

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 17<sup>th</sup> OF OCTOBER, 2023**

**MISC. PETITION No. 5307 of 2023**

**BETWEEN:-**

**SMT. GEETA AGRAWAL W/O SHRI DURGESH  
AGRAWAL, AGED ABOUT 51 YEARS,  
OCCUPATION: HOUSEWIFE R/O 16 SHIVOM  
ESTATE STATION ROAD DEWAS (MADHYA  
PRADESH)**

**.....PETITIONER**

**(BY SHRI C L YADAV, SENIOR ADVOCATE AND SHRI NEERAJ GAUR,  
ADVOCATE)**

**AND**

- 1. SMT. VINODINI VYAS W/O SHRI RAMESH  
VYAS OCCUPATION: RAJNETIC  
KARYAKARTA R/O 3 VIVEKANAND  
COLONY MOTI BUNGLOE DEWAS  
(MADHYA PRADESH)**
- 2. SMT. NIKITA SURYAVANSHI OCCUPATION:  
SAMAJIK KARYAKARTA 18, UPADYAY  
NAGAR DEWAS (MADHYA PRADESH)**
- 3. CHANA GYANESH OCCUPATION: RAJNETIK  
KARYAKARTA 199, VISHRAM BAG, DEWAS  
(MADHYA PRADESH)**
- 4. JUBEDA BEE W/O HATAM DARBAR  
OCCUPATION: SAMAJ DEVA 135,  
JAIPRAKASH MARG DEWAS (MADHYA  
PRADESH)**
- 5. SMT. MANISHA W/O DEEPAK CHOUDHARY  
OCCUPATION: SAMAJIK KARYAKARTA 201,  
HAIBATRAV MARG DEWAS (MADHYA  
PRADESH)**
- 6. RETURING OFFICER NAGAR NIGAM  
CHUNAV 2022 COLLECTORATE DEWAS  
(MADHYA PRADESH)**

**.....RESPONDENTS**

*(BY SHRI MANISH YADAV, ADVOCATE FOR RES. No.1)*

.....  
*This petition coming on, for admission this day, the court passed the following:*

**ORDER**

They are heard and perused the record.

1] This petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 26.8.2023, passed in the Election Petition No. 2/2022 by the First District Judge, Dewas whereby, the respondent No.1/election petitioner's application filed under Order 11 Rule 12 read with 18 of the CPC and under Order 12 Rule 8 of the CPC has been rejected.

2] In brief, the facts of the case are that the petitioner had contested and won the election of Mayor of Dewas in the year 2022, which has been challenged by the respondent in an election petition filed in the Court at Dewas under Section 441 of the Municipal Corporation Act, 1956. In the aforesaid election petition, the respondent also filed an application under Order 11 Rule 12 read with Rule 18 and under Order 12 Rule 8 of the CPC read with Section 11 (a) (c) of the M.P. Municipal Corporation Election Adhinyam, 1963. wherein, it was stated that the petitioner /returned candidate Smt. Geeta Agrawal be directed to place on record her mark sheet of Class XI, and also her enrolment number and the application has been allowed by the Election Tribunal vide its order dated 25.8.2023, which has been challenged by the petitioner in this petition.

3] Shri Champalal Yadav, learned Senior counsel appearing for the petitioner has submitted that the impugned order is liable to be set aside as the learned Judge of the Election Tribunal erred in shifting the burden of proof on the petitioner. Whereas, it is a settled law that in the case of corrupt practice being alleged in the election petition, it has to be tried like of a criminal trial, and the burden of proof cannot be shifted to the returned candidate as it is for the election petitioner only to lead evidence in support of her/his petition.

4] In support of his submissions, Senior counsel for the petitioner has relied upon the decision rendered by the Supreme Court in the case of *N.C. Zeliang vs. Aju Newmai* reported as AIR 1981 SC 8 in which the Court has held as under :-

“ 10. We have gone through the judgment of the High Court carefully and what we find is that the High Court has not made any attempt to determine whether there was any legal and acceptable evidence to prove the corrupt practice alleged against the appellant. It is now well settled by a large catena of authorities that a charge under s. 123 of the Act must be proved by clear and cogent evidence as a charge for a criminal offence. It is not open to the court to hold that a charge of corrupt practice is proved merely on a preponderance of probabilities but it must be satisfied that there is evidence to prove the charge beyond a reasonable doubt. The electoral process in this country is an extremely expensive one and by declaring the election of a candidate null and void, the entire process, so far as the candidate is concerned is set at naught resulting in re- election. Such a course should be adopted only when the allegation of corrupt practice is proved conclusively. In *K.M. Mani v. P.J. Antony & Ors.(1)*, this Court while referring to a large number of cases observed as follows:-

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

.....

In taking that view the trial court lost sight of the requirement that the allegation regarding the commission of a corrupt practice is in the nature of a quasi criminal proceeding which has to be established beyond reasonable doubt and not merely by preponderance of probabilities.

.....

In Mohan Singh's case (AIR 1964 SC 1366) it has been held that the onus of proving the commission of a corrupt practice is not discharged on proof of mere preponderance of probability as in a civil suit, and it must be established beyond reasonable doubt by evidence which is clear and unambiguous.

In Balakrishna (1969) (3 SCR 603) it has been held that while consent may be inferred from circumstantial evidence, the circumstances must point unerringly to the conclusion and must admit of no other explanation, for a corrupt practice must be proved in the same way as a criminal charge.....  
The election petitioner must therefore exclude every hypothesis except that of guilt on the part of the returned candidate or his election agent, and the trial court erred in basing its finding on a mere probability."

It is not necessary to multiply authorities on this point because the law has been fully crystallised on the subject."

*(emphasis supplied)*

5] Thus, it is also submitted that the Election Tribunal has erred in directing the petitioner to produce the evidence as desired by the respondent.

6] Counsel appearing for the respondent, on the other hand, has opposed the prayer and it is submitted that no illegality has been committed by the learned Judge in the Election Tribunal as the documents desired by the respondent-Election Petitioner to be produced on record by the petitioner/returned candidate are the personal documents of the petitioner, and she is the best person from

where such documents can be procured, and instead of filing the requisite documents on record, she has filed this petition itself, which indicates that the allegations levelled against the petitioner by the respondent in the election petition are justified.

7] Heard the counsel for the parties and perused the record. So far as the decisions relied upon by Shri Yadav are concerned, it is true that an election petition alleging corrupt practice by the returned candidate has to be proved as a criminal charge, but in the considered opinion of this court, at the same time it has also to be borne in mind that it is to be tried as a quasi-criminal case and not purely as a criminal case. It must be remembered that a criminal case always precedes a criminal investigation in which the prosecution has ample powers of search and seizure, and on the other hand, to recover the incriminating material at the instance of the accused and subsequently, to prove the same against the accused during the criminal trial are two different things. Whereas, no such facility is available to an election petitioner prior to filing of the election petition, and for production of any document in exclusive possession of the opposite party, she/he can only fall back to the provisions of CPC viz., Order 11 Rule 12 read with 18 of the CPC and under Order 12 Rule 8 of the CPC and, in such circumstances, the principles governing a criminal trial would not be applicable in the election petition as its use is limited to the degree of proof of evidence and not the manner in which the evidence is procured. Thus, this court is of the considered opinion that the decisions cited by Shri Yadav in

the case of *N.C. Zeliang (supra)* will have no application to the issue of procurement of the evidence in an election petition and the learned judge of the Election Tribunal has not committed any error in allowing the application under Order 11 Rule 12 read with 18 of the CPC and under Order 12 Rule 8 of the CPC.

8] Resultantly, the petition being devoid of merits is hereby **dismissed.**

**(SUBODH ABHYANKAR)**

**JUDGE**

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