced by an

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amendment in the Rules w.e.f. 27-2-1962) requires that an affidavit referred to in the proviso to sub-section (1) of Section 83 shall be sworn before a Magistrate of the First Class or a Notary or a Commissioner of Oaths and shall be in Form 25. Form 25 appended to the Rules requires the election petitioner to verify on solemn affirmation or oath the statements about the commission of corrupt practice and the particulars of such corrupt practice distinctly stating to what extent they are true to his knowledge and to what extent they are true to his information. The form also prescribes the following endorsement to appear below the signature of the deponent on affidavit:

“Solemnly affirmed/sworn by Shri/Shrimati ... at ... this ... day of ..., 19....

Before me,

Magistrate of the First Class/Notary  
/Commissioner of Oaths.”

The requirement of Section 83(1) proviso is of an “affidavit in prescribed form”. An endorsement by the specified officer before whom the affidavit is sworn is not the requirement mentioned in the section. Rule 94-A can be dissected into two parts: (i) the affidavit shall be in Form 25, and (ii) it shall be sworn before a Magistrate of the First Class or a Notary or a Commissioner of Oaths. What is prescribed is the form of affidavit. Swearing in before one of the three officers is the mode and manner of swearing in the affidavit. The latter requirement does not relate to the form of affidavit; it prescribes the persons recognised by the Act and the Rules as competent to administer oath to the deponent of the affidavit for the purposes of Section 83(1) read with Rule 94-A and suggests, for the sake of convenience and consistency, the manner of endorsement to be made by the Magistrate, Notary or Commissioner of Oaths administering oath to the deponent. Such endorsement made by the officer administering oath to the deponent is not an integral part of the affidavit. Preparing, signing and swearing an affidavit are acts of the deponent; administering oath and making an endorsement in

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proof thereof on the affidavit are acts of the officer administering the oath.

25. In *T.M. Jacob v. C. Poullose* [(1999) 4 SCC 274] the Constitution Bench has reaffirmed the law as stated earlier by two Constitution Benches in *MurarkaRadheyShyam Ram Kumar v. Roop Singh Rathore* [AIR 1964 SC 1545 : (1964) 3 SCR 573] and *Ch. Subbarao v. Member, Election Tribunal* [AIR 1964 SC 1027 : (1964) 6 SCR 213] and has also explained and expanded the principles laid down by the two earlier Constitution Benches. In *T.M. Jacob* case [(1999) 4 SCC 274] copy of the election petition delivered to the contesting respondent did not show that the verification of the Notary Public required as per Rule 94-A and Form 25 was contained in the original and, therefore, the copy was objected to as being defective and amounting to non-compliance with the requirements of Section 81(3) of the Act. The case was placed before the Constitution Bench specifically for reconsidering the three-Judge Bench decision in *DrShipra v. Shanti LalKhoiwal* [(1996) 5 SCC 181] and while doing so the Constitution Bench also noticed another later three-Judge Bench decision of the Court in *Anil R. Deshmukh v. Onkar N.* [(1999) 2 SCC 205] The law laid down by the Constitution Bench may be summed up as under:

(i) The object of serving a “true copy” of an election petition and the affidavit filed in support of the allegations of corrupt practice of the respondent in the election petition is to enable the respondent to understand the charge against him so that he can effectively meet the same in the written statement and prepare his defence. The requirement is of substance and not of form. (SCC p. 290, para 35)

(ii) The test to determine whether a copy was a true one or not was to find out whether any variation from the original was calculated to mislead a reasonable person. (SCC p. 288, para 33)

(iii) The word “copy” does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. (SCC p. 289, para 34)

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(iv) Substantial compliance with Section 81(3) was sufficient and the petition could not be dismissed, in limine, under Section 86(1) where there had been substantial compliance with the requirements of Section 81(3) of the Act. (SCC p. 289, para 34)

(v) There is a distinction between non-compliance with the requirement of Section 81(3) and Section 83. A substantial compliance with the requirements of Section 81(3) read with the proviso to Section 83(1) of the Act is enough. Defects in the supply of true copy under Section 81 of the Act may be considered to be fatal, where the party has been misled by the copy on account of variation of a material nature in the original and the copy supplied to the respondent. The prejudice caused to the respondent in such cases would attract the provisions of Section 81(3) read with Section 86(1) of the Act. The same consequence would not follow from non-compliance with Section 83 of the Act. (SCC p. 291, para 37)

(vi) The argument that since proceedings in election petitions are purely statutory proceedings and not civil proceedings as commonly understood, there is no room for invoking and importing the doctrine of substantial compliance into Section 86(1) read with Section 81(3) of the Act, cannot be accepted and has to be repelled. (SCC p. 291, para 38)

(vii) It is only the violation of Section 81 of the Act which can attract the application of the doctrine of substantial compliance as expounded in *MurarkaRadheyShyam* [AIR 1964 SC 1545 : (1964) 3 SCR 573] and *Ch. Subbarao* [AIR 1964 SC 1027 : (1964) 6 SCR 213] cases. The defect of the type provided in Section 83 of the Act, on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. This clearly emerges from the scheme of Sections 83(1) and 86(5) of the Act. (SCC p. 291, para 38)

(viii) A certain amount of flexibility is envisaged. While an impermissible deviation from the original may entail the dismissal of an election petition under Section 86(1) of the Act, an insignificant variation in the true copy cannot be construed as a fatal defect. It is, however, neither desirable nor possible to

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catalogue the defects which may be classified as of a vital nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. The tests suggested in MurarkaRadheyShyam case [AIR 1964 SC 1545 : (1964) 3 SCR 573] are sound tests and are now well settled. (SCC p. 292, para 40)

26. Dr. Shipra case [(1996) 5 SCC 181] was referred to, doubted and distinguished in Anil R. Deshmukh [(1999) 2 SCC 205] which also is a three-Judge Bench decision. Both these decisions were placed before the Constitution Bench in T.M. Jacob case [(1999) 4 SCC 274] . In DrShipra case [(1996) 5 SCC 181] the Constitution Bench decisions in Ch. Subbarao [AIR 1964 SC 1027 : (1964) 6 SCR 213] and MurarkaRadheyShyam [AIR 1964 SC 1545 : (1964) 3 SCR 573] have been just referred to, vide para 10, but not dealt with. In T.M. Jacob case [(1999) 4 SCC 274] the Constitution Bench has clearly held that the view taken in DrShipra case [(1996) 5 SCC 181] must be confined to the fact situation of that case and cannot be considered to be of general application. The statement of law in Anil R. Deshmukh case [(1999) 2 SCC 205] has been approved wherein the copy of the affidavit delivered to the respondent did not bear the endorsement of attestation or the seal or stamp of the attesting officer found on the original. But for the absence of the notarial endorsement, it was a true copy of the original as it was a xerox copy and was attested as “true copy” under the signature of the election petitioner. A copy along with notarial endorsement was later on furnished to the respondent. Applying the theories of substantial compliance and of curability this Court held that the election petition was not liable to be dismissed in limine. In Harcharan Singh Josh v. HariKishan [(1997) 10 SCC 294] the defect in the copy of the affidavit supplied to the respondent was the same as is in the present case and a three-Judge Bench of this Court, solely by relying on DrShipra case [(1996) 5 SCC 181] held that the election petition was liable to be dismissed in limine. In DrShipra [(1996) 5 SCC 181] and Harcharan Singh Josh [(1997) 10 SCC 294] — both three-Judge Bench decisions, this Court has held the defect to be not curable and the concept of substantial compliance having no application in such a case. In

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MurarkaRadheyShyam case [AIR 1964 SC 1545 : (1964) 3 SCR 573] and T.M. Jacob case [(1999) 4 SCC 274] the Constitution Benches have held such a defect to be curable and the test of substantial compliance to be applicable. The very premise on which the decisions in DrShipra [(1996) 5 SCC 181] and Harcharan Singh Josh [(1997) 10 SCC 294] proceed, thus, runs counter to the view taken by the Constitution Bench. In view of the Constitution Bench decisions, DrShipra case [(1996) 5 SCC 181] and Harcharan Singh Josh case [(1997) 10 SCC 294] cease to be good law.

8. Thus, it is clear that if the copy of election petition which was supplied to respondents did not contain the impression of seal, name, endorsement and affirmation by the notary, then that by itself would not invite dismissal of election petition under Section 86 of Representation of People Act. Furthermore, the election petitioner had already supplied the true copy of the election petition on 24.03.2025. On 24.03.2025, the following order was passed:

“Shri Dwivedi counsel for election petitioner prays for and is granted one week's time to file reply to I.A. Nos.2233/2025, 2228/2025 and 2229/2025.

At this stage, it is submitted by Shri Dwivedi that he is ready to supply fresh attested copy of election petition to the counsel for respondent No.1 and accordingly, a copy of same is supplied to Shri PratipVisoriya. The fact of belated supply of attested copy of election petition is kept open and shall be considered on the next date of hearing. Specifically when no copy of attested election petition to any other respondent(s) has been supplied.

Now, the petitioners are not permitted to supply the additional set of attested copies of election petition to any other respondents.

List this case on 01.04.2025.”

9. Thus, it is clear that so far as the returned candidate is concerned, the true copy of the election petition was supplied. So far as non-supply of the true copies to the other respondents is concerned, it is true that in the light of relief sought by election petitioner, each & every candidate is a necessary party, but in view of the fact that defect

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is curable, therefore, the election petitioner is directed to supply a complete set of true copy of the election petition by next date of hearing.

10. Under these circumstances, this Court is of considered opinion that election petition cannot be dismissed on the ground that the copy of notice which was served on the respondents did not contain the impression of seal, name of notary or endorsement of affirmation by the notary.

11. Accordingly, **IA. No.2527/2025** is hereby **rejected**.

12. So far as question of non-disclosure of cause of action is concerned, counsel for respondent/returned candidate was directed to address this Court with regard to intention of returned candidate in mentioning words “लागू नहीं होता” in front of two criminal cases which were disclosed by him in the affidavit. Except submitting that it was an inadvertent mistake on the part of returned candidate, no explanation could be submitted by counsel for returned candidate as to why the words “लागू नहीं होता” were mentioned in front of details of criminal cases which were pending against returned candidate. Since the interpretation and meaning of words “लागू नहीं होता” require appreciation of evidence, thus, it is clear that for the purposes of application filed under Order VII Rule 11 CPC, election petitioner has made out a case thereby disclosing cause of action which makes the election petition triable.

13. So far as the lack of material facts is concerned, it is clear that election petitioner in paragraph 16 to 21 of election petition has pleaded the material facts. Merely because the words “materially affected” have not been mentioned in the election petition, it cannot be said that the material facts have not been disclosed because it is suffice to mention here that only facts are to be pleaded and not the law. Section 100(1) of Representation of People Act makes it mandatory for the High Court to give a finding as to whether corrupt practice has materially affected the result or not. Thus, it is for the High Court to decide that suppression had any material effect on the result/outcome of the election or not. In the considered opinion of this Court, the election petitioner has pleaded all the material facts which are necessary for trial of election petition. Furthermore, the Supreme

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Court in the case of **Brajesh Singh Vs. Sunil Arora and others** reported in **(2021) 10 SCC 241**, **Union of India Vs. Association for Democratic Reforms and another** reported in **(2002) 5 SCC 294**, **Public Interest Foundation and others Vs. Union of India and another** reported in **(2019) 3 SCC 224** and **People's Union For Civil Liberties And Another Vs. Union of India and Another** reported in **(2013) 10 SCC 1** has repeatedly held that it is for the political parties as well as contesting candidates to disclose their criminal antecedents because it is the right of the voter to know about the criminal antecedents of the contesting candidate. Furthermore, on 18.03.2024 even the Election Commission has also issued guidelines requiring political parties as well as their candidates to disclose the criminal antecedents of contesting candidates. Thus, the judgments which were relied upon by respondent to show that the suppression of fact with regard to complete income or number of vehicles of the returned candidate stand on a different footing but it is the mandatory requirement for every contesting candidate to honestly disclose the pendency of all the criminal cases. Under these circumstances, this Court is of considered opinion that not only the election petition contains material facts for trial of election petition but also discloses cause of action.

14. Accordingly, **I.A. No.2228/2025** is also hereby **rejected**.

15. At this stage, it is submitted by Shri Sarvesh Sharma, Advocate, that he has also filed an objection with regard to non-supply of the additional true copy of the election petition.

16. Since this Court has already come to a conclusion that the copy of notices which were supplied to the respondents on the earlier occasion is the sufficient compliance of Section 81(3) of Representation of People Act, accordingly, the objection filed by Shri Sarvesh Sharma, Advocate, is hereby rejected.

17. Respondents are granted two weeks' time to file their written statement.”

7. The respondent no.1/Mukesh Malhotra filed SLP (c) No. 19112-19113/2025 which was dismissed by Supreme Court by order dated 22-7-2025.

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**8.** Thereafter, the respondent no.1/Mukesh Malhotra filed his written statement and admitted that all the six criminal cases were registered against him. In respect of criminal cases mentioned as Group 1 cases, it was stated by respondent no.1/Mukesh Malhotra as under :

“That, so far as Group 1 case is concerned under Section 33A Representation of people Act right to information has been given, Section 33A(1)(i) mandates that the candidates shall disclose this pending case where imprisonment for 1 years or more than 1 year has been prescribed and charges have been framed. Answering respondent in his nomination form has mentioned these two cases and also mentioned the name of the Court where these cases are pending and also made description of the offence but has not mentioned other details, because of not mentioning of other details neither the statute has been violated nor voters right to know criminal antecedent have been affected. Answering respondent has disclosed these cases in the nomination form, mistake occurred in the manner and method prescribed in the form which is directory in nature and does not affect the right of voters or anyone and it is the procedural lapse.”

**9.** So far as cases mentioned in Group 2 is concerned, it was the stand of the respondent no.1/Mukesh Malhotra that in forest offence he was convicted by Trial Court, however, in the light of Section 33-A of Representation of the People Act, it was not required to be disclosed in affidavit under form 26 as the conviction was less than 1 year. So far as the conviction of respondent no.1/Mukesh Malhotra in RCT No. 1047/2011 is concerned, it was set aside in appeal and ultimately the respondent no.1/Mukesh Malhotra was acquitted. In the remaining two cases, he was acquitted therefore, in the light of Section 33-A of Representation of the People Act, he was not under obligation to disclose the same in his affidavit filed in form 26. It is further submitted that the bonafide

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mistake has occurred on account of illiteracy and lack of legal awareness and pleaded as under :

That, in reply as to para-9 of the petition, it is submitted that so far as Group 2 cases are concerned, answering respondent is not required to disclose these cases. It is specifically denied that answering respondent has made any suppression in order to get any benefits. Some procedural lapses occurred because of lack of legal awareness or improper advice. It is not out of place to mention here that answering respondent belongs to Sahariya tribe who are still far and far away from civilization and literacy rate is very low but there was no intention to conceal the facts of criminal record, the lapses are purely procedural without any malafide intention. Answering respondent is not at all benefited by the aforesaid lapse.

10. The other respondents also filed their written statement, thereby indirectly supporting the respondent no.1/Mukesh Malhotra.

11. The Election Petitioner examined following witnesses in his support :

S.No.	Name of Witness	Witness No.
1.	Ram Niwas Rawat	P.W.1
2.	Bhupendra Singh	P.W.2

The respondent no.1/Mukesh Malhotra examined following witnesses in his support :

S.No.	Name of Witness	Witness No.
1.	Mukesh Malhotra	D.W.1
2.	Bachhan Bihari	D.W.2
3.	Harish Dubey	D.W.3
4.	Sanat Kumar Jain	D.W.4
5.	Chander Singh Sisodia	D.W.5

The respondent no. 4, Smt. Manju Adivasi, examined herself as a witness :

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S.No.	Name of Witness	Witness No.
1.	Manju Adivasi	D.W.6

The respondent no. 10 Ram Singh Jatav examined himself as a witness :

S.No.	Name of Witness	Witness No.
1.	Ram Singh Jatav	D.W.7

12. The following documents were proved and exhibited by Election Petitioner :

S.No.	Ex. P.	Document	Proved by
1	1	Press Note dated 9-10-2023 issued by Election Commission of India	Admitted by both parties
2	2	Press Note dated 15-10-2024 issued by Election Commission of India	Admitted by both parties
3	3	Nomination Paper of Mukesh Malhotra	Admitted by both parties
4	4	Judgment dated 28-2-2020 passed by C.J.M., Sheopur in RCT No. 1022/2014	Admitted by both parties
5	5	Judgment dated 30-6-2015 passed by J.M.F.C., Sheopur in RCT No. 1407/2011	Admitted by both parties
6	6	FIR in crime No. 2/13 registered at Police Station Karahal, Distt. Sheopur	Admitted by both parties
7	7	Result	Admitted by both parties
8	8	Election Certificate	Admitted by both parties
9	9	FIR in crime No. 2/2022 registered at Police Station Karahal, Distt. Sheopur	Admitted by both parties
10	10	Denial of charges in RCT No. 972/2022	Admitted by both parties
11	10A	FIR in crime No. 93/2023 registered at Police Station Karahal, Distt. Sheopur	Admitted by both parties
12	11	Charges in RCT No. 972/2022	Admitted by both parties

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13	12	Charges in RCT No. 1051/2023	Admitted by both parties
14	13	FIR in crime No. 2/2020 registered at Police Station Karahal, Distt. Sheopur	D.W.1
15	14	News Paper Aacharan dated 8-11-2024	D.W.1
16	15	News Paper Aacharan dated 6-11-2024	D.W.2
17	16	News Paper Aacharan dated 7-11-2024	D.W.2
18	17	News Paper Aacharan dated 8-11-2024	D.W.2
19	18	News Paper Circulation Sheet dated 6-11-2024 of Nav Bharat	D.W.3
20	19	News Paper Circulation Sheet dated 7-11-2024 of Nav Bharat	D.W.3
21	20	News Paper Circulation Sheet dated 8-11-2024 of Nav Bharat	D.W.3
22	21	News Paper Nav Bharat dated 7-11-2024	D.W.3
23	22	News Paper Nav Bharat dated 8-11-2024	D.W.3
24	23	News Paper Nav Bharat dated 6-11-2024	D.W.3

13. The Following documents were proved and exhibited by respondent No.1 /Mukesh Malhotra :

S.No.	Ex. D	Document	Proved by
1	1	Notice to admit documents	P.W.1
2	2	Reply to Notice to Admit Documents	P.W.1
3	3	Affidavit in form 26	P.W.1
4	4	Judgement dated 17-6-2016 passed by 2 <sup>nd</sup> A.S.J., Sheopur in Cr.A. No. 400051/2015	P.W.1
5	5	Register of criminal cases	P.W.1
6	6	Judgment dated 11-3-2023 passed by J.M.F.C., Sheopur in RCT No. 546 of 21	P.W.1
7	7	News Paper Nav Bharat dated 7-11-2024	P.W.1
8	8	News Paper Aacharan dated 6-11-2024	P.W.1
9	9	News Paper Aacharan dated 7-11-2024	P.W.1
10	10	News Paper Nav Bharat dated 8-11-2024	P.W.1
11	11	News Paper Nav Bharat dated 6-11-2024	P.W.1
12	12	Compact Disc	P.W.1

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13	13	News Paper Pradesh Watch dated 7-11-2024	P.W.1
14	14	News Paper Pradesh Watch dated 9-11-2024	P.W.1
15	15	News Paper Pradesh Watch dated 11-11-2024	P.W.1
16	16	News Paper Express News dated 27-10-2024	P.W.1
17	17	News Paper Express News dated 7-11-2024	P.W.1
18	18	News Paper Express News dated 9-11-2024	P.W.1
19	19	News Paper Express News dated 11-11-2024	P.W.1
20	20	Photograph	P.W.2
21	21	Photograph	P.W.2
22	22	Letter dated 7-3-2024 issued by Chief Electoral Officer, Delhi	Admitted by both parties
23	23	Letter dated 7-3-2024 issued by Chief Electoral Officer, Delhi	Admitted by both parties
24	24	Letter dated 6-3-2024 issued by Election Commission of India	Admitted by both parties
25	25	Order dated 13-9-2025 passed by National Lok Adalat	D.W.1
26	26	F.I.R. in crime No. 93 of 2023 registered at Police Station Karahal, Distt. Sheopur	D.W.1
27	27	Circulation Sheet of News Paper Aacharan	D.W. 2
28	28	Circulation Sheet of Pradesh Watch of 11-11-2024	D.W.5
29	29	Circulation Sheet of Pradesh Watch of 7-11-2024	D.W.5
30	30	Bank Account of Pradesh Watch	D.W.5
31	31	News Paper Pradesh Watch dated 11-11-2024	D.W.5
32	32	News Paper Pradesh Watch dated 7-11-2024	D.W.5

14. As already pointed out, the controversy in the present case lies in a very compass i.e., whether incomplete disclosure of criminal cases mentioned in

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**Group 1** cases and non disclosure of criminal cases mentioned in **Group II** cases amount to corrupt practice or not ?

**15.** Challenging the Election of the respondent no.1/Mukesh Malhotra, it is submitted by Counsel for Election Petitioner, that it is the fundamental right of every electorate to know about the criminal antecedents of the candidate. Even otherwise, an incorrect information was given in affidavit that only Verbal altercation (मुंहवाद) had taken place. The respondent no.1/Mukesh Malhotra deliberately did not disclose that Charges in two cases have been framed and deliberately mentioned “not applicable”. Not only important information was suppressed by the respondent no.1/Mukesh Malhotra, but information was got published in those news papers which had either no circulation or very poor circulation in Assembly Constituency 02 Vijaypur. Thus, every effort was made to keep the electorate in dark. Further more, the respondent no.1/Mukesh Malhotra himself had admitted in his cross-examination that trees are worshiped by the residents of Vijaypur Assembly Constituency and the respondent no.1/Mukesh Malhotra was convicted for illegally cutting 210 trees. Non-disclosure of fact that he was convicted for the said offence cannot be said to be a bonafide mistake and the offence in question involved moral turpitude. Further the respondent no.1/Mukesh Malhotra was also being tried for assaulting women also and said fact was also suppressed. The provisions of Section 33A of Representation of the People Act is a mandatory provision. It was further submitted that Section 33B of Representation of the People Act was struck down in Judgment passed in the case of **PUCL Vs. Union of India** reported in **(2003) 4 SCC 399**. Thus, it is submitted that the respondent no.1/Mukesh Malhotra is guilty of corrupt practice and also relied upon the judgments passed by Supreme Court in the case of **Union of India Vs.**

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**Association for Democratic Reforms** reported in (2002) 5 SCC 294, **Krishnamoorthy Vs. Siva Kumar** reported in (2015) 3 SC 467, **Public Interest Foundation and others Vs. Union of India and another** reported in (2019) 3 SCC 224, **Satish Ukey Vs. Devendra Gangadharrao Fadnavis and another** reported in (2019) 9 SCC 1, **Poonam Vs. Dule Singh and others** reported in 2025 INSC 1284, **Ajmera Shyam Vs Kova Laxmi and others** reported in 2025 SCC OnLine 1723 (SC), **Sushil Kumar Singhal Vs. Regional Manager, Punjab National Bank** reported in (2010) 8 SCC 573, **State Bank of India and others Vs. P. Soupramaniane** reported in (2019) 18 SC 135, **Mangali Vs. Chakki Lal** reported in AIR 1963 All 527, **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others** reported in (2020) 7 SCC1, and **Lok Prahari Vs. Union of India** reported in (2018) 4 SCC 699.

16. Per contra, it is submitted by Counsel for respondent no.1/Mukesh Malhotra, that provision of Section 33A of Representation of the People Act was substantially complied with. The respondent no.1/Mukesh Malhotra had explained in his cross examination that the mistake has occurred because the person who was filling up the nomination paper and the affidavit as per form 26 did not think it proper to do so. So far as non-disclosure of criminal cases as mentioned in Group II cases is concerned, the conviction of the respondent no.1/Mukesh Malhotra was less than 1 year, therefore, in the light of Section 33-A of Representation of the People Act, it was not necessary for the respondent no.1/Mukesh Malhotra to disclose the same. So far as incomplete disclosure of criminal cases as mentioned in Group I is concerned, the Court must find out its impact on the society and unless and until the suppression is so monumental, the hard fought election of the respondent no.1/Mukesh Malhotra, should not be set

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aside. It is submitted that the lapses on the part of the respondent no.1/Mukesh Malhotra are of trivial in nature and should not be given undue importance as claimed by the Election Petitioner, and relied upon the judgments passed by Supreme Court in the case of **Ajmer Shyam Vs. Kova Laxmi and others** reported in **2025 SCC OnLine SC 1723**, **Vashist Narain Sharma Vs. Dev Chandra and others** reported in **(1954) 2 SCC 32**, **Shiv Charan Singh Vs. ChndraBhan Singh** reported in **(1988) 2 SCC 12**, **Thakur Sen Negi Vs. Dev Raj Negi and another** reported in **1993 Supp (3) SCC 645** and Judgment passed by Madhya Pradesh High Court in the case of **Ram gareb and other Vs. Ajay Arjun Singh** passed in **EP No. 6/2024** decided on **22-8-2024** as well as Judgment passed by Patna High Court in the case of **Bhamshanker Choudhary Vs. Bhudeo Chaudhary and others** decided on **27-2-2025** in **E.P. No. 17/2000**. It is not out of place to mention here that although respondent no.1/Mukesh Malhotra has given a compilation containing other judgments also, but they were not cited.

17. Although the Counsel for the other respondents were present at the time of arguments, but none of them argued the case.

18. Heard the learned Counsel for the Election Petitioner and respondent no.1/Mukesh Malhotra.

19. First of all, this Court would like to consider the evidence of **Smt. Manju Adivasi (D.W.6)**. Smt. Manju Adivasi (D.W.6) is respondent no. 4. In an affidavit filed in support of her written statement, she had disclosed the name of her husband as Narayan Adivasi, but at the time of recording of her evidence, She disclosed the name of her husband as Raju. When She was asked to clarify then She stated She was asked by Counsel to sign a pre-prepared written

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statement and neither it was read out to her nor She was allowed to read it is out. Thus, it is clear that whatever written statement was filed by Smt. Manju Adivasi, was not her version, but She was merely asked by her counsel to sign the pre-prepared written statement and neither She was allowed to read out the same nor the said written statement was read out to her. This conduct of her Counsel cannot be appreciated. The written statement is the version of the litigating party and the Counsel should not file a written statement which was prepared by him without any instructions or information from the litigating party. Thus, the conduct of the Counsel for the respondent no. 4, Smt. Manju Adivasi is hereby deprecated.

**20. Ram Singh Jatav (D.W.7)** is the respondent no. 10. In examination in chief, he merely mentioned that he had received the notice of the Election Petition and had filed his written statement through his Counsel. In cross examination he stated that he is M.A. (Social Science), but thereafter he started feeling giddiness and was also not in a position to stand and accordingly, he was given up by his Counsel.

**21.** Thus, the respondents no. 4 and 10 who appeared as a witness were not able to throw any light in the matter and it appears that they were forcibly made to contest the election petition. Be that whatever it may be.

### **Discussion on merits**

#### **Group 1 cases**

**22.** To decide the controversy in hand, it is necessary to reproduce the declaration made by respondent no.1/Mukesh Malhotra in clause 5 of Part A of his Affidavit filed in form 26, Ex. D.3, which reads as under :

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**EP. No. 24 of 2024**

**(5) लम्बित आपराधिक मामले**

(i) मैं यह घोषणा करता हूँ कि मेरे विरुद्ध कोई आपराधिक मामला लंबित नहीं है। (यदि अभ्यर्थी के विरुद्ध कोई आपराधिक मामला लम्बित नहीं है, तो इस विकल्प को चिन्हांकित करे और नीचे विकल्प (i) के सामने "लागू नहीं" होना लिखें)

या

(ii) मेरे विरुद्ध निम्नलिखित आपराधिक मामले लंबित हैं

(यदि अभ्यर्थी के विरुद्ध आपराधिक मामले लंबित हैं तो इस विकल्प चिन्हांकित को और उपरोक्त विकल्प (i) को काट दे और नीचे सारणी में सभी लंबित मामलों का ब्यौरे दें)

सारणी

(क)	संबद्ध पुलिस थाने के नाम और पते के साथ प्रथम इत्तिला रिपोर्ट सं.	पुलिस थाना कराहल अपराध क्रं. 02/2022	पुलिस थाना कराहल अपराध क्रं. 93/2023	लागू नहीं होता
(ख)	न्यायालय के नाम के साथ मामला सं.	जे.एम.एफ.सी. न्यायिक मजिस्ट्रेट प्रथम श्रेणी श्योपुर के प्र.क. आरसीटी 972/2022	जे.एम.एफ.सी. न्यायिक मजिस्ट्रेट प्रथम श्रेणी श्योपुर के प्र.क. आरसीटी 1051/2023	लागू नहीं होता
(ग)	अंतर्वलिप संबंध अधिनियमों/संहिताओं की धाराएं (धारा की सं. दें, अर्थात भारतीय दंड संहिता, आदि की धारा....)	धाराएं 323, 294, 506, 34 आई.पी. सी.	धाराएं 294, 323, 341, 506, 34 आई.पी.सी.	लागू नहीं होता
(घ)	अपराध का संक्षिप्त विवरण	मुंहवाद	मुंहवाद	लागू नहीं होता
(ङ)	क्या आरोप विवरित किए गए हैं (हाँ या नहीं का उल्लेख करें)	नहीं	नहीं	लागू नहीं होता
(च)	यदि उपर्युक्त मद (ङ) के सामने उत्तर हाँ है, तो वह तारीख दे, जिसका आरोप विवरित किए गए थे	लागू नहीं होता	लागू नहीं होता	लागू नहीं होता
(छ)	क्या कार्यवाहियों के विरुद्ध कोई अपील/पुनरीक्षण के लिए आवेदन फाईल किया गया है (हाँ या नहीं का उल्लेख करें)	लागू नहीं होता	लागू नहीं होता	लागू नहीं होता

**23.** From clause 5 of part A of affidavit, it is clear that in sub-clause (d) the summary description of crime no. 2/2022 has been mentioned as verbal altercation (मुंहवाद) and in sub-clause (e) in which it was to be declared as to whether charges have been framed or not, it has been mentioned by respondent

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no.1/Mukesh Malhotra as “No”. Even in sub-clause (f) in which the respondent no.1/Mukesh Malhotra was required to disclose the date of framing of charge, it has been mentioned as “not applicable”. Thus, it is clear that in respect of crime no. 2/2022, the respondent no.1/Mukesh Malhotra had declared that charges have not been framed and accordingly, the date of framing of charge was also not given. Even in summary of allegations, it was mentioned as Verbal altercation (मुंहवाद). However, it is clear from order (Ex. P.11), charges under Sections 294,323,506 Part 2 of IPC were framed in RCT No. 972/2022 arising out of crime no. 2/2022.

**24.** Similarly, it is clear from order dated 17-10-2023 (Ex. P.12), charges under Sections 294,323/34 (three counts), 506 Part 2 of IPC were framed in RCT NO. 1051/2022 arising out of crime no. 93/2023. It is clear from the order framing charges, the allegations were that the respondent no.1/Mukesh Malhotra, had caused hurt to Balwant, Ms.Bhagwanti and Ms. Meena. However, in Part A clause 5 of affidavit, the respondent no.1/Mukesh Malhotra had disclosed the summary of allegations as Verbal altercation (मुंहवाद) and mentioned “No” against the sub-clause requiring declaration as to whether charges have been framed or not and mentioned “not applicable” against sub-clause requiring disclosure of date of framing charges.

**25.** In the written statement, the respondent no.1/Mukesh Malhotra had claimed that it was bonafide mistake but in his evidence, he tried to shift the burden on to the shoulder of person filling up the nomination paper and affidavit and submitted that although he had disclosed all the necessary details to Shri J.P. Dhanopia, the person who was filling up the nomination papers and affidavit but in fact, Shri J.P.Dhanopia on his own mentioned the words “No”

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and “not applicable” and even Verbal altercation (मुंहवाद) in affidavit Ex. D.3. The aforesaid explanation given by respondent no.1/Mukesh Malhotra (D.W.1) in his evidence is not supported by pleadings in written statement. The explanation given by respondent no.1/Mukesh Malhotra (P.W.1) in his evidence cannot be accepted because firstly, in absence of pleadings, such an evidence cannot be accepted and secondly, the respondent no.1/Mukesh Malhotra has not examined Shri J.P. Dhanopia who had allegedly filled up the nomination paper as well as the affidavit, Ex. D.3 on behalf of respondent no.1/Mukesh Malhotra. Further more, the nomination paper and the affidavit (Ex. D.3) contains a declaration by the respondent no.1/Mukesh Malhotra that all the informations given in the said document are true to his personal knowledge and belief. **Under these circumstances, it is clear that it was the respondent no.1/Mukesh Malhotra, who had deliberately and consciously given false information in his affidavit, Ex. D.3.** Although the respondent no.1/Mukesh Malhotra in his written statement had taken a stand that bonafide mistake has taken place on account of lack of legal knowledge but the respondent no.1/Mukesh Malhotra (D.W.1) in his evidence has admitted that he has done M.A. (Social Science), and LL.B. Further more, this educational qualification is also mentioned in affidavit, Ex. D.3. Thus, it is clear that respondent no.1/Mukesh Malhotra is a law graduate and therefore, his defence that bonafide mistake had occurred on account of lack of legal knowledge is false even to the knowledge of respondent no.1/Mukesh Malhotra.

**26.** Shri Vivek Tankha, Senior Advocate submitted that since, the respondent no.1/Mukesh Malhotra had substantially complied with the provisions of Section 33A of Representation of the People Act and non-disclosure that “whether charges have been framed or not” or “non-disclosure of date of

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framing of charges” or “incorrect summary of allegations” is not suppression but it is merely an omission which does not go to the root of the controversy and cannot be said to be monumental amounting to corrupt practice under Section 123(2) of Representation of the People Act, 1951.

27. Considered the aforesaid submissions made by Counsel for respondent no.1/Mukesh Malhotra.

28. There is a specific provision in affidavit to the effect that “whether charges have been framed or not” and “if yes then the date of framing of charges”. The moot question for consideration is that what is the purpose behind declaration that “whether charges have been framed or not”?

29. After the cognizance is taken, the next step in the trial is to “either read out the substance of accusation or framing of charge”. “Framing of Charge” is not a mere formality. It is an application of judicial mind to the facts of the case to find out as to whether the material collected by the investigating agency is sufficient to point out grave suspicion that the accused might have committed the offence or not?

30. The Supreme Court in the case of **Satishchandra Ratanlal Shah v. State of Gujarat**, reported in **(2019) 9 SCC 148** has held as under :

9. Before we analyse this case, it is to be noted that the criminal application preferred by the accused before the High Court was against the order of the trial court at the stage of framing of charges, wherein it is the duty of the court to apply its judicial mind to the material placed before it and to come to a clear conclusion that a prima facie case has been made out against the accused. An order for framing of charges is of serious concern to the accused as it affects his liberty substantially. Courts must therefore be cautious that their decision at this stage causes no irreparable harm to the accused.

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**10.** Coming to the aspect of quashing of the charges, it is well settled that such exercise needs to be undertaken by the High Court in exceptional cases. It is also well settled that the framing of charges being initial stages in the trial process, the court therein cannot base the decision of quashing the charge on the basis of the quality or quantity of evidence rather the enquiry must be limited to a prima facie examination. (Refer to *State of Bihar v. Ramesh Singh.*)

**31.** The Supreme Court in the case of **Ram Prakash Chadha v. State of U.P.**, reported in **(2024) 10 SCC 651** has held as under :

**23.** In para 13 in *P. Vijayan case*, this Court took note of the principles enunciated earlier by this Court in *Union of India v. Prafulla Kumar Samal* which reads thus: (*Prafulla Kumar Samal case*, SCC p. 9, para 10)

“10. ... (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry

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into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

**24.** In the light of the decisions referred supra, it is thus obvious that it will be within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused concerned has been made out. We are of the considered view that a caution has to be sounded for the reason that the chances of going beyond the permissible jurisdiction under Section 227 CrPC, and entering into the scope of power under Section 232 CrPC, cannot be ruled out as such instances are aplenty. In this context, it is relevant to refer to a decision of this Court in *Om Parkash Sharma v. CBI*. Taking note of the language of Section 227 CrPC, is in negative terminology and that the language in Section 232 CrPC, is in the positive terminology and considering this distinction between the two, this Court held that it would not be open to the Court while considering an application under Section 227 CrPC, to weigh the pros and cons of the evidence alleged improbability and then proceed to discharge the accused holding that the statements existing in the case therein are unreliable. It is held that doing so would be practically acting under Section 232 CrPC, even though the said stage has not reached. In short, though it is permissible to sift and weigh the materials for the limited purpose of finding out whether or not a prima facie case is made out against the accused, on appreciation of the admissibility and the evidentiary value such materials brought on record by the prosecution is impermissible as it would amount to denial of opportunity to the prosecution to prove them appropriately at the appropriate stage besides amounting to exercise of the power coupled with obligation under Section 232 CrPC, available only after taking the evidence for the prosecution and examining the accused.

**25.** Even after referring to the aforesaid decisions, we think it absolutely appropriate to refer to a decision of the Madhya Pradesh High Court in *Kaushalya Devi v. State of M.P.* It was held in the said case that if there is no legal evidence, then framing of charge would be groundless and compelling the accused to face the trial is contrary to the procedure offending Article 21 of the Constitution of India. While agreeing with the view, we make it clear that the expression “legal evidence” has to be construed only as evidence disclosing prima facie case, “*the record of the case and the documents submitted therewith*”.

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- 26.** The stage of Section 227 CrPC, is equally crucial and determinative to both the prosecution and the accused, we will dilate the issue further. In this context, certain other aspects also require consideration. It cannot be said that Section 227 CrPC, is couched in negative terminology without a purpose. Charge-sheet is a misnomer for the final report filed under Section 173(2) CrPC, which is not a negative report and one that carries an accusation against the accused concerned of having committed the offence(s) mentioned therein.
- 32.** Thus, it is clear that stage of framing charge is not a mere formality but in fact it is stage where a judicial mind is applied to find out as to whether the material collected against the accused *prima facie* raises a grave suspicion that the accused might have committed offence requiring his trial or not and for that purpose, the court has power to sift and weigh the evidence. An order for framing of charges is of serious concern to the accused as it affects his liberty substantially. Courts must therefore be cautious that their decision at this stage causes no irreparable harm to the accused.
- 33.** Thus, a specific declaration in this regard by the candidate is necessary to give an information to the electorate that after application of judicial mind, it has been found that there is a sufficient material against the candidate warranting his trial. Therefore, non-disclosure of the fact that charges have been framed, cannot be said to be a mere omission therefore, it is held that specific declaration in Clause 5 of part A of the affidavit that charges have not been framed, was with a clear intention to mislead the electorate.
- 34.** Further more, a candidate is also required to give summary of allegations, so that the electorate must know the nature of allegations made against the candidate. In the present case, in Crime No. 2/2022, the allegations were that the respondent no.1/Mukesh Malhotra had used abusive language in the name of mother of the complainant and also assaulted the complainant Bhola by fists and

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blows and also extended a threat to his life. The aforesaid fact is clear from the order framing charge, Ex. P.11. Similarly in Crime No. 93/2023, the allegations were that the respondent no.1/Mukesh Malhotra had used abusive language against Balwant, Bhagwati and Meena in the name of mother and sister and also assaulted Balwant, Bhagwati and Meena and also extended a threat to their life. This fact is evident from order framing charge, Ex. P.12. Thus, the contention of the Election Petitioner, that the allegations made against the respondent no.1/Mukesh Malhotra also indicated that he has no respect for the women also appears to be correct. However, it is made clear that there is no pleading in this regard in the Election Petition, although specific questions were put to respondent no.1/Mukesh Malhotra (D.W.1) in his evidence in this regard. However, the Counsel for the respondent no.1/Mukesh Malhotra, did not raise any objection that in absence of specific plea, the question of wrong disclosure of allegations should not be considered and did not plead any prejudice.

**35.** It is true, that pleadings should be specific and clear and any evidence in absence of pleading cannot be considered but at the same time, it is also well established principle of law that where the parties have gone to the Trial knowing fully well the issues involved in the case, then in absence of prejudice, the Court should also find out as to whether the issues involved in the trial were well within their knowledge or not and should try to find out the substance. The pleadings should receive a liberal construction and no pedantic approach should be adopted to defeat justice or hair-splitting technicalities as held by Supreme Court in the case of **Ram Sarup Gupta v. BishunNarain Inter College** reported in **(1987) 2 SCC 555**. The relevant paragraph is as under :

**6.** The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the licence was irrevocable as contemplated by Section

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60(b) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Some times, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings; instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence in that event it would not be open to a party to raise the question of absence of pleadings in appeal. In *Bhagwati Prasad v. Chandramaul* a Constitution Bench of this Court considering this question observed:

“If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the court has to consider in dealing with such an objection

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is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the court cannot do injustice to another.”

**36.** As already pointed out, Shri Vivek Tankha, Senior Advocate, Counsel for respondent no.1/Mukesh Malhotra, did not plead any prejudice on account of absence of specific plea in election petition regarding incorrect disclosure of allegations, therefore, it is held that the respondent no.1/Mukesh Malhotra also gave false declaration about the nature of allegations levelled against him in two pending cases mentioned in **Group I cases**. Therefore, it is held that respondent no.1/Mukesh Malhotra, mislead the electorate by giving false information in his affidavit filed in form 26.

### **Group II cases**

**37.** In order to appreciate the non-disclosure of cases in which decision was already rendered prior to filing of affidavit in form 26, it would be appropriate to consider the declaration given by the respondent no.1/Mukesh Malhotra, which reads as under :

(6) दोष सिद्धि के मामले:-

(i) मैं यह घोषणा करता हूँ कि मुझे किसी आपराधिक मामले में दोषसिद्ध नहीं किया गया है।

(यदि अभ्यर्थी दोषसिद्ध नहीं किया गया है तो इस विकल्प को चिन्हांकित करे और नीचे विकल्प (ii) के सामने लागू नहीं होता है लिखे)

या

(ii) मुझे नीचे वर्णित अपराधों के लिए सिद्धदोषकियागयाहै।

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(यदि अभ्यर्थी दोषसिद्ध किया गया है तो इस विकल्प को चिन्हांकित करे और उपरोक्त विकल्प (i) को काट दें, और नीचे दी गई सारणी में ब्यौरे दें)

**सारणी**

(क)	मामला संख्यांक	लागू नहीं होता	लागू नहीं होता	लागू नहीं होता
(ख)	न्यायालय का नाम	लागू नहीं होता	लागू नहीं होता	लागू नहीं होता
(ग)	अंतर्वलित अधिनियमों/संहिताओं की धाराएं (धारा की सं. दे. अर्थात् भारतीय दंड संहिता, आदि की धारा....)	लागू नहीं होता	लागू नहीं होता	लागू नहीं होता
(घ)	अपराधों का संक्षिप्त विवरण जिनके लिए दोषसिद्ध कि गया है	लागू नहीं होता	लागू नहीं होता	लागू नहीं होता
(ङ)	दोषसिद्धि के आदेशों की तारीखें	लागू नहीं होता	लागू नहीं होता	लागू नहीं होता
(च)	अधिरोपित दंड	लागू नहीं होता	लागू नहीं होता	लागू नहीं होता
(छ)	क्या दोषसिद्धि के आदेश के विरुद्ध कोई अपील फाईल की गई है (हाँ या नहीं का उल्लेख)	लागू नहीं होता	लागू नहीं होता	लागू नहीं होता
(ज)	यदि उपरोक्त मद (छ) का उत्तर हां है तो अपील के ब्यौरे तथा वर्तमान प्रस्थिति दें	लागू नहीं होता	लागू नहीं होता	लागू नहीं होता

(6क) मैंने, ऊपर पैरा (5) और (6) में दिए गए अनुसार मेरे विरुद्ध सभी लंबित आपराधिक मामलों की ओर दोषसिद्धि के सभी मामलों के बारे में अपने राजनीतिक दल को पूरी और अद्यतन सूचना दे दी है।

(ऐसे अभ्यर्थियों को, जिन्हें यह मद लागू नहीं होती है, उपरोक्त पैरा 5(i)) और परा 6(i) में की प्रविष्टियों को देखते हुए, स्पष्ट रूप से लागू नहीं होता है, लिखना चाहिए)

टिप्पणी :

1. ब्यौरे स्पष्ट रूप से और सुपाठ्य रूप से बड़े अक्षरों में प्रविष्ट किये जाने चाहिए।
2. प्रत्येक मद के मामले विभिन्न स्तंभों के अधीन प्रत्येक मामले के लिए ब्यौरे पृथक रूप से दिए जाए।
3. ब्यौरे विलोम कालानुक्रम में दिए जाने चाहिए, अर्थात् नवीनतम मामलों को पहले वर्णित किया जाए और अन्य मामलों के लिए तारीखों के क्रम में पीछे की ओर वर्णित किया जाए।
4. यदि अपेक्षित हो तो पृथक शीट जोड़ी जा सकती है।
5. अभ्यर्थी 2011 की रिट याचिका (सिविल) सं. 536 मेंमाननीय उच्च न्यायालय के निर्णय के अनुपालन में सभी सूचनाएं देने का उत्तरदायी होगा।

**38.** The undisputed fact is that the respondent no. 1/Mukesh Malhotra was convicted in Forest Crime No. 32773/2014 for offence under Sections 26(1)(a)(g) and 66(i) of Indian Forest Act. It is clear from Judgment dated 28-2-2020 passed by C.J.M., Sheopur in RCT No. 1022/2014, Ex. P. 4 that the

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respondent no.1/Mukesh Malhotra was tried on the allegations that on 4-2-2014, he was found in possession of 210 freshly cut trees from reserved beat no. 351 and 352 of beat Rasen. After receiving an information, when the Forest officials went to the spot, that it was found that respondent no.1/Mukesh Malhotra with 25 other persons had already cut 210 green trees from the above mentioned Reserved Forest Area and the freshly cut trees were also recovered. The respondent no.1/Mukesh Malhotra, admitted his guilt and accordingly he was punished with a sentence of “till rising of Court” and a fine of Rs. 7000/- with default imprisonment of 1 month. The respondent no.1/Mukesh Malhotra (D.W.1) has admitted in para 8 of his cross examination that he had not filed any appeal against his conviction. **Further in para 10 of his cross examination, respondent no.1/Mukesh Malhotra (D.W.1) has admitted that the Vijaypur Assembly Constituency is dominated by Adivasis and Adivasis worship the trees like a God.** However, he denied the suggestion that under an apprehension that disclosure of his conviction for forest offence where he was convicted for cutting 210 trees would have adverse effect on the electorate, he did not disclose the same. It is the stand of the respondent no.1/Mukesh Malhotra that since, his conviction was of less than 1 year, therefore, he did not disclose his conviction under Forest Offence. In para 13 of his cross-examination, the respondent no.1/Mukesh Malhotra (D.W.1) had admitted that society hates crime and therefore, it was necessary to give details of all the informations sought in affidavit in form 26. Further, the respondent no.1/Mukesh Malhotra (D.W.1) also admitted that FIR in crime no. 2/2020 was lodged against him for offence under Section 505(2) of IPC Ex. P.13, however, it was submitted by him that since, he was acquitted in the said offence, therefore, he did not disclose the same. In FIR in crime no. 2/2020 Ex. P.13, it

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was alleged that respondent no.1/Mukesh Malhotra had tried to spread hatred against one particular community and had also demanded the ouster of the said community from Karahal area.

**39.** Section 33A of Representation of the People Act read as under :

**33A. Presentation of nomination paper and requirements for a valid nomination.**--(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether--

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

**40.** Shri Vivek Tankha, Senior Advocate relied upon the judgment passed by Supreme Court in the case of **C.P. John (Supra)** and referred to Para 6 and 46 which reads as under :

**6.** With regard to the allegations based on criminal convictions, it was contended that of the two criminal cases which were referred to by the

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appellant in the election petition, in one case the first respondent was acquitted by the Sessions Court in Criminal Appeal No. 248 of 2000 and that in CC No. 167 of 1995, the sentence awarded was less than a year and, therefore, there was no violation of Section 33-A of the Act. The first respondent, therefore, prayed for the dismissal of the election petition as the same was not in conformity with Section 83 of the Act.

\* \* \* \*

46. The only other ground which was raised in the election petition related to violation of Section 33-A of the Act wherein, the first respondent stated to have suppressed his conviction in two criminal cases. As far as those two criminal cases are concerned, Mr Shishodia, learned Senior Counsel appearing for the first respondent brought to our notice that the contention of the appellant based on those two criminal cases was factually incorrect. In the impugned judgment it has been noted that the first respondent was convicted for the offence in Sessions Case No. 4 of 1975 but, however, the said conviction was set aside in Criminal Appeal No. 248 of 2000 which was not in dispute. Similarly, with reference to the conviction in CC No. 167 of 1995 the High Court has noted that the certified copy of the judgment in the said case was produced which disclosed that the sentence imposed in the said case was less than a year. Under Section 33-A(1)(ii) of the Act, the requirement of the candidate is to furnish the information in the nomination as regards his/her conviction for any offence referred to in sub-sections (1), (2) and (3) of Section 8 and if he/she is sentenced to imprisonment for a period of one year or more, only then should it be disclosed in the nomination. As it has been found in the present case that the conviction in CC No. 167 of 1995 and the sentence imposed was less than a year, there was no compulsion for the first respondent to disclose the said conviction in his nomination. Therefore, on this ground when the High Court declined to interfere with the election of the first respondent, no fault can be found with the said conclusion.

41. Shri Vivek Tankha, Senior Advocate also relied upon the judgment passed by Supreme Court in the case of **Satish Ukey (Supra)** referred to para 23 which reads as under :

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**23.** The position is made further clear by the letters written by the Election Commission of India to the Chief Electoral Officer of all the States and the Union Territories. A reading of the said letters would go to show that a contesting candidate is mandated to furnish information concerning the cases in which a competent court has taken cognizance along with the cases in which charges have been framed. The said letters also make it clear that the affidavit mentioned in Section 33-A(2) of the 1951 Act is prescribed in Form 26 and that any false declaration or concealment of information in the said affidavit will attract the provisions of Section 125-A of the 1951 Act. The letters in this regard are dated 24-8-2012, 26-9-2012 and 26-4-2014, relevant portions of which are extracted below:

**23.1. Letter dated 24-8-2012:**

*“1. Sub.: Affidavit to be filed by candidates with their nomination paper-modification of format-regarding.*

The candidates at elections to Parliament and the State Legislatures hitherto were required to file two affidavits: one, in Form 26 appended to Conduct of Elections Rules, 1961 and the other, in the Form prescribed by the Commission, vide its Order No. 3/ER/2003 dated 27-3-2003, as subsequently modified by the letter of even number dated 25-2-2011. In the affidavits, the candidates are required to declare information about their criminal background, if any, assets, liabilities and educational qualifications.

2. On a proposal moved by the Commission for amalgamating the two affidavits into one format, the Government has amended Form 26 so as to include in it all the information that was sought in the two separate affidavits. The Ministry of Law and Justice have notified the revised Form 26 in the Gazette of India on 1-8-2012. A copy of the said notification dated 1-8-2012 is enclosed herewith.

3. In view of the amendment to Form 26, all candidates shall, hereafter, file only one affidavit in the revised Form 26 notified on 1-8-2012 (at elections to Parliament and State Legislatures). The requirements to be followed while filing the affidavit have been mentioned in the notes given at the end of the format....

\* \* \*

5. You are requested to furnish a copy of this letter along with the copy of the enclosed notification to every political party (including registered unrecognised parties) having headquarters in your State/UT,

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including the State units of recognised National and State political parties.”

(emphasis supplied)

**23.2. Letter dated 26-9-2012:**

“Sub.: Affidavit to be filed by the candidates with their nomination paper-regarding:

\* \* \*

2. Item 5 of Part A and Part B of the revised Form 26 relates to information regarding criminal antecedents to be furnished by the candidates. It is clarified that in Item (5)(ii) of the said Part A and Part B of Form 26, *the details of all pending cases in which cognizance has been taken by the Court, irrespective of the quantum of punishment or framing of charges will have to be disclosed by the candidate.* This may be brought to the notice of all candidates when they file their nomination at all future general/bye-elections in the State...”

**23.3. Letter dated 26-4-2014:**

“Sub.: Filing of false affidavit in Form 26.reg.

Sir/Madam,

You are aware that the format of affidavit in Form 26 appended to the Conduct of Elections Rules, 1961, was amended with effect from 1-8-2012. Now the candidates are required to make declarations about assets and liabilities including that of spouse and dependants, candidate’s criminal antecedents and educational qualifications, in the affidavit in Form 26. The concealing of information in the affidavit in Form 26 will attract the provisions of Section 125-A. *Under Section 125-A, furnishing of any false information or concealing of information in the affidavit in Form 26 is an electoral offence punishable with imprisonment up to six months, or with fine or both.*

2. Prior to amendment to Form 26 in August 2012, the affidavit regarding declaration about assets, liabilities, criminal antecedents and educational qualification was given in the format prescribed by the Commission. In the case of complaints about false statement in the said affidavit, the Commission, vide its Circular Letter No. 3/ER/2004, dated 2-6-2004, had clarified that if complaints were filed before the Returning Officer raising the issue of false declaration in the affidavit and if the RO was prima facie satisfied about the merits of the complaint, then the RO was to file a complaint before the competent court under Section 177 IPC read with Section 195 CrPC.

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3. Now that the affidavit is in Form 26 under Section 33-A of the RP Act, 1951, making false declaration/concealing of information in the affidavit would be covered under Section 125-A of the Act. Under Section 125-A, there is no stipulation that complaints under the section have to be made by the public servant concerned (in this case the RO). Therefore, it would be open to any aggrieved person to move petition before the appropriate court of competent jurisdiction with petition for action under Section 125-A in the case of any false declaration or concealing of information in the affidavit in Form 26.”

(emphasis supplied)

42. Shri Vivek Tankha, Senior Advocate also relied upon judgment passed by Madhya Pradesh High Court in the case of **Umang Singhar Vs. Chhattar Singh and others** decided on **2-1-2006** in E.P. No. **13 of 2004** in which it was held that “From a bare perusal of provisions contained in this Section, it is clear that a prospective candidate is not required to disclose particulars of the criminal case in which he has been acquitted or discharged.” Shri Vivek Tankha, Senior Advocate also relied upon another judgment passed by co-ordinate bench of this Court in the case of **Rasal Singh Vs. The Election Commission of India** decided on **4-9-2014** in **E.P. No. 10/2014** in which it was held that “it is clear that a candidate is not required to disclose (a) the cases in which he is acquitted or discharged of criminal offences;”.

43. It was submitted by Shri Vivek Tankha, Senior Advocate that since, the respondent no.1/Mukesh Malhotra was sentenced to imprisonment till rising of Court and a fine of Rs. 7000/- with default imprisonment of one month” in Forest Crime No. 32773/2014, therefore, he was not under obligation to disclose the same. Similarly, it was submitted that although the respondent no. 1/Mukesh Malhotra was also convicted in crime No. 32/2011 by the Trial Court, but since he was acquitted by the Appellate Court, therefore, it was also not

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necessary for him to disclose the same in the light of Section 33-A of Representation of the People Act.

44. However, it was submitted by Counsel for Election Petitioner, that disclosure of all the details of criminal antecedents is necessary in the light of evolution of law regarding right to information of electorate. The Counsel for the Election Petitioner relied upon the judgment passed by Supreme Court in the case of **Assn. for Democratic Reforms (Supra)** and referred to the following paragraphs:

21. Further, it is to be stated that: (a) one of the basic structures of our Constitution is “republican and democratic form of government”; (b) the election to the House of People and the Legislative Assembly is on the basis of adult suffrage, that is to say, every person who is a citizen of India and who is not less than 18 years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under the Constitution or any law on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election (Article 326); (c) holding of any asset (immovable or movable) or any educational qualification is not the eligibility criteria to contest election; and (d) under Article 324, the superintendence, direction and control of the “conduct of all elections” to Parliament and to the legislature of every State vests in the Election Commission. The phrase “conduct of elections” is held to be of wide amplitude which would include power to make all necessary provisions for conducting free and fair elections.

***Question 1***

***Whether the Election Commission is empowered to issue directions as ordered by the High Court***

22. For health of democracy and fair election, whether the disclosure of assets by a candidate, his/her qualification and particulars regarding involvement in criminal cases are necessary for informing voters, maybe illiterate, so that they can decide intelligently, whom to vote for. In our opinion, the decision of even an illiterate voter, if properly educated and informed about the contesting candidate, would be based

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on his own relevant criteria of selecting a candidate. In democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens — voters. In a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. The voter has the choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his representative. Voter has to decide whether he should cast vote in favour of a candidate who is involved in a criminal case. For maintaining purity of elections and a healthy democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided — its result, if pending — whether charge is framed or cognizance is taken by the court. There is no necessity of suppressing the relevant facts from the voters.

\* \* \*

**46.** To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:

1. The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word “elections” is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.
2. The limitation on plenary character of power is when Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. The Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions, the Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya Lal Omar case* the Court construed the expression “superintendence, direction

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and control” in Article 324(1) and held that a direction may mean an order issued to a particular individual or a precept which many may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.

3. The word “elections” includes the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the process of choosing a candidate. Fair election contemplates disclosure by the candidate of his past including the assets held by him so as to give a proper choice to the candidate according to his thinking and opinion. As stated earlier, in *Common Cause case* the Court dealt with a contention that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election. If on an affidavit a candidate is required to disclose the assets held by him at the time of election, the voter can decide whether he could be re-elected even in case where he has collected tons of money.

Presuming, as contended by the learned Senior Counsel Mr Ashwani Kumar, that this condition may not be much effective for breaking a vicious circle which has polluted the basic democracy in the country as the amount would be unaccounted. Maybe true, still this would have its own effect as a step-in-aid and voters may not elect law-breakers as law-makers and some flowers of democracy may blossom.

4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

5. The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant on Civil and Political Rights, which is as under:

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“(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; *this right shall include freedom to seek, receive and impart information and ideas of all kinds*, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

6. On cumulative reading of a plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the executive to subserve public interest.

7. Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voter’s speech or expression in case of election would include casting of votes, that is to say, **voter speaks out or expresses by casting vote**. For this purpose, information about the candidate to be selected is a must. Voter’s (little man — citizen’s) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. **The little man may think over before making his choice of electing law-breakers as law-makers.**

\* \* \*

**48.** The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.

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- (4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.
- (5) The educational qualifications of the candidate.

45. The Counsel for the Election Petitioner also relied upon the judgment passed in the case of **People's Union for Civil Liberties (PUCL) (Supra)** and referred to the following paragraphs :

***III. Section 33-B is unconstitutional***

***III. (1) The right to information cannot be frozen and stagnated***

110. In my view, the constitutional validity of Section 33-B has to be judged from the above angle and perspective. Considered in that light, I agree with the conclusion of M.B. Shah, J. that Section 33-B does not pass the test of constitutionality. The reasons are more than one. Firstly, when the right to secure information about a contesting candidate is recognized as an integral part of fundamental right as it ought to be, it follows that its ambit, amplitude and parameters cannot be chained and circumscribed for all times to come by declaring that no information, other than that specifically laid down in the Act, should be required to be given. When the legislation delimiting the areas of disclosure was enacted, it may be that Parliament felt that the disclosure on other aspects was not necessary for the time being. Assuming that the guarantee of right to information is not violated by making a departure from the paradigms set by the Court, it is not open to Parliament to stop all further disclosures concerning the candidate in future. In other words, a blanket ban on dissemination of information other than that spelt out in the enactment, irrespective of the need of the hour and the future exigencies and expedients is, in my view, impermissible. It must be remembered that the concept of freedom of speech and expression does not remain static. The felt necessities of the times coupled with experiences drawn from the past may give rise to the need to insist on additional information on the aspects not provided for by law. New situations and the march of events may demand the flow of additional facets of information. The right to information should be allowed to grow rather than being frozen and stagnated; but the mandate of Section 33-B prefaced by the non obstante clause impedes the flow of such information conducive to the freedom of expression. In the face of the prohibition under

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Section 33-B, the Election Commission which is entrusted with the function of monitoring and supervising the election process will have to sit back with a sense of helplessness in spite of the pressing need for insisting on additional information. Even the Court may at times feel handicapped in taking necessary remedial steps to enforce the right to information. In my view, the legislative injunction curtailing the nature of information to be furnished by the contesting candidates only to the specific matters provided for by the legislation and nothing more would emasculate the fundamental right to freedom of expression of which the right to information is a part. The very objective of recognizing the right to information as part of the fundamental right under Article 19(1)(a) in order to ensure free and fair elections would be frustrated if the ban prescribed by Section 33-B is taken to its logical effect.

***III. (2) Impugned legislation fails to effectuate right to information on certain vital aspects***

**111.** The second reason why Section 33-B should be condemned is that by blocking the ambit of disclosures only to what has been specifically provided for by the amendment, Parliament failed to give effect to one of the vital aspects of information viz. disclosure of assets and liabilities and thus failed in substantial measure to give effect to the right to information as a part of the freedom of expression. The right to information which is now provided for by the legislature no doubt relates to one of the essential points but in ignoring the other essential aspect relating to assets and liabilities as discussed hereinafter, Parliament has unduly restricted the ambit of information which the citizens should have and thereby impinged on the guarantee enshrined in Article 19(1)(a).

***III. (3) How far the principle that the legislature cannot encroach upon the judicial sphere applies***

**112.** It is a settled principle of constitutional jurisprudence that the only way to render a judicial decision ineffective is to enact a valid law by way of amendment or otherwise fundamentally altering the basis of the judgment either prospectively or retrospectively. The legislature cannot overrule or supersede a judgment of the Court without lawfully removing the defect or infirmity pointed out by the Court because it is obvious that the legislature cannot trench on the judicial power vested in the courts. Relying on this principle, it is

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contended that the decision of the Apex Constitutional Court cannot be set at naught in the manner in which it has been done by the impugned legislation. As a sequel, it is further contended that the question of altering the basis of judgment or curing the defect does not arise in the instant case as Parliament cannot pass a law in curtailment of fundamental right recognized, amplified and enforced by this Court.

**113.** The contention that the fundamental basis of the decision in *Assn. for Democratic Reforms case*<sup>1</sup> has not at all been altered by Parliament, does not appeal to me. I have discussed at length the real scope and ratio of the judgment and the nature and character of directives given by this Court to the Election Commission. As observed earlier, those directions are pro tempore in nature when there was a vacuum in the field. When once Parliament stepped in and passed the legislation providing for right of information, maybe on certain limited aspects, the void must be deemed to have been filled up and the judgment works itself out, though the proposition laid down and observations made in the context of Article 19(1)(a) on the need to secure information to the citizens will hold good. Now the new legislation has to be tested on the touchstone of Article 19(1)(a). Of course, in doing so, the decision of this Court should be given due weight and there cannot be a marked departure from the items of information considered essential by this Court to effectuate the fundamental right to information. Viewed in this light, it must be held that Parliament did not by law provide for disclosure of information on certain crucial points such as assets and liabilities and at the same time, placed an embargo on calling for further informations by enacting Section 33-B. That is where Section 33-B of the impugned Amendment Act does not pass the muster of Article 19(1)(a), as interpreted by this Court.

***IV. Right to information with reference to specific aspects***

**114.** I shall now discuss the specifics of the problem. With a view to promote the right to information, this Court gave certain directives to the Election Commission which, as I have already clarified, were ad hoc in nature. The Election Commission was directed to call for details from the contesting candidates broadly on three points, namely, (i) criminal record, (ii) assets and liabilities, and (iii) educational qualification. The Third Amendment to the RP Act which was

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preceded by an ordinance provided for disclosure of information. How far the Third Amendment to the Representation of the People Act, 2002 safeguards the right of information which is a part of the guaranteed right under Article 19(1)(a), is the question to be considered now with specific reference to each of the three points spelt out in the judgment of this Court in *Assn. for Democratic Reforms case*<sup>1</sup>.

***IV. (1) Criminal background and pending criminal cases against candidates — Section 33-A of the RP (Third Amendment) Act***

**115.** As regards the first aspect, namely, criminal record, the directives in *Assn. for Democratic Reforms case*<sup>1</sup> are twofold: (SCC p. 322, para 48)

“(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.

(2) Prior to six months of filing of nomination, whether the candidate is an accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law.”

As regards the second directive, Parliament has substantially proceeded on the same lines and made it obligatory for the candidate to furnish information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the competent court. However, the case in which cognizance has been taken but charge has not been framed is not covered by clause (i) of Section 33-A(I). Parliament having taken the right step of compelling disclosure of the pendency of cases relating to major offences, there is no good reason why it failed to provide for the disclosure of the cases of the same nature of which cognizance has been taken by the Court. It is common knowledge that on account of a variety of reasons such as the delaying tactics of one or the other accused and inadequacies of the prosecuting machinery, framing of formal charges gets delayed considerably, especially in serious cases where committal procedure has to be gone through. On that account, the voter/citizen shall not be denied information regarding cognizance taken by the Court of an offence punishable with imprisonment for two years or more. The citizen’s right to information, when once it is recognized to be part of the

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fundamental right under Article 19(1)(a), cannot be truncated in the manner in which it has been done. Clause (i) of Section 33-A(I) therefore falls short of the avowed goal to effectuate the right of information on a vital aspect. Cases in which cognizance has been taken should therefore be comprehended within the area of information accessible to the voters/citizens, in addition to what is provided for in clause (i) of Section 33-A.

**116.** Coming to clause (ii) of Section 33-A(I), Parliament broadly followed the pattern shown by the Court itself. This Court thought it fit to draw a line between major/serious offences and minor/non-serious offences while giving Direction 2 (vide para 48). If so, the legislative thinking that this distinction should also hold good in regard to past cases cannot be faulted on the ground that the said clause fails to provide adequate information about the candidate. If Parliament felt that the convictions and sentences of the long past relating to petty/non-serious offences need not be made available to the electorate, it cannot be definitely said that the valuable right to information becomes a casualty. Very often, such offences by and large may not involve moral turpitude. It is not uncommon, as one of the learned Senior Counsel pointed out that the political personalities are prosecuted for politically related activities such as holding demonstrations and visited with the punishment of fine or short imprisonment. Information regarding such instances may not be of real importance to the electorate in judging the worth of the relative merits of the candidates. At any rate, it is a matter of perception and balancing of various factors, as observed supra. The legislative judgment cannot be faulted merely for the reason that the pro tempore directions of this Court have not been scrupulously followed. As regards acquittals, it is reasonable to take the view that such information will not be of much relevance inasmuch as acquittal prima facie implies that the accused is not connected with the crime or the prosecution has no legs to stand. It is not reasonable to expect that from the factum of prosecution resulting in acquittal, the voters/citizens would be able to judge the candidate better. On the other hand, such information in general has the potential to send misleading signals about the honesty and integrity of the candidate.

**117.** I am therefore of the view that as regards past criminal record, what Parliament has provided for is fairly adequate.

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**118.** One more aspect which needs a brief comment is the exclusion of offences referred to in sub-sections (1) and (2) of Section 8 of the RP Act, 1951. Section 8 deals with disqualification on conviction for certain offences. Those offences are of serious nature from the point of view of national and societal interest. Even the existing provisions viz. Rule 4-A inserted by the Conduct of Elections (Amendment) Rules, 2002 makes a provision for disclosure of such offences in the nomination form. Hence, such offences have been excluded from the ambit of clause (ii) of Section 33-A.

**46.** The Supreme Court in the case of **Public Interest Foundation (Supra)** has held as under :

**116.** Keeping the aforesaid in view, we think it appropriate to issue the following directions which are in accord with the decisions of this Court:

**116.1.** Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.

**116.2.** It shall state, in bold letters, with regard to the criminal cases pending against the candidate.

**116.3.** If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.

**116.4.** The political party concerned shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.

**116.5.** The candidate as well as the political party concerned shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers.

**117.** These directions ought to be implemented in true spirit and right earnestness in a bid to strengthen the democratic set-up. There may be certain gaps or lacunae in a law or legislative enactment which can definitely be addressed by the legislature if it is backed by the proper intent, strong resolve and determined will of right-thinking minds to ameliorate the situation. It must also be borne in mind that the law

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cannot always be found fault with for the lack of its stringent implementation by the authorities concerned. Therefore, it is the solemn responsibility of all concerned to enforce the law as well as the directions laid down by this Court from time to time in order to infuse the culture of purity in politics and in democracy and foster and nurture an informed citizenry, for ultimately it is the citizenry which decides the fate and course of politics in a nation and thereby ensures that “we shall be governed no better than we deserve”, and thus, complete information about the criminal antecedents of the candidates forms the bedrock of wise decision-making and informed choice by the citizenry. Be it clearly stated that informed choice is the cornerstone to have a pure and strong democracy.

47. The Supreme Court in the case of **Krishnamoorthy (Supra)** has held as under :

86. From the aforesaid, it is luculent that free exercise of any electoral right is paramount. If there is any direct or indirect interference or attempt to interfere on the part of the candidate, it amounts to undue influence. Free exercise of the electoral right after the recent pronouncements of this Court and the amendment of the provisions are to be perceived regard being had to the purity of election and probity in public life which have their hallowedness. A voter is entitled to have an informed choice. A voter who is not satisfied with any of the candidates, as has been held in *People’s Union for Civil Liberties*, can opt not to vote for any candidate. The requirement of a disclosure, especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offence of corruption or moral turpitude, the exercise of electoral right would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind of a voter, who is expected to vote to make a free, informed and advised choice. The same is sought to be scuttled at the very commencement. It is well settled in law that election covers the entire process from the issuance of the notification till the declaration of the result. This position has

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been clearly settled in *Hari Vishnu Kamath v. Ahmad Ishaque, Election Commission of India v. Shivaji and V.S. Achuthanandan v. P.J. Francis*. We have also culled out the principle that corrupt practice can take place prior to voting. The factum of non-disclosure of the requisite information as regards the criminal antecedents, as has been stated hereinabove is a stage prior to voting.

**87.** At this juncture, it will be appropriate to refer to certain instructions issued from time to time by the Election Commission of India. On 2-7-2012, the Election Commission of India has issued the following instructions:

“To,

The Chief Electoral Officer of all States and UTs.

*Sub.:* Affidavit filed by candidates along with their nomination papers—dissemination thereof.

Sir/Madam,

Please refer to the Commission’s instructions regarding dissemination of information in the affidavits filed by the candidates along with the nomination papers. The Commission has, inter alia, directed that copies of affidavits should be displayed on the noticeboard of RO/ARO, and in cases where offices of RO and ARO are outside the boundary of the constituency concerned, copies of affidavits should be displayed in the premises of a prominent public office within the limits of the constituency. Further, affidavits of all contesting candidates are required to be uploaded on the website of the CEO.

2. There are complaints at times that in the absence of adequate publicity/awareness mechanism, the general public is not sensitized about the availability of the affidavits filed by the candidates with the result that the affidavits do not fully serve the intended purpose of enabling the electors to know the background of the candidates so as to enable them to make an informed choice of their representative.

3. The Commission has directed that, at every election, press release should be issued at the State and district level stating that affidavits of the candidates are available for the electors to see and clearly mentioning in the press release of the DEO place(s) at which copies of the affidavits have been displayed. The press release should also make it clear that the affidavits can also be viewed on the website, and the path to locate them on the website should also be mentioned.

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4. Please bring these instructions to the notice of all DEOs, ROs and other authorities concerned for compliance in future elections.

Yours faithfully,  
(K.F. Wilfred)

Principal Secretary”

**91.** The purpose of referring to the instructions of the Election Commission is that the affidavit sworn by the candidate has to be put in public domain so that the electorate can know. If they know the half truth, as submits Mr Salve, it is more dangerous, for the electorate is denied of the information which is within the special knowledge of the candidate. When something within special knowledge is not disclosed, it tantamounts to fraud, as has been held in *S.P. Chengalvaraya Naidu v. Jagannath*. While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice. It is necessary to clarify here that if a candidate gives all the particulars and despite that he secures the votes that will be an informed, advised and free exercise of right by the electorate. That is why there is a distinction between a disqualification and the corrupt practice. In an election petition, the election petitioner is required to assert about the cases in which the successful candidate is involved as per the rules and how there has been non-disclosure in the affidavit. Once that is established, it would amount to corrupt practice. We repeat at the cost of repetition, it has to be determined in an election petition by the Election Tribunal.

**94.** In view of the above, we would like to sum up our conclusions:

**94.1.** Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

**94.2.** When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

**94.3.** Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference

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or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

**94.4.** As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.

**94.5.** The question whether it materially affects the election or not will not arise in a case of this nature.

**95.** Before parting with the case, we must put on record our unreserved appreciation for the valuable assistance rendered by Mr Harish N. Salve, learned Senior Counsel and Mr Maninder Singh, learned Additional Solicitor General for the Union of India.

**96.** Ex consequenti, the appeal, being sans substance, stands dismissed with costs, which are assessed at Rs 50,000.

**48.** The Supreme Court in the case of **Ajmera Shyam (Supra)** has held as under :

## **11. CONCLUSION**

**11.1** Judicial intervention in election disputes concerning disclosure of information, as discussed above, was prompted by the quest for sanitising the electoral process by eliminating polluting elements by making candidates' criminal antecedents public. Aiming to prevent criminals from participating in elections to maintain purity of the electoral process — essential for the proper functioning of parliamentary democracy — the court was compelled to exercise its extraordinary power to issue specific directions. Consequently, not only disclosure of criminal antecedents, but also related obligations to disclose assets, liabilities, and educational qualifications of election candidates became mandatory. The knowledge of the criminal antecedents, assets and educational qualifications of the candidates by voters certainly invigorates the electoral process, which is ensured by obligatory disclosure by the candidate. However, the Court has made a subtle distinction between non-disclosure of criminal antecedents and that of assets and educational qualifications. While disclosure of criminal antecedents in the electoral process was the most critical

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element to maintain the purity of the electoral process which has to be scrupulously adhered to, disclosure of assets and educational qualifications were considered as attending supplementary requirements to strengthen the electoral process, of which there will be certain scope for consideration as to whether it is of substantial or inconsequential nature.

In the light of the above, this disclosure requirement as far as assets and educational qualification is concerned, should not be unreasonably stretched to invalidate an otherwise validly declared election over minor technical noncompliances that are not of substantial character, and should not be the basis for nullification of the people's mandate.

**11.2** In the light of the legal position exposted, on examination of the facts in the peculiar background obtaining in the case, we hold that the non-disclosure of income in the income tax return for four financial years by Respondent No. 1, is not a defect of substantial character. Therefore, the nomination could not have been rejected under Section 36(2) of the Representation of the People Act, 1951 as contended by the Appellant and hence, no illegality was committed by the Returning Officer in accepting the nomination of the Respondent No. 1. Resultantly, the penal clause cannot be invoked to invalidate Respondent No. 1's election under Section 100(1)(d)(i) of the Act on the ground that the nomination of Respondent No. 1 was improperly accepted.

**11.3** As we have held that the defect of non-disclosure mentioned is not of a substantial nature, for the same reason the Respondent No. 1 cannot be considered to have indulged in a corrupt practice within the meaning of Section 123 (2) of the Act, and thus, the election of Respondent No. 1 cannot be rendered void under Section 100(1)(b) of the Act.

**11.4** Consequently, on the same consideration, it cannot be also said that the Respondent No. 1 did not comply with the relevant provisions

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of the Act or any rule or order made under the Act, to attract the provisions of Section 100(1)(d)(iv) of the Act.

**11.5** Furthermore, we also hold that the allegation that the Respondent No. 1 did not disclose the income from honorarium she received as the Chairperson of Zilla Parishad, or that she did not disclose receiving ex-MLA pension—cannot be considered to have been proved or established, nor these are of any material consequences.

**49.** The Supreme Court in the case of **Lok Prahari (Supra)** has held as under

:

**79.** We shall now deal with Prayer 2 which seeks a declaration that non-disclosure of assets and sources of income would amount to “undue influence” — a corrupt practice under Section 123(2) of the 1951 RP Act. In this behalf, heavy reliance is placed by the petitioner on a judgment of this Court in *Krishnamoorthy v. Sivakumar*. It was a case arising under the Tamil Nadu Panchayats Act, 1994. A notification was issued by the State Election Commission stipulating that every candidate at an election to any panchayat is required to disclose information, inter alia, whether the candidate was accused in any pending criminal case of any offence punishable with imprisonment for two years or more and in which charges have been framed or cognizance has been taken by a court of law. In an election petition, it was alleged that there were certain criminal cases pending falling in the abovementioned categories but the said information was not disclosed by the returned candidate at the time of filing his nomination. One of the questions before this Court was whether such non-disclosure amounted to “undue influence” — a corrupt practice under the Panchayats Act. It may be mentioned that the Panchayats Act simply adopted the definition of a corrupt practice as contained in Section 123 of the 1951 RP Act.

**80.** On an elaborate consideration of various aspects of the matter, this Court in *Krishnamoorthy case* held as follows: (SCC p. 522, para 91) “91. ... While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and

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undisputedly is undue influence and, therefore, amounts to corrupt practice. ...”

**81.** For the very same logic as adopted by this Court in *Krishnamoorthy*, we are also of the opinion that the non-disclosure of assets and sources of income of the candidates and their associates would constitute a corrupt practice falling under heading “undue influence” as defined under Section 123(2) of the 1951 RP Act. We, therefore, allow Prayer 2

**50.** The Supreme Court in the case of **Poonam (Supra)** has held as under :

**19.** It is now necessary to deal with the contention raised on behalf of the petitioner that notwithstanding her conviction, the same was not for committing a serious offence or one touching upon moral turpitude. The conviction being under Section 138 of the Act of 1881, the petitioner was not liable to be unseated for her conviction for a minor offence.

We are unable to accept this contention which seeks to dilute the fact of non-disclosure of the petitioner's conviction in the nomination form. Rule 24A-(1) requires a candidate to disclose any order of conviction suffered by him by filing an affidavit along with the relevant information before the Returning Officer. The format of the affidavit prescribed under the Rules of 1994 requires a disclosure as regards conviction and sentence of imprisonment for a duration of one year and more. The validity of Rule 24-A(1) of the Rules of 1994 has not been subjected to any challenge. It would therefore have to be treated as valid. Its compliance has been made mandatory as failure to furnish such information along with an affidavit as prescribed visits a candidate with the consequence of non-compliance of the provisions of the Rules of 1994. This in turn is a ground to challenge the election of the returned candidate. In absence of any provision in the Rules of 1994 that would enable the Court to condone such non-compliance or exempt its compliance on the ground that the conviction was for a non-serious offence or one not involving moral turpitude, adopting such course as urged would do violence to the Act of 1961 and the Rules of 1994.

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20. At this stage, we may refer to the decision of this Court in *Krishnamoorthy* (supra) wherein this Court considered the effect of non-disclosure of criminal cases in respect of serious offences including those involving moral turpitude. After noting that the right to contest an election was neither a fundamental right nor a common law right, it was observed as under:

“The controversy which has emanated in this case is whether non-furnishing of the information while filing an affidavit pertaining to criminal cases, especially cases involving heinous or serious crimes or relating to corruption or moral turpitude would tantamount to corrupt practice, regard being had to the concept of undue influence”.

It was thereafter concluded in paragraph 86 as under:

“In view of the above, we would like to sum up our conclusions:

- (a) Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.
- (b) When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.
- (c) Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.
- (d) As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.
- (e) The question whether it materially affects the election or not will not arise in a case of this nature.”

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This Court was concerned with the suppression of various cases of embezzlement by the concerned candidate in his nomination form. The reference to heinous or serious offences or offences relating to corruption or moral turpitude would have to be seen in that factual backdrop. This Court was not dealing with an offence that was not heinous or not involving moral turpitude. It is therefore not the ratio of *Krishnamoorthy* (supra) that disclosure only of serious and heinous offences is mandated and that failure to disclose conviction for a minor or non-serious offence could be condoned, as a principle.

We may however clarify that ultimately it is a matter of exercise of judicial discretion in the given facts of the case, as was exercised in *Ravi Namboothiri* (supra), as to whether such non-disclosure is fatal or not. Hence, the decision in *Krishnamoorthy* (supra) cannot be the basis to hold that non-disclosure of conviction in case of a minor offence was always intended to be condoned and not viewed seriously.

**21.** The plea raised by the petitioner that her election could not be set aside in the absence of it being proved that the result of the election had been materially affected on account of the improper acceptance of her nomination form need not detain us. Once it is found that there has been non-disclosure of a previous conviction by a candidate, it creates an impediment in the free exercise of electoral right by a voter. A voter is thus deprived of making an informed and advised choice. It would be a case of suppression/non-disclosure by such candidate, which renders the election void.

**22.** In this regard, we may refer to the decision in *Kisan Shankar Kathore v. Arun Dattatray Sawant*. Therein the election of the returned candidate to the Legislative Assembly was challenged by a voter from the constituency on the ground that the nomination form of the returned candidate had been improperly accepted by the Returning Officer and that the election was void due to non-compliance of the provisions of the Representation of the People Act, 1951. There were in all five candidates in the fray. In the election petition, the High Court held that the returned candidate failed to make material disclosures in the affidavit filed along with the nomination form and

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hence the nomination form was improperly accepted by the Returning Officer. It further held that the result of the election was materially affected due to non-disclosure of relevant information. Accordingly, the election of the returned candidate was set aside. While considering the challenge to the said judgment, this Court noted that the aspect of non-disclosure of material information was an admitted fact. Referring to the decisions in *Association for Democratic Reforms* (supra) and *People's Union for Civil Liberties (PUCL) v. Union of India*, it was held that if the required information as per the guidelines of the Election Commission was not given, the same would amount to suppression/non-disclosure of relevant information. On the aspect of the result of the election being materially affected due to non-disclosure of such information, it was observed in paragraph 28 as under:—

“Issue No. 8 pertains to the question as to whether the election result was materially affected because of non-disclosure of the aforesaid information. The High Court took note of provisions of Section 100 (1)(d)(i) and (iv) and discussed the same. Thereafter, some judgments cited by the appellant were distinguished and deciding this issue against the appellant, the High Court concluded as under:

“137. In my opinion, it is not necessary to elaborate on this matter beyond a point, except to observe that when it is a case of improper acceptance of nomination on account of invalid affidavit or no affidavit filed therewith, which affidavit is necessarily an integral part of the nomination form; and when that challenge concerns the returned candidate and if upheld, it is not necessary for the Petitioner to further plead or prove that the result of the returned candidate has been materially affected by such improper acceptance.

138. The avowed purpose of filing the affidavit is to make truthful disclosure of all the relevant matters regarding assets (movable and immovable) and liabilities as well as criminal actions (registered, pending or in respect of which cognizance has been taken by the Court of competent jurisdiction or in relation to conviction in respect of specified offences). Those are matters which are fundamental to the accomplishment of free and fair election. It is the fundamental right of

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the voters to be informed about all matters in relation to such details for electing candidate of their choice. Filing of complete information and to make truthful disclosure in respect of such matters is the duty of the candidate who offers himself or who is nominated for election to represent the voters from that Constituency. As the candidate has to disclose this information on affidavit, the solemnity of affidavit cannot be allowed to be ridiculed by the candidates by offering incomplete information or suppressing material information, resulting in disinformation and misinformation to the voters. The sanctity of disclosure to be made by the candidate flows from the constitutional obligation.”

Affirming the said finding, it was held in paragraph 38 as under:—

“...Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void...”

**23.** In *Sri Mairembam Prithviraj @ Prithviraj Singh v. Shri Pukhrem Sharatchandra Singh*<sup>8</sup>, two candidates were in the election fray. The returned candidate failed to submit any documents as regards his educational qualification alongwith the nomination form. The acceptance of his nomination form was accordingly challenged. The High Court held that the declaration made by the returned candidate as regards his educational qualification was false. The said finding was upheld by this Court. On the question as to whether the election of the returned candidate was materially affected due to such improper acceptance of the nomination form, reference was made to the decision in *Kisan Shankar Kathore* (supra). It was thereafter held in paragraph 23 as under:—

“23. Mere finding that there has been an improper acceptance of the nomination is not sufficient for a declaration that the election is void under Section 100(1)(d). There has to be further pleading and proof that the result of the election of the returned candidate was materially affected. But, there would be no necessity of any proof in the event of

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the nomination of a returned candidate being declared as having been improperly accepted, especially in a case where there are only two candidates in the fray. If the returned candidate's nomination is declared to have been improperly accepted it would mean that he could not have contested the election and that the result of the election of the returned candidate was materially affected need not be proved further. We do not find substance in the submission of Mr.Giri that the judgment in *DuraiMuthuswami* (supra) is not applicable to the facts of this case.”

Though in the aforesaid case there were only two candidates who contested the elections, the principle that failure to disclose relevant information in the affidavit filed along with the nomination form amounted to non-disclosure of material information was accepted. That such wrongful acceptance of the nomination form of the returned candidate would result in the election being materially affected rendering it void was recognised as a consequence.

**24.** Even otherwise, it is clear from the decision in *Krishnamoorthy* (supra) that non-furnishing information pertaining to criminal antecedents has the effect of causing undue influence which creates an impediment in the free exercise of electoral right by a voter. When there is such non-disclosure of criminal antecedents, this Court held in paragraph 86(e) that the question whether the election is materially affected or not would not arise in such a case.

It is thus clear that by failing to disclose her conviction under Section 138 of the Act of 1881, the petitioner suppressed material information and thus failed to comply with the mandatory requirements of Rule 24-A(1) of the Rules of 1994. The acceptance of her nomination form has therefore been rightly held to be improper. She being the returned candidate, her election was rendered void. It is thus obvious that on account of such wrongful acceptance of her nomination form, the election was materially affected. This contention of the petitioner also fails.

**25.** We may now indicate why discretion under Article 136 of the Constitution of India does not deserve to be exercised in the present case. The Constitution Bench in *Pritam Singh v. State* while

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explaining the scope and powers of the Court under Article 136 has held that:

“Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.”

Having considered the entire matter, we are not persuaded to hold that the petitioner has made out an exceptional case for this Court to hold that notwithstanding the failure on the part of the petitioner to disclose her conviction leading to the sentence of imprisonment of one year, such lapse should be condoned. The information furnished in her affidavit filed under Rule 24-A(1) of the Rules of 1994 has been found to be incorrect and false. The petitioner rests on her subsequent acquittal in appeal, which event occurred after her election. She did not step into the witness box to explain her inadvertence, which is now sought to be put forward. The plain reading of Rule 24-A(1) and its requirement does not admit of any doubt whatsoever. Moreover, both the Courts have concurrently found that the petitioner failed to disclose her conviction without any justifiable reason. In these facts therefore, no special or exceptional case has been made out by the petitioner for this Court to exercise jurisdiction under Article 136 of the Constitution of India. In the passing, we may observe that the petitioner had contested the bye election that had occasioned by her removal and she lost the same.

**26.** For all the above reasons, the Special Leave Petition stands dismissed.

**51.** Although the Counsel for the Election Petitioner, by taking clue from judgment passed by Supreme Court in the case of **Poonam (Supra)** submitted that non-disclosure of criminal case in which conviction for a period of less than 1 year was recorded would also amount to corrupt practice, but this Court is unable to accept the said contention. In the case of **Poonam (Supra)**, the

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returned candidate had suppressed that She was convicted for one year for offence under Section 138 of Negotiable Instruments Act and as per the relevant rule, the candidate was under obligation to disclose all criminal cases, in which they have been convicted for one year or more. Since, the returned candidate was convicted for one year, therefore, it was held that non-disclosure of criminal case amounted to corrupt practice.

**52.** However, the Counsel for Election Petitioner is right in relying upon the judgment passed in the case of **Poonam (Supra)** that where the suppression is found proved then whether the nature of offence was trivial or whether it did not materially effect the election result becomes secondary as Court cannot condone such non-compliance or exempt its compliance on the ground that the conviction was for a non-serious offence or one not involving moral turpitude.

### **Conclusion**

**53.** The Supreme Court in the case of **Poonam (Supra)** has elaborately dealt with the evolution of law pertaining to disclosure of criminal antecedents. Therefore, it is suffice to mention here that non-disclosure of complete information regarding the stage of pending cases, by itself would amount to suppression of material fact, resulting in corrupt practice.

**54.** This Court has already held that the disclosure of fact that “whether charges have been framed or not” is not a mere formality but that provision has been made purposely in order to make the electorate aware that even the Trial Court has prima facie found that the material collected against the candidate is sufficient to raise grave suspicion that he might have committed the offence warranting his trial. This Court has also held that the respondent no.1/Mukesh Malhotra has also failed to prove that wrong declaration regarding non framing of charge was his bonafide mistake because in the written statement, he did not

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allege against Shri J.P. Dhanopia who according to respondent no.1/Mukesh Malhotra had filled up the affidavit in form 26 but also did not examine the said person in support of his contention. For the purposes of clarity, it is mentioned that there is no pleading in written statement, that the respondent no.1/Mukesh Malhotra had disclosed all the necessary facts to Shri J.P. Dhanopia, but it was he who did not disclose the same in the affidavit, Ex. D.3. Therefore, it is held that the affidavit in form 26 was filled up by the respondent no.1/Mukesh Malhotra by himself, he had deliberately gave a false declaration that “no charges have been framed” in the pending criminal cases. As already pointed out, the respondent no.1/Mukesh Malhotra is a law graduate and post graduate in Social Science, therefore, he was aware of the importance of order framing charges. Even, the respondent no. 1/Mukesh Malhotra also gave false information with regard to nature of allegations made in the pending cases by mentioning that the allegations are only of verbal altercation. In fact in Crime No. 93/2023, the allegations were of assaulting and abusing three victims including two women. The respondent no.1/Mukesh Malhotra was aware of the fact that society may not accept his conduct of assaulting women. In cross-examination, respondent no.1/Mukesh Malhotra had also admitted that since, he had also lodged a cross case, therefore, the complainants had entered into compromise and during the pendency of this election petition, he has been acquitted. Acquittal of respondent no.1/Mukesh Malhotra in crime no. 93/2023, during the pendency of this election petition has no relevance for the purposes of adjudicating the controversy in hand. Therefore, the respondent no.1/Mukesh Malhotra gave false information regarding the nature of allegations levelled against him in crime no. 2/2022 and 93/2023.

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55. So far as non-disclosure of two cases in which the respondent no.1/Mukesh Malhotra was convicted by the Trial Court is concerned, it is suffice to mention here that in none of those two cases, he was convicted for more than 1 year. However, the respondent no.1/Mukesh Malhotra, himself has admitted in his cross examination that Vijaypur Assembly Constituency is dominated by Adivasi population and Adviasis worship trees and he was convicted for imprisonment “till rising of Court and a fine of Rs. 7000/- with default imprisonment of one month” in Forest Crime No. 32773/2014 for offence under Sections 26(1)(a)(g) and 66(i) of Indian Forest Act, and the allegations were of cutting 210 trees. Looking to the very purpose of disclosure of criminal antecedents of the candidate and the right of the electorate to know about the background of the candidate, it was desirable on the part of the respondent no.1/Mukesh Malhotra to disclose the said case also. So far as Crime No. 32/11, in which the respondent no.1/Mukesh Malhotra was convicted by the Trial Court for assaulting the complainant Kuldeep Joshi by shoe and for using abusive language, but he was later on acquitted by the Appellate Court by judgment dated 17-6-2016, Ex. D.4 is concerned, but it was also desirable on the part of the respondent no.1/Mukesh Malhotra to have disclosed the said case. Further more, the respondent no.1/Mukesh Malhotra was also tried for offence under Section 505(2) of IPC in crime no. 2/2020 for spreading hatred against a particular community and also for raising demand to oust the members of the said particular community, but by judgment dated 11-3-2023 Ex. D.6, he was acquitted mainly on the ground that the complainant had turned hostile. It was also desirable on the part of the respondent no. 1/Mukesh Malhotra to disclose the said case also, but that was not done. However, in view of Section 33-A of Representation of the People Act, it is made clear that non-disclosure of

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aforesaid cases may not amount to corrupt practice warranting setting aside of his election.

**56.** Further more, it is clear from the evidence of the representatives of News Papers, the information regarding criminal antecedents was not published in News Papers having wide circulation in Assembly Constituency 02 Vijaypur.

**57.** Under these circumstances, it is held that respondent no.1/Mukesh Malhotra by deliberately and knowingly suppressing material information regarding framing of charges in two pending criminal cases, has misled the electorate, therefore, it is held that such suppression has materially created an impediment in the free exercise of electoral rights, and has deprived the voters to make an informed and advised choice and therefore, this act of suppression has resulted in direct or indirect interference with free exercise of right to vote by the electorate and since, it was within the knowledge of the respondent no.1/Mukesh Malhotra about the pending cases and whether charges have been framed or not, therefore, this act of respondent no.1/Mukesh Malhotra amounts to undue influence, necessitating the declaration of his result as null and void. It is made clear that it is not necessary for this Court to consider as to whether suppression on the part of the respondent no.1/Mukesh Malhotra has materially effected the election result or not because it has to be presumed and such question does not arise. Thus, respondent no. 1/Mukesh Malhotra is held guilty of corrupt practice.

**58.** For the reasons mentioned above, the election of respondent no.1/Mukesh Malhotra as M.L.A. from Assembly Constituency 02 Vijaypur in bye-elections held in the year 2024 is hereby declared as null and void and all adverse consequences as provided in Representation of the People Act, 1951 would follow.

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**59.** Since, the Election Petitioner had also sought a declaration that he be declared as elected as he was the candidate who had secured second highest votes, therefore, the Election Petitioner Ram Niwas Rawat is declared elected as M.L.A. from Assembly Constituency 02 Vijaypur, Distt. Sheopur in the bye-elections which were held in the year 2024. The Election Commission as well as Returning Officer are directed to complete the formalities in this regard.

**60.** Accordingly, the Election Petition is **allowed** with no order as to costs. The parties shall bear their respective expenses.

**(G.S. Ahluwalia)**  
**Judge**

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**IN THE HIGH COURT OF MADHYA PRADESH, BENCH AT GWALIOR**  
**CASE NO. : EP-00024-2024 ( DISPOSED )**

**APPLICANT DETAILS:**

**Application No.:** 4918/ 2026

**Applicant Name:** kapil shah

**Type:** Express

**PARTY DETAILS:**

Petitioner	RAMNIWAS RAWAT S/o SHRI GANESH PRASAD RAWAT , Aged about 65 years , POLITICIAN/ AGRICULTURIST , R/o HOUSE NO. 5/KA VILLAGE SUNWAI TEHSIL VIJAYPUR DISTRICT SHEOPUR, District- Sheopur (Madhya Pradesh)
Respondent	MUKESH MALHOTRA S/o SHRI CHHOTELAL , Aged about 42 years , R/o VILLAGE SILPURI JANAPAD PANCHAYAT KARAHLA TEHSIL KARAHAL DISTRICT SHEOPUR, District- Sheopur (Madhya Pradesh)
	NETRAM DEWARIYA S/o SHRI BALWANT DEWARIYA , R/o VILLAGE SIRSANWADI (PARTWAD) TEHSIL KARAHAL DISTRICT, District- Sheopur (Madhya Pradesh)
	MS. BHARTI PACHORI D/o SHRI RAMCHARAN PACHORI, R/o WARD NO. 15 SEMAI ROAD VIJAYPUR DISTRICT , District- Sheopur (Madhya Pradesh)
	MS. MANJU ADIWASI W/o SHRI NARAYAN ADIWASI , R/o WARD NO.15 VIJAYPUR DISTRICT, District- Sehore (Madhya Pradesh)
	ASHOK ADIWASI S/o SHRI RAMDAYAL ADIWASI , R/o R/O 3 KHEDA POST AGRA TEHSIL VIJAYPUR DISTRICT , District- Sheopur (Madhya Pradesh)
	CHHOTELAL SEMARIA S/o SHRI CHHITYA , R/o R/O BEHIND PHE OFFICE WARD NO.8 SHEOPUR, District- Sheopur (Madhya Pradesh)
	RAMESH ADIWASI S/o SHRI FUNDI ADIWASI , R/o R/O VILLAGE KAKARDHA TEHSIL KARAHAL DISTRICT , District- Sheopur (Madhya Pradesh)
	RAMESH SOLANKI S/o SHRI CHHOTE LAL SOLANKI , R/o 57 KA VILLAGE HARKUEI TEHSIL VEERPUR DISTRICT , District- Sheopur (Madhya Pradesh)
	RAMPRASAD GOCHRIYA S/o SHRI TUNDARAM , R/o VILLAGE AND POST KALARNA TEHSIL AND DISTRICT, District- Sheopur (Madhya Pradesh)
	RAMSINGH JATAV BHAIYA S/o SHRI JAGANI JATAV , R/o VILLAGE AND TEHSIL KARAHAL DISTRICT, District- Sheopur (Madhya Pradesh)

**Advocates Details:**

Petitioner Advocates	,BAL KRISHNA SHARMA,DHARMENDRA SINGH RAGHUWANSHI,AMAN SHARMA,RK DWIVEDI,RK TIWARI,SONAL MITTAL,DHARMENDRA DWIVEDI,TANYA AGARWAL[P-1],YASH NAHAR[P-1],VEDANT SHARMA[P-1],RAKSHIT GUPTA[P-1],HARSHIT RAGHUWANSHI[P-1],AYUSHI YADAV[P-1],ANIRUDH SINGH BAIS[P-1],SANKALP SHARMA[P-1],BRAJRAJ SHARMA[P-1],NIPUN SAXENA[P-1],AADYA PANDEY[P-1],SANJAY KUMAR DWIVEDI[P-1]
Respondent Advocates	,ALOK KATARE[INT],SEEMA PARASHAR[R-1],ABHISHEK SINGH CHAUHAN[R-1],PRATIP VISORIYA[R-1],SHIVAM RAWAT[R-5],SHIVAM RAWAT[R-8],CHANDRA SEN ROMAN[R-5],CHANDRA SEN ROMAN[R-8],RAJKUMAR AWASTHI[R-5],RAJKUMAR AWASTHI[R-8],RAVINDRA SHARMA[R-5],RAVINDRA SHARMA[R-8],PRIYANSHU SAHU[R-4],SUNDRAM SHRIVASTAVA[R-4],PARIJAT SHARMA[R-4],NAVNI DHI PARHARYA[R-4],DHARMPAL[R-10],PRIYANSHU YADAV[R-10],MAYANK KUMAR SHARMA[R-10],ABHINAV BHARGAV[R-10],SARVESH KUMAR SHARMA[R-10],RAVINDRA SHARMA[R-2],RAVINDRA SHARMA[R-3],RAVINDRA SHARMA[R-9],RAVINDRA SHARMA[R-6],RAVINDRA SHARMA[R-7],RAJEEV KUMAR SONI[R-1]

**LAST LISTED ON DETAILS:**

<b>Judge</b>	HONBLE SHRI JUSTICE GURPAL SINGH AHLUWALIA	<b>Date</b>	09-03-2026
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**LOWER COURT DETAILS:**

<b>Case Type</b>	---0-	<b>District</b>	SHEOPUR	<b>Police Staion</b>		<b>Crime No.</b>	/0
<b>Judge</b>	--	<b>Decision Date</b>	23-11-2024				

**EXTRA DETAILS:**

<b>Subject Heading/Category/Sub-Category</b>	(1) ELECTION-12800 / Representation of the People Act, 1951-12802-
<b>Provision of law</b>	U/S 81 OF REPRESENTATION OF THE PEOPLE ACT
<b>Act- U/Section</b>	-
<b>Brief Description of the Judgment/ Order/Award impugned</b>	MATTER PERTAINING TO BY-ELECTION OF MEMBER OF STATE LEGISLATIVE ASSEMBLY 2024 FROM 02-VIJAYPUR CONSTITUENCY
<b>Des of Relief Claimed</b>	FOR DECLARING THE ELECTION OF RES.NO.1FROM ASSEMBLY CONSTITUENCY 02 VIJAYPUR

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