

**BEFORE THE ELECTION TRIBUNAL, HIGH COURT OF
SINDH CIRCUIT COURT HYDERABAD**

Election Petition No.S-17 of 2018

Petitioner: Mir Abdullah Khan through
M/s.Noorul Haq Qureshi and Saad
Salman Ghani Advocates.

Respondent No.1: ECP through Mr. Zaheer Abbas, Law
Officer.
Mr. Fazal Qadir Memon, Assistant
Attorney General for Pakistan.

Respondents No.2 to 8
and 11 to 15: *Ex-parte* vide order dated 06.11.2018

Respondent No.9. Mir Allah Bux Talpur through
Mr.Parkash Kumar, Advocate.

Respondent No.16 NADRA through Mr. Habib-ur-
Rehman, Law Officer.

Date of hearing: 21.05.2022.

Date of judgment: 13.08.2022.

JUDGMENT

AMJAD ALI SAHITO, J: - This election petition, under section 139 read with section 142 of the Election Act, 2017 (which hereinafter is referred to as "the Act of 2017"), is directed against the declaration of respondent No.9 through notification bearing No.F.2(40)/2018-Cord. dated 07th August 2018 as the returned candidate after the General Elections-2018. Election to Constituency of Provincial Assembly PS-71, Badin-II, was held on 25.07.2018 (which hereinafter is referred to as "said Constituency"). Petitioner and respondents No.2 to 15 have contested the General Elections-2018 for said constituency. Petitioner was the candidate of the Pakistan Democratic Alliance (GDA) while respondent No.9 is the candidate of Pakistan People's Party Parliamentarian (PPPP). Petitioner obtained 33047 votes whereas respondent No.9 obtained 38550 votes with a

Amjad

difference of 5503 votes, as such, respondent No.9 has been declared as a 'Returned Candidate' in the General Elections-2018.

2. The petitioner in his election petition has alleged illegalities committed by the election functionaries against the petitioner at the behest of respondent No.9; the R.O. appointed most of the Presiding Officers, Assistant Presiding Officers and Polling Officers in collusion with respondent No.9/returned candidate to give him undue favour; that the presiding officers 130 polling stations provided results of count but did not provide ballot paper account; that at the time of consolidation of results by the R.O. the petitioner objected by pointing out the position of tampered record sent by the Presiding Officers and requested for recounting but the R.O. illegally consolidated the result of the count. The provisional result (Form-47) and final result (Form-49) by the R.O. are contrary to section 95(2) of the Act of 2017 as well as section 80 of the Election Rules. Per petitioner, the application to the D.R.O. Provincial Election Commission and Chief Election Commission of Pakistan for the same subject was received in their respective offices but his efforts went in vain. The petitioner further stated that on his application though the order was passed believing the version of other candidates who extended their oral support to the returned candidate, neither the petitioner nor any other person thereafter invited to participate in the consolidation process.

3. It is contended in the petition that it was obligatory upon the R.O. to examine invalid votes (excluded from the count) and after scrutiny, the same should be made as part of the record. The petitioner alleged that some polling stations took benefit due to the non-availability of agents of the rival, there was passage free to rig the elections as such many votes cast by same persons; therefore, such allegation could be established on verification of thumb impression of voters through NADRA to ascertain the actual quantum of rigging the polls. The petitioner has further alleged that the R.O. dismissed his application filed for a recount of the votes by ignoring the mandate of law which is simultaneous to be observed pre-requisite condition of 5% of the total ballots poled or Ten Thousand. He further alleged that the very serious aspect concerning form-45 either not given to the agents or somewhere given on plain papers containing the seal of the election commission through containing similar aspect by forged signatures the agents

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were kept on hallow hopes of issuance of Form-45; somewhere the requirements of form-45 have not been complied with by mentioning names of the candidates, their election symbols status as an independent or party affiliation, therefore, such practice by issuing these papers as Form-45 would be an eye wash merely to satisfy the petitioner for ill-achievements which have been secretly done in favour of the returned candidate. The Form-45 though issued at some polling stations did not contain signatures of the polling officers or somewhere thumb impressions were missing and the polling officers issued fake form-45 instead of carbon copies of the original one. Petitioner also alleged that somewhere the calculations are altogether incomplete and interpolations are showing the maneuvering of results by the polling officers in favour of the returned candidate. Despite the filing of applications to the D.R.O. Badin, Provincial Election Commissioner, Karachi, Secretary Election Commissioner Sindh to Chief Election Commissioner of Pakistan and Secretary Election Commission Pakistan before the consolidation of result and on the applications, no notice was ever provided; such conduct on part of the election functionaries is tantamount to disregard fundamental rights guaranteed to him under the Constitution and his right to a fair trial as well as due process of law. The petitioner further alleged that several spoiled votes were wrongly counted in favour of the candidate of PPP despite the protest of the polling agents which was not recorded. A number of the polling agents were not allowed to enter the polling stations at the time of counting of votes which shows the irregularity floating on the face of the record. The returned candidate has committed corrupt practice and hence, his conduct falls within the ambit of section 175 of the Act of 2017, therefore, his election as a returned candidate is liable to be declared void. The petitioner, therefore, filed an instant election petition with the following prayers:-

- (a) Declare that the impugned notification dated 07.08.2018 to the extent of PS-71 Badin-II is contrary to law, consequently set aside the same.

OR IN THE ALTERNATIVE

- (b) Declare that the election of Respondent No.9 as returned candidate is void and fresh polls are directed to be conducted in the entire constituency.



- (c) This Honourable Court may kindly be pleased to pass an order for recount of votes for the entire polling stations comprising 130 polling stations of PS-71 Badin-II, Sindh.
- (d) That, the mala-fide conduct conjointly committed is declared to be corrupt and illegal practice as defined in Chapter X of the Election Act, 2017.
- (e) Any other relief which this Honourable Court deems fit may be awarded to the petitioner in the circumstances of the case.

4. In response to notices issued by this Tribunal to the respondents through all possible modes for effecting service upon them, only respondent No.9 being returned candidate and respondent No.10 have chosen to contest the petition and submitted their written statements while the rest of the respondents failed to contest the instant petition, as such, the respondents No.2 to 8 and 11 to 15 were declared *ex parte* by this Tribunal vide order dated 06.11.2018 while respondents No.1 and 16 were debarred from the filing of their written replies.

5. Respondent No.9 in his written reply has denied the allegations of the petitioner and questioned the petition on the ground that it does not disclose the cause of action and non-compliance with provisions of sections 142 to 144 of the Act of 2017. He denied that any violation or illegality has been committed by the election functionaries. The returned candidate further denied the appointment of election staff with his collusion; however, he added that if the petitioner felt so, he did not raise any objection to the appointment of polling staff before R.O., D.R.O. and the Election Commission of Pakistan. Form-45 of all 130 polling stations was provided to the petitioner. The application for a recount of the votes was rightly dismissed by R.O. after hearing the counsel of the petitioner. The consolidation of the result was made according to section 95 of the Act of 2017 and Rule 85 of the Election Rules. None of the contesting candidates including the petitioner made any request for examination of the invalid votes. The entire consolidation process was carried out in presence of candidates and their agents. There was no rigging or any false vote was cast on any polling station and the petitioner did not make any complaint during or

after the close of the poll. Respondent No.9/returned candidate prayed for dismissal with special costs.

6. Respondent No.10 in his written statement has stated that the petition is misconceived; it does not disclose the cause of action; the petitioner has not complied with the provisions of sections 142 to 144 of the Act of 2017, therefore, the petition is not maintainable. He further contended that the petitioner has sent only a copy of the petition without annexure including the list of witnesses, affidavits and documentary evidence. He disclosed the weight of the petition along with annexure, which includes affidavits and documentary evidence to be 1.40 kg while the petitioner sent only 0.50 kg and to this extent he annexed shipment details of TCS with his written statement. He relied upon the contents of the written statement filed by respondent No.9 to be true and correct. However, respondent No.10 lastly contended that the petitioner has filed a false, frivolous and vexatious petition, which may be dismissed with special costs.

7. From the pleadings of parties, the following issues were framed:-

1. Whether the petition is not maintainable under the law?
2. Whether the election and result of the returned candidate/respondent No.9 for the constituency of PS-71, Badin-II, in the General Elections, 2018 had been procured by corrupt and illegal practices with the help of staff appointed to perform duties thereby committed violations of their official duties?
3. Whether the election of respondent No.9 as returned candidate is void and fresh poll be conducted in the entire constituency?
4. Whether the recount of votes for the entire PS-71 Badin-II is required?
5. What should the decision be?

8. After framing of issues, the petitioner examined his witnesses namely Raja Khaskheli, Wahid BuxKhosro, Salaar Dal and Shabeer Ahmed Jarwar in his support. These witnesses have produced their affidavits-in-evidence. The petitioner also examined himself and produced a memo of the petition, amended memo of petition and affidavit-in-evidence as well as Form-49, notification

dated 07.08.2018, application for recounting of election votes along with order, applications made to high-ups along with receipts; and the number of Form-45 and Form-47. Thereafter learned counsel closed side of petitioner's evidence through the statement. The contesting respondent No.9/returned candidate Mir Allah Bux examined himself and produced a memo written statement and his affidavit-in-evidence and then his counsel closed the side of evidence.

9. Learned counsel for the petitioner while reiterating the contents of the petition mainly contended that the petition is maintainable; that illegalities and irregularities have been committed by the election functionaries against the petitioner and most of the Presiding Officers, Assistant Presiding Officers and Polling Officers were appointed in collusion with the respondent No.9 / returned candidate to give him undue favour; that the presiding officers 130 polling stations provided results of count but did not provide ballot paper account; that at the time of consolidation of results by the R.O. despite the petitioner objected to tampered record sent by the Presiding Officers and requested for recounting but the R.O. illegally consolidated the result of the count. It is further contended that the provisional result (Form-47) and final result (Form-49) by the R.O. are contrary to section 95(2) of the Act of 2017 as well as section 80 of the Election Rules. Learned counsel alleged that against illegal acts the application moved by him was though received by high-ups but no action was taken. Per learned counsel, at some polling stations benefit was taken due to non-availability of agents of the rival, there was passage free to rig the elections as such many votes cast by same persons; therefore, he prays that such allegation could be established on verification of thumb impression of voters through NADRA to ascertain the actual quantum of rigging the polls. Learned counsel further contended that the R.O. dismissed his application for a recount of the votes by ignoring the mandate of law which is simultaneous to be observed as a pre-requisite condition of 5% of the total ballots polled or ten thousand. He further contended that form-45 was not provided to the agents or somewhere given on plain papers containing the seal of the election commission containing forged signatures and the agents were kept on false hopes of issuance of Form-45; that mostly the requirements of form-45 have not been complied with by mentioning names of the candidates,

their election symbols status as an independent or party affiliation, therefore, such practice by issuing these papers as Form-45 would be an eye wash merely to satisfy the petitioner for ill-achievements which have been secretly done in favour of a returned candidate. He also contended the Form-45 issued at some polling stations did not contain signatures of the polling officers or somewhere thumb impression were missing and the polling officers issued fake form-45 instead of carbon copies of the original one, therefore, such conduct on part of the election functionaries is tantamount to disregard fundamental rights guaranteed under the Constitution and right to a fair trial as well as due process of law. Learned counsel also contended that several spoiled votes were wrongly counted in favour of returned candidates; that number of the polling agents were not allowed to enter the polling stations at the time of counting of votes which shows the irregularity floating on the face of the record. Learned counsel has stressed that the returned candidate has committed corrupt practice and hence his conduct falls within the ambit of section 175 of the Act of 2017, therefore, his election as a returned candidate is liable to be declared void and consequently entire fresh poll be conducted or recounting of the votes for the entire polling stations comprising 130 polling stations of the constituency be ordered.

10. Conversely, learned counsel appearing on behalf of respondent No.9 while reiterating the contents of his reply mainly contended that the petition is not maintainable on the ground that the petitioner has not complied with the requisite provisions of sections 142 to 144 of the Act of 2017. He has contended that no illegality or irregularity was made during the process of the poll and in the presence of law enforcement agencies deployed at all the polling stations, the entire poll was conducted peacefully. Learned counsel for the returned candidate further contended that though the petitioner has taken a plea in respect of the appointment of polling staff who are alleged to have collusion with the returned candidate the petitioner has never made any complaint to this respect before any forum even did not complain after the close of poll immediately. He contended that despite the petitioner is seeking a recount of polling stations comprising 130 polling stations but he has failed to pinpoint any illegality, or tampering of record at the time of consolidation of result, which was made in presence of all contesting

candidates/agents. He further contended that since there was no justification for the allegations of the petitioner, as such, the application for a recount of votes was rightly dismissed by the R.O. with cogent reasons. He pointed out that since the petitioner lost his election, therefore, with malafide intention and manipulation has filed an instant petition with concocted false, frivolous allegations though the petition was filed without verification, which later on was amended by filing an application. The petitioner examined his witnesses being agents of the election but they failed to produce their agentnamas to prove that they were not allowed or ousted from polling stations. Form-45 and 46 were provided to the agents of the petitioner at all polling stations, however, no complaint in respect of any mistake or tampering of the record was made by the petitioner. The grounds taken by the petitioner are trifling, insignificant and do not fall within the definition of corrupt practices alleged committed by the returned candidate. Learned counsel further contended that the contents of the petition and affidavits in evidence have specifically been denied by the returned candidate and the petitioner failed to shatter evidence of respondent No.9 at the time of cross-examination. The version of the petitioner is not supported by any corroboratory evidence, as such, on such vague and concocted allegations, the election of the returned candidate cannot be declared void. Lastly, learned counsel has prayed for dismissal of instant petition with special costs by relying upon the case laws reported as 2016 SCMR 251, 849 & 1312, 2018 SCMR 87, PLD 2017 SC 684 and PLD 2020 SC 718.

11. The learned Assistant Attorney General for Pakistan and Law Officer of the Election Commission of Pakistan have contended that the election was conducted peacefully and no illegal practices or procurement of results with the connivance of officials or in contravention of mandatory provisions of the Act of 2017 was made.

12. Heard and perused the material available on record with the able assistance of counsel appearing on behalf of respective parties.

13. **Issue No.1.**

(Whether the petition is not maintainable?).

With regard to the maintainability of the instant petition, learned counsel for respondent No. 9 mainly contended

that the instant petition is not maintainable on the ground that the petitioner has failed to make verification of the petition following the requirement prescribed under subsection 4 of Section 144 of the Act of 2017, as such, on the failure of this mandatory requirement, the instant petition is liable to be dismissed. On the other hand, learned counsel for the petitioner has contended that all the provisions of the Act of 2017 have been complied with and the verification of the petition has been made following the law after seeking amendment, therefore, the petition is maintainable in law.

As to this issue, I would like to add here that subsection (1) of section 145 of the Election Act, 2017 provides that if any provision of section 142, 143, or 144 has not been complied with, the Election Tribunal shall summarily reject the election petition; whereas its subsection (2) says that if an election petition is not rejected under sub-section (1), the Election Tribunal shall issue notice to each of the respondents through all certain modes. It is an admitted position that at the time of filing this petition, it was not summarily rejected by this Tribunal and the notices were issued; the amendment was sought in the petition, the requisite verification of the petition was made, and the written statement was filed and issues were framed; evidence of the parties has been recorded. The main scope for rejection of petition is at the earliest stage and if both subsections (1) & (2) of section 145 of the Election Act, 2017 are read together, then it would be clear that such chapter for rejection of election petition in the circumstances of an instant petition becomes closed after issuance of notice to the respondents and amendment. As such, the petition is maintainable and this issue is answered in favour of the petitioner.

14. Issue No.2.

(Whether the election and result of the returned candidate/respondent No.9 for the constituency of PS-71, Badin-II, in the General Elections, 2018 had been procured by corrupt and illegal practices with the help of staff appointed to perform duties thereby committed violations of their official duties?).

On this issue, the petitioner has examined himself and his four witnesses; they got exhibited memos of the petition, affidavits-in-evidence and numerous documents relating to the election. The petitioner's witnesses namely, Raja Khaskheli, Wahid

Bux, Salaar and Shabeer Ahmed have produced their affidavit-in-evidence, which are stereotype written only with change of identity of each witness wherein they have generally stated that "on 25.07.2018 I was performing my duties as an agent of petition in the constituency of PS 71 Badin II, wherein the Presiding Officer in league with the respondent No.9 were openly busy in process of voting and recounting process in rigging by casting fake votes of persons not available or came to cast their votes, inspite of complaining orally they turned down my request, and there was no any law enforcing agency to conduct fair and free elections.. That the behavior of Returning Officer was very biased. Criteria for rejection of ballot papers with symbol other than "ARROW" were very strict while with "ARROW", he was very lenient." This being position of the similar type contents of the affidavits-in-evidence of the petitioner's witnesses suggests that the stance taken by them is just allegations against the Presiding Officers and R.O. otherwise no tangible material is brought to validate their version. Even the witnesses have admitted that they neither made the complaint to the R.O. nor have produced a written complaint with their evidence. They also failed to produce their agentnamas. They have also admitted that under the instructions of petitioner Mir Abdullah they have filed their affidavits.

Petitioner Mir Abdullah Khan during cross-examination has deposed as under:-

"It is correct to suggest that earlier I have filed petition in which verification is not available. It is correct to suggest that I have not filed complaint to the Returning Officer for appointment of the polling staff on the different polling stations at PS-71 Badin-II. Voluntarily says that subsequently we came to know that the officers appointed on different polling stations are biased to me. It is correct to suggest that even then I have not filed any application to the Returning Officer. The contents of the petition were read-over to me by my counsel. It is correct to suggest that some of the results on the plain paper of Form-45 were provided and some were not provided to me. It is correct to suggest that in petition in para-3 it is written that "on 25.07.2018 after close of polls the Presiding Officers of 130 polling stations provided results of count (Form XIV), but did not provide ballot papers account (Form XV)." It is correct to suggest that due to typical mistake it is written Form-14 but it may be treated as Form-45. It is correct to suggest that I produced the Form-45



from pages No.67 to 583. I have not challenged the figures of the votes before any high-ups or Returning Officer. It is correct to suggest that simply I have made application by requesting to the Officer of PS-71 Badin-II for recounting of votes; however, I have not made allegation against the respondents. It is correct to suggest that petitioner has not made specific allegation of corrupt and corrupt practices. It is correct to suggest that on my application which was moved by me on 27.7.2018 to the Returning Officer of PS-71 Badin-II notices were issued to all the contesting candidates and the order was passed in presence of all the contesting parties. It is correct to suggest that I have moved the application on 28.07.2018. Voluntarily says that I have moved application when rigging was committed. Voluntarily says that in Form-45 the result was different one and subsequently result was given to the polling agents in which votes were different when we had taken the result from the Election Commission of Pakistan. It is correct to suggest that I have produced the documents as E7 page No.5 which disclosed the date is/was 9th August 2018 and it is correct to suggest that I have moved application on 28.07.2018. It is incorrect to suggest that I have filed the annexed documents which are available at pages-51 to 59 are afterthought. It is correct to suggest that in my application I have not specifically mentioned that in which polling station rigging was committed and the election was not conducted in free, fair and transparent manner. It is incorrect to suggest that in support of my contents of petition I have not produced the agents. It is correct to suggest that I have not produced the agentnamas of all those agents who have supported the contents of my petition as well my complaints. It is correct to suggest that during polling process I have not made any complaint to the Returning Office, High-ups or Rangers and Army Personnel. It is incorrect to suggest that documents which I have produced which is available at pages No.51 to 59 which are managed one. It is correct to suggest that I have pursued my application which was moved by him before chief Election Commissioner of Pakistan at Islamabad. It is incorrect to suggest that in my presence the entire result was compiled, consolidated by the Returning Officer. It is incorrect to suggest that consolidated result was announced all the candidates were satisfied. It is incorrect to suggest that I have received Forms-45 from all polling stations. It is correct to suggest that total votes cast on all polling stations were near about 84000/- and I have lost my election with the difference of 5500/- It is incorrect to suggest that on the day of polling stations no rigging was made. The election process was conducted, free, faire and transparent manner. It is incorrect to suggest that I am deposing falsely. It is incorrect to suggest that

when I have lost my election thereafter I have filed this petition."

15. Respondent No.9/returned candidate Mir Allah Bux also examined himself during his evidence has produced his affidavit-in-evidence. Respondent No.1 was subjected to cross-examination by the counsel for the petitioner, during which, this witness deposed that;

"The contents of petition as well as affidavit-in-evidence, which I have filed, were read over to me; however, I do not remember what is written in the same as I am aged about 82 years. The total votes were casted near about 83000/-; I have secured 38550/- votes while petitioner Abdullah obtained 30447 votes. It is correct to suggest that there is difference of over 5500 between returned candidate and respondent No.9. It is correct to suggest that more than 5000 were invalid declared by the R.O. It is correct to suggest that petitioner Abdullah has also filed application for recounting of the total votes. It is correct to suggest that notices were issued by the Returning Officer to me and other candidates. It is correct to suggest that I have gone through the order passed by the Returning Officer. It is correct to suggest that in that order the votes in which I have taken were near about 38727 and the petitioners had obtained 32822 votes. It is incorrect to suggest that due to my influence, the R.O. dismissed the application moved by the petitioner and same were shown by R.O. on my pressure. I do not know whether petitioner has moved application to the Election Commission of Pakistan or not. It is incorrect to suggest that I am involved in illegal and corrupt practices defined in section 171 of the Election Act, 2017. Mst. DurBibi is not my wife. It is incorrect to suggest that petitioner has secured more votes than me; but, with the collusion of R.O. he has declared me as successful. It is incorrect to suggest that I am deposing falsely."

16. I have carefully scrutinized the evidence and documents placed on record, it reveals that the version of the petitioner in respect of procurement of the result through corrupt and illegal practices has not been supported by their testimonies or through any documentary evidence. Neither the petitioner has brought on record any document showing such illegal practice or evidence which supports him. When such kind of allegation is being leveled then the alleger has to bring on record documentary proof or corroborative pieces of evidence, but he failed. The most important contention of the petitioner is that form-45 and 46 were not

provided but no such written complaint was made at the relevant time nor has been brought on record. The petitioner has also failed to establish that the result of the returned candidate/respondent No.9 had been procured by corrupt and illegal practices with the help of staff appointed to perform duties through direct or circumstantial evidence. It is necessary for the petitioner that he should completely bring on record convincing evidence; however, the evidence of the petitioner is neither of such standards, based on which the election of the entire or at some polling stations of the constituency could be declared as void. The personnel of enforcing agencies were deployed to the polling stations but no misfortune occurred during the process of voting as nothing is available in this regard. It is a mandatory requirement to be established, full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed such corrupt or illegal practice and the date and place of commission of such practice or act but it is lacking in the instant petition. Even though, if any lapse is committed by the polling staff due to a lack of proper skill and adequate knowledge or expertise, such lapse on part of the polling staff cannot be termed as 'illegal practice'. The petitioner's witnesses have not produced their Agentnamas of being Election Agentsshowing that they were appointed for the petitioner to show their names, fathers' names and addresses who are examined in the instant petition to strengthen his claim that the presiding officers have not provided Form-45 / were involved in illegal or corrupt practices. The affidavits-in-evidence placed on record by the witnesses of the petitioner are completely stereotyped only with the change of their respective names, as such; a prudent mind can easily illustrate the same to be general in nature without any force. Further, it is ordinary that nothing will be the same at different polling stations simultaneously. On examination of the contents of the affidavits of the witnesses, it appears that they have not nominated any of the polling staff, involved in illegal and corrupt practices. The allegations of corrupt practices are required to be proved by leading evidence that the result of the returned candidate had been obtained through the assistance of polling personnel. However, it has not been disclosed specifically about rigging allegedly committed by the polling staff; the petitioner has also failed to nominate any of the polling staff in league with the

returned candidate or produced any documentary evidence strengthening his version with any concrete or substantial evidence. The stance taken by the petitioner in the election petition also appears to be non-specific, unclear and common in nature as it is significant to state that the rules of proof for the grounds alleging the persons appointed for the polling process are guilty of the violation of their official duties are quite strict and stern and the claim must be extremely proved through corroborative evidence without accepting any guess and if there is any doubt, the benefit must go in favour of a person against whom the allegation of corrupt or illegal practices are levelled. It is also well-settled law that the charge of corrupt practice is to be proved like a criminal charge and the standard of proof as required in a criminal case, is to be applied in testing of evidence of corrupt practice in the election petition. The allegations of corrupt practice are required to be established by clinching unimpeachable evidence. Unless there is cogent evidence to take the case beyond a reasonable doubt, the election of a returned candidate cannot be set aside. There are mere allegations of corrupt practice without substance, which may only create doubt, but the charge of corrupt practice cannot be proved only on suspicion or doubt without giving a date and time at a specific place/polling station as it is lacking in the instant petition. The requirement of proof of corrupt practice is higher and is confined to strict legal evidence. A penalty has been provided to a person being guilty of offences of corrupt and illegal practices under sections 174 and 183 of the Act, 2017, therefore, the such charge must be proved with strong and convincing evidence.

17. The commission of corrupt practice by the returned candidate or his agent can be a ground for setting aside the election, in case any corrupt practice is committed by the returned candidate or his election agent, the election is void without any further condition being fulfilled. However, in case the corrupt practice is committed by any other person other than the candidate or his election agent, it must be shown that it was committed by him with the consent of the candidate or his election agent. If the corrupt practice is committed in the interest of the returned candidate by an agent, other than his election agent, it is further to be proved that the result of the election in so far as the returned candidate is concerned, has been materially affected. The charge of corrupt practice is quasi-criminal in nature. The allegations relating to the commission of corrupt practice should

sufficiently be clear and be stated precisely to afford the person charged a full opportunity of meeting out the same. The charges when put to the issue should be proved by clear, cogent and credible evidence. There would a presumption of innocence be available to the person charged as the charge has to be proved to the standard of proof being the same as in a criminal trial. The burden of proof cannot be discharged merely on the preponderance of probabilities but the standard of proof is required to be proved like a criminal or quasi-criminal charge, for which credible and reliable evidence is required to prove the charge beyond any reasonable doubt. In the election dispute, it is settled that the burden to prove illegal and corrupt practices lies heavily on the shoulders of the petitioner and that these allegations must be proved with such standard as is required for proving a charge in the criminal trial. It is further settled that in case of doubt arising out of the material placed before the Election Tribunal, its benefits must go to the returned candidate. In the case of **Muhammad Saeed v. Election Tribunal, West Pakistan (PLD 1957 SC 91)**, the Hon'ble Supreme Court has held that;

"A charge of a corrupt practice is a quasi-criminal charge, and, as the Tribunal has stated in its report, the great volume of authority in the corpus of election laws is treated, for the propose of evidence, on the principle to the trial of criminal charges. One such principle is that in case of doubt raised upon the evidence, the benefit of such doubt must go to the accused person...."

In the case of **Hafeezuddin v. Abdul Razzaq (PLD 2016 SC 79)**, Hon'ble Supreme Court has held that;

"Before we embark upon an analysis of the evidence and a determination about the correctness or otherwise of the findings of the learned Tribunal, it is pertinent to mention that the rules of proof for the grounds challenging the election which are founded on corrupt and illegal practices are quite strict and stringent and the allegations in this regard must be absolutely proved through positive evidence without accepting any inferences and if there is any doubt, the benefit must go to the person against whom corrupt or illegal practices are being alleged."

In the case of *Muhammad Siddique Baloch v. Jehangir Khan Tareen* (2016 SC 97), Hon'ble Supreme Court has held that;

"15.... In view of the severe consequences following the proof of corrupt and illegal practices in particular by a returned candidate, different pronouncements by this Court adopt a cautious stance towards a defending incumbent of elected office. The earliest case on the subject is Muhammad Saeed v. Election Petitions Tribunal, West Pakistan, etc. (PLD 1957 SC 91) which holds that each ingredient of the misdemeanor of corrupt or illegal practices must be affirmatively proved by direct or circumstantial evidence is to be believed if all responsible hypothesis which are consistent with the non-commission of corrupt or illegal practices have been excluded..."

In the case of *Usman Dar v. Khawaja Muhamamd Asif* (2017 SCMR 292), Hon'ble Supreme Court has held that;

"24. .. It is settled law that the election petition who alleges the use of illegal or corrupt practices or rigging has to establish his case on the same standard of proof as a criminal case i.e. beyond reasonable doubt..."

In the case of *Kaliq Shah v. Abdul Raheem Ziaratwal* (PLD 2017 SC684), Hon'ble Supreme Court has held that;

"10. The onus to prove allegations of rigging and the use of corrupt and illegal practices is on the person alleging such practices. The quality of evidence and standard of proof must meet the benchmarks set by this Court by production of positive evidence..."

In another case of *Nawab Ali Wassan v. Ghous Ali Shah* (2018 SCMR 87), Hon'ble Supreme Court has held that;

"10. .. It may be noted here that in order to successfully challenge an election on the ground that the same was induced through corrupt practices, the petitioner should be conscious of the fact that the charge of corrupt practices is in the nature of a criminal charge and has to be proved beyond any shadow of doubt. The standard of proof required for establishing such charge is the same as it applicable to a criminal charge. ..."

18. The importance is on the material facts which should be in a concise form. The election petition should set forth full particulars of

corrupt practice which is alleged to have been committed. Such particulars should be complete in every respect and when it relates to an allegation of corrupt practice, it should specifically mention the names of the parties, who alleged to have committed such corrupt practice and the date and the place where such corrupt practice was committed. As such, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should be in a position to gather every minute detail about the alleged corrupt practice such as names of the persons, the nature of the alleged practice indulged in by such person or persons, the place, the date, the time and every other detail relating to alleged corrupt practice. The petitioner cannot simply raise an allegation of corrupt practice and to get away with it he is required to specify corrupt practice in support of the facts so pleaded, as well as, the material particulars.

19. It is also a settled proposition of law that the election results should not lightly be set aside and the will of electorates should ordinarily be respected. Setting aside an election result is a serious matter and it should not be done lightly. The clearness of elections is the core of the democratic system. In case the election is set aside only on the basis of vague allegations of corrupt practices without proving on the basis of evidence, it would be a wrong precedent. The appreciation of evidence for determining the commission of corrupt practice is to be made liberally. It is a mandatory requirement that the election petition is required to contain a concise statement of material facts relied upon by the petitioner by mentioning full particulars of any 'corrupt practice' alleged by the petitioner including the names of the parties alleged to have committed such practice by mentioning date and place of commission of such practice. In case it does not contain a concise statement of material facts and particulars and does not set forth full particulars relating to the alleged corrupt practice in the election petition, the election petition is liable to be dismissed in case it does not furnish the cause of action. The material facts should include the complete chain of material events and the foundation in support of the allegations. The material facts mean a composite bundle of facts, which are sufficient for giving the cause of action and must be specifically averred as to how the result of a petitioner has been materially affected. There should not be any vagueness in the allegations. In case the petitioner does not comply whereof, in such a

situation there is a lacking of material facts and particulars election petition can be dismissed. The outcome of the above discussion is that I did not find the alleged corrupt and illegal practices committed by the returned candidate or his election agent or by any other person with the consent and connivance of the returned candidate. Accordingly, this issue is answered in the negative.

20. Issue No.3.

(Whether the election of respondent No.9 as returned candidate is void and a fresh poll be conducted in the entire constituency?)

Since no direct or circumstantial evidence has come on record which establishes that the respondent No.9/returned candidate with the support of the presiding officers or other polling staff procured his election result in any illegal manner or the persons appointed to perform functions in connection with an election are found guilty of the violation of their official duties and there is no convincing evidence with the principles of the appreciation as applicable to the criminal cases and charge of corrupt practices is like a criminal charge, which must be proved beyond any shadow of a doubt. However, the evidence brought on record by the petitioner is neither of such values, based on which, the election of the entire or part of constituency could be declared as void or respondent No.9/returned candidate could be set with such responsibility. As no forceful evidence has been adduced which may convince that the respondent No.9/returned candidate has committed illegal and corrupt practices directly, through his polling agents or any of the Polling Staff, involved in the rigging in any manner to procure the election results in favour of respondent No.9/returned candidate, as such, on mere presumptions and assumptions, the election results cannot be declared as void and fresh poll be conducted in the entire constituency. Consequently, this issue is also answered in negative.

21. Issue No.4.

(Whether the recount of votes for the entire PS-71 Badin-II is required?)

It would be essential to note here that though the petitioner has prayed in his prayers for recounting of votes of the

entire constituency on perusal of the record, the petitioner has failed to bring on record documentary proof or meet with criteria for permitting a recount in an election matter as laid down in the case of 'Bhabhi v. SheoGovind and others' [AIR 1975 SC 2117], which was discussed by the Honourable Supreme Court of Pakistan in the case of 'JAM MADAD ALI v. ASGHAR ALI JUNEJO and others' [2016 SCMR 251]. Consequently, this issue is replied in negative.

22.

Issue No.5.

(What should the decision be?)

For what has been discussed above, the petitioner has failed to establish its case as prayed; consequently, the instant Election Petition is **dismissed** with no order as to costs.