



GAHC010113552015

Page No.# 1/18



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : El.Pet./1/2015

SMT. ZENEISILE ATE LOUCHI
W/O LHOUTUO LOUCHI, R/O ZHADIMA VILLAGE, P.O. CHIECHAMA, PIN-
797105, DIST-KOHIMA, NAGALAND

VERSUS

NEIPHREZO KEDITSU
S/O KENEILHOULIE, R/O CHIECHAMA BAWA, DIST- KOHIMA, NAGALAND,
PIN-797105

For the Petitioner: Ms. B. Chowdhury, Adv.

For the Respondent: Mr. P. Khataniar, Adv.

THE HON'BLE MR. JUSTICE SUMAN SHYAM

Date of hearing : 22/07/2022.

Date of judgement : 17/08/2022.

JUDGEMENT AND ORDER (CAV)

1. Heard Ms. B. Chowdhury, learned counsel appearing for the election petitioner. Also heard Mr. P. Khataniar, learned counsel representing the respondent.

1. The petitioner herein claims to be a citizen of India and a permanent resident of Zhadima village in the district of Kohima, Nagaland and an elector of No. 11 Northern

Angami-II Assembly Constituency. According to the election petitioner, her name appears in the electoral roll of the said assembly constituency under Polling station No.2, Zhadima Lower (main) in Sl. No. 181.

2. By filing this election petition under section 80 read with section 80-A and 81 as well as the provisions of Part-VI of the Representation of People Act, 1951 (*herein after referred to as the Act of 1951*), the election petitioner has called in question, the election of the respondent, who was declared as the returned candidate in the bye-election of No. 11 Northern Angami-II Legislative Assembly Constituency, Nagland, held on 15/10/2014, on the ground of commission of corrupt practice of bribery within the meaning of section 123 (1)(A) (b) of the Act of 1951.

3. Through her pleadings in the election petition, the election petitioner has alleged two different instances of corrupt practices of bribery allegedly committed by the respondent. The first instance of corrupt practice, according to the election petitioner, was committed by Shri Peter Kuotsu at the Zhadima village by distributing money amounting to Rs. 3000/- per voter, on behalf of the respondent, amongst the voters of 13 clans demanding votes. The relevant pleadings pertaining to the corrupt practice of bribery allegedly committed by Shri Peter Kuotsu at the Zhadima village, have been furnished in paragraph 7 of the election petition, which is reproduced herein below for ready reference :-

“7. That Zhadima village falls under No. 11 Northern Angami-II assembly constituency, Zhadima village constitute of 13 clans. On the 9th of October 2014 respondent’s supporter Shri Peter Kuotsu who is known as Peter distributed money on behalf of respondent amounting to Rs. 3000/- (Rupees three thousand only) per vote to voters residing at Zhadima village at Peter Kuotsu’s residence between 7:00-8:00 P.M. in Zhadima village. The voters who were paid are enrolled in the electoral roll of the constituency under polling station no.2. Peter Kuotsu is a N.P.F. party worker and in the nomination paper filed by respondent, Peter Kuotsu was the proposer of the respondent. Peter Kuotsu was Personal Assistant of Shri Neiphiu Rio former Chief Minister of Nagaland for about 10 years and respondent being son-in-law of Shri Neiphiu Rio, Peter Kuotsu played a very active role in election of respondent. The money was given to the voters through 5 (five) members representative of each clan

who assembled in Peter Kuotsu's residence that day. Peter Kuotsu asked the representative of various clan to cast their votes in favour of the respondent and they were also asked by Peter Kuotsu to ensure that all clan member cast their vote in favour of the respondent. Peter Kuotsu distributed money to voters/elector of the constituency with knowledge, consent and connivance of respondent. At the time of distribution of money petitioner's clan was represented by Medozhalie Loucii, Khriellelie Loucii and Neizolie Loucii and they received Rs. 3,78,000/- (Rupees three lakhs seveny eight thousand) from Peter Kuotsu for 27 votes on behalf of Loucii Clan. Other representing 12 clans also have received money amounting to a minimum of Rs. 3,000/- (Rupees three thousand) per vote. 70% of votes of Zhadima village were purchased by respondent on 9th of October 2014 between 7-8 P.M. by Peter Kuotsu. Entire incident of distribution of money by Peter Kuotsu has been witnessed by Medozhalie Loucii, Khriellelie Loucii and Neizolie Loucii as these persons were present at the residence of Peter Kuotsu during distribution of money. On 09/10/2014 at night Medozhalie Loucii called petitioner and informed her about the incident of distribution of money by Peter Kuotsu, he also said to the petitioner that next day morning he will sent petitioner's share of money received from Peter Kuotsu through Diezelie Loucii. Next day morning i.e. on 10/10/2014, Diezelie Loucii, brother-in-law of petitioner from Zhadima village came to Kohima and met petitioner and offered her share of Rs. 3000/- received from Peter Kuotsu and asked her to vote for respondent. Diezelie Loucii narrated to petitioner the entire incident of distribution of money by Peter Kuotsu, he was also in Zhadima village when money was distributed. Petitioner refused to accept the money offered by Diezelie Loucii and verified about the incident from Khriellelie Loucii, Neizolie Loucii and other members of her clan at Zhadima village. The aforesaid act of Peter Kuotsu on behalf of respondent with consent and connivance of the Respondent constitutes commission of corrupt practice of bribery as defined under section 123 (1)A)(b) of the Representation of the People Act, 1951."

4. The second instance of corrupt practice of bribery alleged by the election petitioner relates to payment of a sum of Rs. 50,000/- to 72 voters from Gariphema village of Kohima,

the facts and particulars of which, have been provided in paragraph 11 of the election petition and the same is reproduced herein below for ready reference :-

“11. That in another incident of 72 voters from Gariphema Village which falls under No. 11 Northern Angami-II assembly constituency were paid Rs. 50,000/- (Rupees fifty thousand each) to vote for respondent. The aforesaid 72 voters stays in A.G. Colony, Kohima, on the evening of 9th October 2014 at 5.00 P.M. they were paid a total of Rs. 36,00,000/- (Rupees thirty six lakhs) to vote for respondent. The money was distributed by Sri Vibeilietuo Kets on 9th October 2014 at 5.00 P.M. in the residence of Sri Kezha Loha at A.G. Colony, Kohima to the voters who assembled there. Sri Vibeilietuo Kets is a contractor and is a supporter of Nagaland Peoples Front (NPF) and General Secretary of NPF for Northern Angami-II Assembly Constituency. Sri Kezha Loha is a business man, he is from Gariphema village and he has a big building in A.G. Colony where voters assembled. Sri Vibeilietuo Kets asked the voters to cast their votes in favour of the respondent. Sri Vibeilietuo Kets distributed money to voters/elector of the constituency with knowledge, consent and connivance of respondent. The aforesaid distribution of money has been witnessed by Pastor Riiduozhii Yashii of A.G. Road Christian Revival Church, Kohima and Achiino Yashii wife of Pastor Riiduozhii. Pastor Riiduozhii and his wife Achiino Yashii informed petitioner about the aforesaid incident of distribution of money to voters on behalf of respondent. Pastor Riiduozhii Yashii also informed petitioner that 2/3 days prior to distribution of money respondent attended a feast in the residence of Sri Kezha Loha and met the Gariphema village voters who were subsequently given money on 9/10/2014 to vote for respondent. The aforesaid incident was informed to petitioner on 12/10/2014 and petitioner by her verbal complaint has informed Income Tax Department on 14/10/2014 about the aforesaid incident.

The aforesaid act of Sri Vibeilietuo Kets on behalf of respondent with consent and connivance of the respondent constitutes commission of corrupt practice of bribery as defined under section 123 (1)(A)(b) of the Representation of the People Act, 1951.”

5. According to the election petitioner, the amount mentioned in paragraph 7 and 11

were distributed amongst the voters for casting vote in favour of the respondent at the bye-election and such activities were carried out with the knowledge and consent of the respondent/returned candidate. Therefore, the same constitutes corrupt practice of bribery within the meaning of section 123(1)(A)(b) of the Act of 1951. In support of the allegation of corrupt practice, the petitioner has annexed a schedule of corrupt practice as well as an affidavit in form 25 of Conduct of Election Rules, 1961, whereby she has mentioned that the statements made in paragraph 7 of the election petition, corresponding to Sl. No.1 of the Schedule of Corrupt Practice are true to her information received from Medozhalie Loucii, Khriellelie Loucii, Neizolie Loucii and Diezelie Loucii, which she believed to be true whereas, the statements made in paragraph 11 of the election petition, corresponding to Sl. No. 2 of the Schedule of Corrupt Practice, are true to her information received from Pastor Riiduozhii Yashii and his wife Achiino Yashii.

6. On receipt of summons issued by the Court, the respondent appeared and contested the election petition by submitting written statement whereby, he has questioned the maintainability of the election petition for want of material facts. The respondent has also specifically denied each and every allegations made in paragraphs 7 and 11 of the election petition and by taking a pleaded stand that the allegations made therein are all false, fabricated, concocted and vexatious in nature, he has prayed for dismissal of the election petition. The respondent has also categorically denied that he had ever provided any money to Shri Peter Kuotsu asking him to distribute the same amongst the voters on his behalf, as has been alleged. He has also denied the allegations of bribery pertaining to 72 voters of Gariphema village by categorically denying each and every allegation brought against him on such count.

7. Based on the pleadings of the parties, by the order dated 31/05/2016, the following issues had been framed for trial of the election petition :-

- “(1) Whether there is any cause of action of the election petition?*
- (2) Whether the election petition is maintainable in its present form?*
- (3) Whether the election petition is bad for defect of parties?*
- (4) Whether the election petition has been duly verified in accordance with law?*
- (5) Whether election of the returned candidate is liable to be set aside on the ground of bribery as enumerated under section 123(1)(A)(b) of the Representation of People Act, 1951?*

(6) *Whether the election petition is entitled to any relief?"*

8. During the course of trial, the election petitioner had examined as many as five witnesses, viz. the election petitioner herself as PW-1, Sri Medozhalie Loucii as PW-2, Sri Zakakhrie Loucii as PW-3 and Sri Diezelie Loucii as PW-4, who had filed their evidence-in-chief on affidavit. PW-5 Sri W. Honje Konyak, who was the Returning Officer, was examined as a witness on the basis of summons issued by this Court.

9. The respondent had examined three witnesses, viz. Sri Kethosituo Sekhose as RW-1, Sri Neiphrezo Kreditsu i.e the respondent himself as RW-2 and Sri K.T. Vilie as RW-3. The arguments on behalf of the election petitioner was initially advanced by the learned senior counsel Mr. Niloy Dutta. However, the hearing in the election petition had to be adjourned due to the out-break of pandemic (COVID-19). During this period, unfortunately, the learned senior counsel Mr. Niloy Dutta expired, as a result of which, further arguments on behalf of the election petitioner had to be advanced by Ms. B. Chowdhury, learned counsel holding the brief.

10. By referring to the materials available on record, the learned counsel for the election petitioner had argued that there is sufficient evidence available on record in support of the pleadings contained in paragraphs 7 and 11 of the election petition for this Court to hold that the respondent was guilty of committing corrupt practice of bribery. It is, however, submitted that although the assembly has since been dissolved and fresh assembly election have already held in the State of Nagaland, yet, since allegation of corrupt practice would invite disqualification of the respondent for a period of six years, even though the returned candidate had not contested the subsequent elections, there is still a live issue surviving for decision by this Court in the proceeding. In support of the above argument, the learned counsel for the election petitioner has relied upon a decision of the Supreme Court rendered in the case of ***Sheo Sadan Singh Vs. Mohan Lal Gautam*** reported in **(1969) 1 SCC 408** and ***Loknath Padhan Vs. Birendra Singh Sahu*** reported in **(1974) 1 SCC 526**.

11. The learned counsel for the election petitioner has further argued that merely because PWs-2, 3 and 4 are relatives of the election petitioner, that by itself cannot be a ground to disbelieve their testimony if the same is otherwise found to be true. Since the witnesses examined by the election petitioner have supported the pleadings in the election

petition and the charge of bribery has been established on the basis of the evidence brought on record, the learned counsel submits that the petitioner is entitled to a declaration from this Court to the effect that the election of the returned candidate in the by-election held on 15/10/2014 in respect No. 11 Northern Angami-II Assembly Constituency, had been vitiated by commission of corrupt practice of bribery by the returned candidate. Therefore, an order be passed by this Court under Section 99(1)(a) and (b) of the Act of 1951, declaring the respondent's election as void and also disqualifying him for six years.

12. Mr. P. Khataniar, learned counsel for the respondent, on the other hand, has argued that the election petition is devoid of the material facts and there is no evidence to prove the charge of bribery brought against the respondent. According to Mr. Khataniar, the allegations made in paragraph 7 of the election petition relates to Shri Peter Kuotsu, who was merely a proposer of election petitioner and not against the respondent. Since the petitioner has failed to prove the ingredients of corrupt practice or the fact that money was distributed with the knowledge and consent of the respondent, the charge of bribery must be held to be unsustainable in law. It is also the submission of learned counsel for the respondent that the petitioner, having failed to furnish proof of the fact that she was in fact, an elector from the No. 11 Northern Angami-II Assembly Constituency by producing documentary evidence, the election petition itself is not maintainable and, therefore, the same is liable to be dismissed on such count alone. Mr. Khataniar further submits that the petitioner has failed to furnish the names and particulars of the voters who had allegedly received money for casting their vote in favour of the respondent in the by-election inasmuch as there is nothing on record to show that the persons who had allegedly received bribe through Shri Peter Kuotsu were, in fact, electors from the said assembly constituency. In the absence of facts and particulars supported by evidence to establish that electors of No. 11 Northern Angami-II Assembly Constituency had, in fact, received bribe paid by the election agent of the respondent and with his consent, Mr. Khataniar submits that the election petition on the charge of bribery would not be maintainable in the eye of law. To sum up his arguments, Mr. Khataniar has submitted that the stand of the election petitioner in her pleadings contradicts the evidence brought on record and there is no evidence to prove any of the allegations brought against the respondent in the election petition. As such, a prayer has been made to dismiss the election petition with costs.

13. I have considered the submissions made by learned counsel for both the sides and have also carefully gone through the materials available on record.

14. As regards the allegation of bribery is concerned, the facts and particulars of such corrupt practices have been pleaded in paragraphs 7 and 11 of the election petition, which have been reproduced herein above. It is the undisputed position of fact that the assembly constituency to which the respondent was elected on 15/10/2015 has already been dissolved and fresh elections to the said assembly constituency in Nagaland has already been held. The returned candidate, however, did not contest the said election. To that extent, the challenge made in the election petition, even if it succeeds, would only have a limited bearing on the respondent/ returned candidate in the form of his disqualification from contesting any election for a period of six years.

15. As per section 100 (1)(b) of the Act of 1951, the election of a returned candidate can be declared to be void on the ground that corrupt practice has been committed by the returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent. Therefore, in the present case, what would be necessary for this Court to determine is as to whether corrupt practice of bribery had, in fact, been committed by the returned candidate or his election agent/or by other person with the consent of the returned candidate or its election agent.

16. Let me now take up the issues for decision. During the course of hearing, learned counsel for both the sides have not advanced any arguments with regard to issue nos. 1 to 4. Moreover, there was no challenge to the maintainability of the election petition at the threshold. Therefore, the issue Nos. 1 to 4 stand answered in favour of the election petitioner.

17. In so far as the issue nos. 5 and 6 are concerned, those are undoubtedly the key issues arising for decision in this election petition. For the sake of convenience, both the issues are being taken up for decision together.

18. Section 123 of the Act of 1951, defines corrupt practices which is reproduced herein below for ready reference :-

“123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) “Bribery”, that is to say, —

(A) any gift, offer or promise by a candidate or his agent or by any other person with

the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

- (a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or*
- (b) an elector to vote or refrain from voting at an election, or as a reward to—*
 - (i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or*
 - (ii) an elector for having voted or refrained from voting;*
- (B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward —*
- (a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or*
- (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.”*

19. From a plain reading of the provision contained in Section 123(1)(A)(b) of the Act, it is thus clear that in order to succeed in this election petition, the petitioner will have to plead and establish through cogent evidence brought on record that money was distributed amongst the electors by the candidate i.e. the returned candidate, or his agent or by any other person with the consent of the candidate or his election agent. It is not the case of the election petitioner in this case that money was distributed by the respondent himself or his election agent. Therefore, unless the consent and knowledge of respondent is proved, a case of corrupt practice of bribery will not be made out against the returned candidate even if it is found that there was distribution of money in the election by some person. Moreover, it will also have to be established based on evidence brought on record that the money was paid to the elector(s) and not to any other person and also with the intention of inducing those voters to vote or refrain from voting at the election.

20. In her evidence filed on affidavit, the election petitioner i.e. the PW-1 has deposed in the line of her pleadings in the election petition. However, during her cross examination, the PW-1 has admitted that she had not seen the incident personally but she has received a sum

of Rs. 3,000/- from Mr. Medozhalie Loucii, who was her brother-in-law. She knew that offering and taking bribe was a criminal offence i.e. why she had returned the amount to her brother-in-law. The PW-1 had stated that she had received the money from Mr. Diezelie Loucii (PW-4). The PW-1 has also admitted that she had not named the voters who were paid and enrolled in the electoral roll of the Polling Station no. 2 of No. 11 Northern Angami-II Assembly Constituency nor has she filed any copy of the electoral roll or voter ID card pertaining to Polling Station No. 2 of the assembly constituency. She had also not filed any document to show that Peter Kuotsu is the Personal Assistant of Shri Neiphiu Rio, i.e. the then Chief Minister of Nagaland. PW-1 has, however, stated that as per her information, Peter Kuotsu had spent a sum of Rs. 3,78,300/- for paying bribe to 126 voters and that the fact mentioned in the election petition to the effect that 27 voters had been procured by Peter Kuotsu was a mistake. She has further deposed that the statements made in paragraph 7 of the election petition was based on information received by her from Sri Medozhalie Loucii (PW-2), who is her brother-in-law, who had wrongly informed her that 27 voters had been bribed. However, on realizing the mistake, no step was taken by her for amendment of the election petition. During her cross-examination, PW-1 has also clarified that she had not personally witnessed the distribution of money but was told about the same by her brother-in-law Medozhalie Loucii (PW-2). She has also stated that, in the election petition, it has not been specifically mentioned about the active role played by Shri Peter Kuotsu but he is the proposer of the returned candidate. She has not mentioned in the election petition that Peter Kuotsu was the election agent of the respondent. The names of the 13 Clans have also not been mentioned in the election petition nor has she mentioned about the population of the 13 clans in the election petition. The PW-1 has further replied that she could not remember the names of all the 126 persons who had received money but some names have been mentioned in the election petition. She was informed by Sri Medozhalie Loucii (over mobile phone) about the alleged incident on 09/10/2014 but she has not provided the mobile number through which she was informed. The money allegedly paid by Peter Kuotsu was offered to her by Sri Diezelie Loucii (PW-4), who had paid her the money at her house situated at Kohima in the morning of 10/10/2014 at about 8 A.M. When money was paid to her, besides herself and Diezelie Loucii, there was no other person present. On a pointed query made by this Court, she had replied that save and except the figure of 27 voters and a

statement to the effect that Sri Medozhalie Loucii had called her in the night of 09/10/2014 informing about the distribution of money by Peter Kuotsu, all the other statements made in the election petition were correct. The PW-1 has also stated that when Diezelie Loucii had offered her bribe money on 10/10/2014, she did not report the incident to the Police. She has also not mentioned anywhere that the respondent was present in the village on 09/10/2014 at the instance of Peter Kuotsu when the bribe money was distributed but has stated that about 2-3 days before the incident, the respondent, along with the family members, had come to the village where a community feast was organized and therein he had made an appeal to the villagers seeking vote. In that feast, Peter Kuotsu was present. The PW-1 has, however, admitted that she had not mentioned about these facts in the election petition as well as in her evidence-in-chief. PW-1 has also admitted that in her election petition or in the evidence-in-chief, she has nowhere mentioned about the source of her information regarding the knowledge and consent on the part of the respondent as regards the activities of Peter Kuotsu in distributing money to the voters but since Peter Kuotsu was actively involved in the election campaign of the respondent, she had inferred that the respondent had proper knowledge and consent of such activities. The PW-1 has also admitted that she had a residence in Delhi and she came from Delhi to adduce evidence before the Court. PW-1 has further stated that Sri Medozhalie Loucii (PW-2), Sri Zakakhrie Loucii(PW-3) and Sri Diezelie Loucii, PW-4), who have been called as witness, are all her relatives.

21. Sri Medozhalie Loucii i.e. PW-2, in his cross examination by the respondent has stated that although he was not personally asked by Peter Kuotsu to go to his residence, yet, he went there because such an information was circulated amongst the members of the clan. He was not selected by the community as one of the representative of the clan to receive the money from Peter Kuotsu. He has not submitted the list of 142 persons, who had received money. The persons who had accepted money have put their signature in the register lying in the residence of Peter Kuotsu but he has not produced the said list. According to Pw-2, 126 persons had accepted bribe money amongst the clan members. In his evidence-in-chief he has stated that they had received Rs. 3,00,000/- from Peter Kuotsu. PW-2 has further stated that although in his evidence, he has stated that the people had gathered in the house of Peter Kuotsu to accept the money, yet, in reality, the amount was distributed by door to door visit. The names of 3 representatives of the community are Khriellelie Loucii, Mhalebeizo

Loucii and Medozhalie Loucii (PW-2). He and his wife had received Rs. 3,000/- each. He had paid Rs. 3,000/- to Diezelie Loucii, which was meant to be paid to his sister-in-law (election petitioner). This witness has further admitted that he had earlier stated before the SDO-cum-Sector Magistrate that he was not involved in purchasing of votes but he has received some amount only for the purpose of organizing a party, so as to celebrate the work done by them for electioneering. PW-2 has also admitted that he was an NPF supporter and regardless of any inducement, he would support the NPF and cast vote in favour of the respondent/returned candidate. This witness has further stated that it is a fact that the respondent (returned candidate) has not paid any bribe to the voters.

22. PW-3 Zakakhrie Loucii has stated during his cross examination that he did not personally go to the residence of Peter Kuotsu nor has Peter Kuotsu paid any money to him. The money was handed over to him by Medozhalie Loucii. He could not say anything about others having received money. He only knew that the money was paid to him by Medozhalie Loucii (PW-2). This witness has further stated that he had not personally seen Neiphrezo Kreditsu i.e. the respondent handing over any money to Peter Kuotsu for distribution amongst the clan members for the election purpose.

23. Sri Diezelie Loucii was examined as PW-4. During his cross examination by the respondent, this witness has deposed that his evidence-on-affidavit was prepared by "Advocate Bharali". He has put his signature on the affidavit in the advocate's chamber. As a Pastor, he preaches and also prays for others. He was aware that respondent was the son-in-law of Shri Neiphiu Rio. On 09/10/2014, he had visited the house of Medozhalie Loucii (PW-2) but he has not seen Medozhalie Loucii coming to the house of Peter Kuotsu. On 09/10/2014, while he was in the house of Medozhalie Loucii, he had gone out for some time and returned back at around 8 P.M. he was told that 3 (three) persons had received a sum of Rs. 3,78,000/- for being distributed amongst the members of the said clan. Medozhalie Loucii, however, returned back home alone. He did not see any money in the hands of Medozhalie Loucii. Medozhalie Loucii had handed over a sum of Rs. 3,000/- to him asking him to give it to his sister-in-law (election petitioner) as pocket money but when he offered this money to his sister-in-law, she refused to accept the same calling it as election money.

24. Sri W. Honje Konyak was the Returning Officer and he was examined as PW-5. This witness has deposed before the Court by stating that he remembers having received a

complaint forwarded by the Chief Electoral Officer, Nagaland, in respect of allegation of distribution of money to purchase votes against Sri Neiphrezo Kreditsu (respondent). He had entrusted RW-1 to conduct an inquiry into the allegation made in the aforesaid complaint, which was filed by a lady, viz. Smt. Zeneisiile Ate Loucii. After the inquiry, RW-1 had submitted a report which he later on forwarded to the Chief Electoral officer.

25. Sri Kethosituo Sekhose, who was serving as SDO(C) –cum-Sector-I Magistrate, posted in the office of the Additional Deputy Commissioner, Chhiephobozou district, Kohima, was examined as RW-1. This witness has stated that vide letter dated 11/10/2014, he was asked to verify the allegations made by the election petitioner with regard to distribution of money by one candidate through his agent. On conclusion of the inquiry conducted by him, it could be found that there was no concrete proof of distribution of money for votes at *Zhadima village* as alleged by the election petitioner. During the course of his inquiry, he had also examined Medozhalie Loucii and he had told him that he had not met Peter Kuotsu in last one month. Therefore, there was no question of receiving any money from Peter Kuotsu is what was stated by Medozhalie Loucii (PW-2). RW-1 has further deposed that one Sri K.T. Ville, the then Village Council Chairman, *Zhadima village* had stated that there was no complaint whatsoever regarding purchase of votes by offering money for votes, which had come to his attention. Further, he had stated that the village council had passed an oral resolution to the effect that no political party would be allowed to resort to any unfair means during the upcoming bye-election to No. 11 Northern Angami-II Assembly Constituency. This witness has further deposed that he had also tried to contact the election petitioner but could not do so inspite of his best effort. From the relevant queries made by him, he could learn from the villagers that the election petitioner is not a permanent resident of *Zhadima village*. He could also learn from the Chairman of the Village Council that the election petitioner lives in Dimapur and her husband lives in New Delhi. He was also told that the election petitioner had not visited *Zhadima village* for a very long time.

26. During his cross examination, RW-1 has stated that during the course of inquiry, he had interacted with the villagers who had not only denied of having received any money from Shri Peter Kuotsu but a member of the villagers had even told him that they had not seen Peter Kuotsu in the village for a long time. Later on, he had met the Chairman of the village council and he had also confirmed that the story regarding distribution of money by Peter

Kuotsu was totally untrue. Since he could not gather any evidence to indicate that Peter Kuotsu had indulged in distributing money amongst the villagers, he had submitted his report on 14/10/2014 before the Deputy Commissioner stating that the allegations were unfounded.

27. The respondent (returned candidate) had examined himself as RW-2. He has deposed before the Court that Sri Vibieliuetuo was his election agent and Shri Peter Kuotsu was his proposer who had engaged his counting agents. He had chosen Peter as his proposer because Peter was the President of the Assembly Constituency. He was aware of the allegations made in the election petition. RW-2 has stated that the role played by Peter Kuotsu for campaigning for his election was as per the instruction received from the High Command and he was not aware if Peter along with the party workers visited his constituency for campaigning on his behalf. He did not talk to Peter after he received notice in this case. To a pointed query made as to whether Peter had distributed money on his behalf, the RW-2 has replied that he could not say anything about it but he believes that Peter has not done so because that would go against the instruction of the party High Command. This witness has categorically denied of having any knowledge or having given consent to his election agent to distribute money amongst the voters.

28. Sri K.T. Ville, who was the Chairperson of the village council of *Zhadima village* during the period from 2002 to 2016, was examined as RW-3. RW-3 has stated that he knew the election petitioner because she had married a person belonging to *Zhadima village*. As far as his knowledge goes, the election petitioner does not have a residence in the *Zhadima village*. He is not aware if the election petitioner has any business establishment in *Zhadima village*. As per his knowledge, the election petitioner is a resident of Gurgaon, Haryana. RW-3 has stated that he knew Shri Peter Kuotsu but he was not present at *Zhadima village* on 09/10/2014. He had never heard anything which indicated that Peter Kuotsu was the foster son of Shri Neiphiu Rio. RW-3 has further stated that he was aware that the election petitioner had lodged a FIR and he came to know that an inquiry was made by the local Magistrate on 14/10/2014. During the inquiry, the Magistrate had called three family members of the election petitioner, viz. Medozhalie Loucii, Khrielelie Loucii and Neizolie Loucii. The Magistrate had also called him. The three family members of the election petitioner had stated before the Magistrate in his presence that they have neither received any money from Peter Kuotsu nor have they seen him in the village since last one month. He had also told the

Magistrate that no political party should use any unfair means in the election. RW-3 has also stated that the village council had asked the election petitioner to apologize for making false allegation against Peter Kuotsu saying that he had distributed money amongst the voters during the bye-election of No. 11 Northern Angami-II Assembly Constituency and it is on account of such threat coming from the village council that the election petitioner had to leave *Zhadima village* so as to file a case being WP(C) 635/2015 before the Hon'ble Supreme Court of India.

29. From a careful analysis of the evidence available on record, this Court finds that there is no evidence, whatsoever, in support of the averments in paragraph 11 of the election petition corresponding to Sl. No.2 of the schedule of corrupt practice relating to distribution of money amongst the voters of Gariphema Village. According to the election petitioner, she had heard about distribution of money at Gariphema village from Pastor Riiduoshii Yashii and his wife Achiino Yashii but none of them have been examined as witnesses in support of the allegation made in paragraph 11. Therefore, the allegation regarding corrupt practice allegedly committed at the Gariphema village has remained wholly un-substantiated.

30. In so far as the allegations made in paragraph 7 of the election petition regarding distribution of money amongst the voters of Zhadima village is concerned, it can be seen from the evidence adduced by the election petitioner as PW-1 that her testimony not only contradicts the pleaded stand as regard the number of voters who had been allegedly bribed but the PW-1, during her cross examination, has herself admitted that some of the information received by her from PW-2 were not correct. However, she has not explained as to which of the information was not correct. It is to be borne in mind that here also, the allegations are entirely based on the information received by her from Sri Medhozhlie Loucii (PW-2).

31. PW-2 Medozhalie Loucii was the key witness in this case who had allegedly reported the entire matter to the election petitioner based on which allegations have been made in the election petition. However, during his cross examination, the PW-2 was shakened. This witness had virtually admitted that he was not involved in the purchase of vote but had received some money for celebration of the work done during electioneering. If the said version of PW-2 is believed, than the same would completely falsify the allegation of distribution of money by Peter Kuotsu for purchasing votes.

32. Evidence of the remaining witness examined by the election petitioner also do not establish the fact that Peter Kuotsu had, in fact, distributed money amongst the voters, as bribe, for procuring their votes. On the other hand, the evidence lead by the respondent clearly demolishes the case of the election petitioner as regards the allegation of payment of bribe to the voters. There is no evidence to indicate that the voters were bribed under the instruction of the returned candidate.

33. Law is well settled by a long line of judicial pronouncement that allegation of corrupt practices must be proved in the same manner as a criminal charge. In the case of **Razik Ram Vs. Jaswant Singh Chauhan** reported in **(1975) 4 SCC 769**, it has been held that charge of corrupt practice is substantially akin to criminal charge.

34. In the case of **Monmohan Kalra Vs. Yash** reported in **(1984) 3 SCC 499**, the Hon'ble Supreme Court has observed that the allegation of corrupt practice must be proved as strictly as a criminal charge and the principle of preponderance of probabilities would not apply to corrupt practices because if this test not applied, serious prejudice would be caused to the elected candidates.

35. In **Surendra Singh Vs. Hardial Singh** reported in **(1985) 1 SCC 91**, the Supreme Court has observed that the charge of corrupt practices are to be equated with criminal charges and proof thereof would be not of preponderance of probabilities as in civil proceeding but beyond reasonable doubt as a criminal trial.

36. After taking note of the aforesaid decisions, the Supreme Court has further explained the law on the subject in the case of **M.J. Jacob Vs. A. Narayanan and others** reported in **(2009) 14 SCC 318** by holding that in an election petition, for proving the allegation of corrupt practice, the standard of proof is like that in a criminal case. In other words, the allegation must be proved beyond reasonable doubt and if two views are possible, than the benefit of doubt should go to the elected candidate.

37. As noted above, there is no evidence available on record to prove that there was distribution of money amongst the elector(s) of Gariphema village by Sri Vibeilietyo Kets on 9th October, 2014 as has been alleged in paragraph 11 of the election Petition. As such, the question of knowledge or consent of the respondent in this regard does not arise. In so far as the allegation as regards distribution of money by Peter Kuotsu amongst the members of 13

Clans of Zhadima Village, here also, I find that the evidence adduced by the election petitioner does not prove the said allegation.

38. From an analysis of the pleadings in the election petition as well as the evidence on record, it is apparent that the election petitioner did not herself see any money being distributed but according to her, she came to know about the same on being informed by Medozhalie Loucii (PW-2). According to the election petitioner, who had examined herself as PW-1, money was paid to her by Sri Diezelie Loucii (PW-3) in the morning of 10-10-2014 at about 8 A.M. and she had declined the same. However, PW-1 has herself deposed that some of the information about distribution of money on 09/10/2014 given to her by Medozhalie Loucii (PW-2) were not correct.

39. PW-2 Medozhalie Loucii has taken a completely different stand by deposing that 126 persons had accepted bribe money from Peter Kuotsu by signing a register but later on, he has deposed that the money was actually distributed by door to door visit. If the voters were receiving bribe money from Peter Kuotsu then also it difficult to believe that they would do so by signing a register as stated by the PW-2. According to RW-1, the PW-2 had stated before him that he had not met Peter Kuotsu in last one month and, therefore, there was no question of receiving any money from him. Therefore, the evidence of PW-2 is not found to be trustworthy.

40. The evidence adduced by the remaining witnesses examined by the election petitioner also does not establish the fact that money was distributed by Peter Kuotsu amongst the voters of the constituency from Zhadima Village with the knowledge and consent of the respondent. The evidence of RWs-1, 2 and 3 on the other hand, goes to disprove the case of the election petitioner by totally negating the story of distribution of money amongst the voters.

41. Be that as it may, even if the evidence adduced by the election petitioner is taken on the face value, even then, it could at best go to show that some money was distributed amongst the villagers wherein Peter Kuotsu had some role to play but the same would be insufficient, in the opinion of the Court, to hold that voters were being bribed by the election agent of the respondent, that too, with his knowledge and consent. In the absence of any evidence to show that there was distribution of money amongst the voters of No. 11 Northern Angami-II Assembly Constituency by Peter Kuotsu with the knowledge and consent of the



respondent, the election of the returned candidate cannot be declared to be void on the ground of committing corrupt practice within the meaning of Section 123 (1)(A)(b) of the Act of 1951. As such, it is held that the election petitioner has failed to prove the allegation of corrupt practice by adducing cogent evidence. Therefore, there is no scope for this Court to issue any declaration under Section 8A of the Act of 1951 disqualifying the returned candidate from contesting election in future.

42. For the reasons stated herein above, the election petition fails and is hereby dismissed.

Parties to bear their own costs.

Send back the records.

JUDGE

Sukhamay

Comparing Assistant