
Rebuttal evidence in Civil suits and Election Dispute.



RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

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COURT: HON'BLE CHIEF JUSTICE ABDULLAH BALOCH
SUBJECT: CIVIL LAW
DATE: 19TH AUGUST 2024
BY: NOOR BAKHSH MENGAL RESEARCH OFFICER

QUERY: **What is the effect of rebuttal evidence in determining the outcome of the (i) Civil Cases and (ii) Election Disputes?**

In reply to the query, it is submitted that it is established principle that the burden of proof generally rests on the party moving the court for relief however if the other party offer evidence in rebuttal, the courts should evaluate the evidence based on the *preponderance of evidence*, and the party with the stronger evidence will prevail. Guidance may be obtained from the **case of KHALID HUSSAIN and others--- Petitioners/Appellants Versus NAZIR AHMAD and others--- Respondents 2021 S C M R 1986 [Supreme Court of Pakistan]**. Excerpt of the relevant para is reproduced below for ready reference.

*"6. There is no cavil to the proposition that the onus to prove the claim is ordinarily on the person moving the court to seek his relief, as he is the one who is to fail if no evidence at all is given on either side.⁵ However, **when the contesting party takes up a defence and desires the court to pronounce judgment as to his legal right dependent on the existence of facts which he asserts, then the onus to prove those facts lies on him.**⁶ It is after the parties have produced their respective evidence that, the court is to consider and evaluate the evidence, in civil cases, on the touchstone of preponderance of evidence. It is on whose side the scale of evidence tilts would emerge as the victor, and be awarded the positive verdict."*

In the same vein, in case of **Mst. KANEEZA BIBI and 4 others--- Petitioners Versus SABIR HUSSAIN and 3 others---Respondents P L D 2023 Lahore 380**, the Lahore High Court has observed that the burden of proof typically lies with the party asserting the claim but once both the sides introduce evidence they have to be evaluated, based on the balance of probabilities. The case highlights the principle that evidence must reach a degree of cogency sufficient to discharge the burden in civil matters. It beneficial to reproduce the relevant part of the judgment for kind perusal, as under:-

*"18. Learned counsel for the parties have also raised dispute as to burden and standard of proof. They have read the evidence of rival sides pointing out the discrepancies with the contentions that the said discrepancies should lead to adverse conclusion. There are no two views about the proposition that onus is normally on the one who asserts. The person seeking relief fails when he has not led evidence in his support. **In the present case, both parties led their respective evidence, thus, the Court has to evaluate evidence on the***

balance of probabilities and the case is to be decided in favour of one party, unless the evidence of rival arises to the same degree of cogency as is required to discharge the burden in civil matters. Reliance, in this regard, can be placed on case titled "Miller v. Minister of Pensions" (1947 All England Law Reports, Vol-2, Page 372). The relevant extract is as follows: -

"...This means that the case must be decided in favour of the man unless the evidence against him reaches the same degree of cogency as is required to discharge a burden in a civil case. That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that tribunal can say: "We think it more probable than not" the burden is discharged, but, if the probabilities are equal, it is not."

(underlining added)

The Honourable Supreme Court of Pakistan in case titled "Khalid Hussain and others v. Nazir Ahmad and others" (2021 SCMR 1986) has observed, regarding the point in hand, as follows: -

"6. There is no cavil to the proposition that the onus to prove the claim is ordinarily on the person moving the court to seek his relief, as he is the one who is to fail if no evidence at all is given on either side. However, when the contesting party takes up a defence and desires the court to pronounce judgment as to his legal right dependent on the existence of facts which he asserts, then the onus to prove those facts lies on him. It is after the parties have produced their respective evidence that, the court is to consider and evaluate the evidence, in civil cases, on the touchstone of preponderance of evidence. It is on whose side the scale of evidence tilts would emerge as the victor, and be awarded the positive verdict."

It is also apropos to add here that Law is well settled that a party cannot benefit from the weaknesses in the opposing party's case. In this regard light can be had from the case of **REHMATULLAH and others---Petitioners Versus MUHAMMAD IBRAHIM and others---Respondents 2024 Y L R 1556 [Balochistan]**. This judgment emphasizes that Under Article 117 of the Qanun-e-Shahadat Order, 1984, the burden of proof lies with the party seeking relief. The plaintiff must prove their case through reliable and cogent evidence. The portion of the judgment, germane of the proposition is extracted in the following for ready reference: -

"8. Under Article 117 of the Qanun-e-Shahadat Order, 1984 whoever desires any court to give judgment/decision as to any legal right or liability in the existence of fact which he assert must prove the same. As per above referred provision the heavy burden is on shoulder of plaintiff to prove his case through cogent and reliable evidence. It is well settled principle of law that party approaching the court for grant of relief would have to discharge the burden on the strength of his/their own evidence and could not avail any benefit of any weakness in the case of opposite party. Reliance is placed on the case of Administrator Municipal Corporation Peshawar v. Taimoor Hussain Amin PLD 2020 SC 249, whereby it has been observed as under:

"12. The burden of proof lay on the Plaintiffs (Articles 117, 118 and 119 of the Qanun-e-Shahadat Order, 1984) to prove, firstly, that the Property was bought by them, secondly, that they had bought it from the Sellers and, thirdly, that the Sellers were its owners, however, the Plaintiffs did not establish any of this. The Plaintiffs simply relied on sale mutation No. 8482, however, this mutation was denied by the Corporation therefore the Plaintiffs, the beneficiary of the purported sale, had to establish the original sale transaction; a well established principle and referred to in a number precedents of this Court, some of these cases (prior to the judgment of the judgment dated 21st April 2011 of the learned Civil Judge) are: Muhammad Akram v. Altaf Ahmad (PLD 2003 Supreme Court 688), Fida Muhammad v. Murid Sakina (2004 SCMR 1043), Muhammad Hussain v. Wahid Bakhsh (2004 SCMR 1137), Arshad Khan v. Resham Jan (2005 SCMR 1859), Muhammad Afzal v. Matloob Hussain (PLD 2006 Supreme Court 84) and Abdul Rasheed v. Manzoor Ahmad (PLD 2007 Supreme Court 287); all these precedents were disregarded by the learned Civil Judge."

In case of **2024 Y L R 1227 [Peshawar (Mingora Bench)] AMIR ZADA and another---Petitioners Versus JAFAR SHAH and others---Respondents** it has been held that The plaintiff must establish their case through their own evidence and cannot rely on the defendant's shortcomings. The Court has held as under:

10 Under the law, the petitioners/plaintiffs have to establish the facts on the strength of their evidence, so set up in their plaint. In this regard, Article 117 of the Qanun-e-Shahadat Order, 1984 is relevant, which is reproduced as under:

"117. Burden of proof.---(1) Whoever desires any Court to give judgment as to any legal right of liability dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

The aforesaid Article declares that a person, desires a Court to issue a judgment in his favour, has to prove all those facts which he has pleaded in his plaint, however, the record made available before this Court would transpire that the petitioners/plaintiffs could not prove the existence of all those facts on which they have based their plaint. **Needless to mention here that the plaintiff has to prove his own case on the basis of his own evidence and he cannot be allowed to take any benefit from the weakness or lapses of the defendant's evidence.** Reliance is placed on the case of Qahaim Khan and 4 others v. Amar Khan and 2 others reported as 2022 CLC 335, wherein, the Balochistan High Court has held that:

"Admittedly it is responsibility and duty of claimant to prove his case on his own strength. Under Article 117 of Qanun-e-Shahadat Order, 1984 (Order, 1984), the burden of proof lies on person who desire the court to give decision in his/their favour. It is bounden duty of a party to prove the claim through cogent and confidence inspiring evidence. The plaintiff must prove his case on the strength of his own evidence. He cannot take benefit from the weaknesses of the defendant's case."

Similarly, in the case of Muhammad Latif v. Bashir Ahmed and 7 others reported as 2004 CLC 1010, the Lahore High Court has also held that:

"It is settled proposition of law that a party has to succeed on the basis of his own evidence and not on account of lapses in the case of his adversary."

In the case of Abdul Waheed v. Muhammad Bilal reported as PLD 2005 Peshawar 19, this Court has also held that:

"Needless to emphasize that burden of proof always lies upon the plaintiff and plaintiff cannot be benefited from short comings of defendant's case, where the case of plaintiff was doubtful and the entire evidence of plaintiff was self-contradictory and highly discrepant."

In case of **GOVERNMENT OF PAKISTAN, MINISTRY OF HOUSING AND WORKS Versus FAZAL WAHAB 2020 P L C (C.S.) 708 [Peshawar High Court]** the Court held that burden of proof lies with the party asserting a fact and that mere assertion are insufficient without supporting evidence. Following is the reproduction of what the judgment reads:

"9.The onus was on the defendants/petitioners to prove the factum of subletting in accordance with the provision of Article 117 of the Qanun-e-Shahadat Order, 1984, which reads as under:-

"Burden of proof (1) whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist,

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

The petitioner was required to prove that the plaintiff/respondent has sublet the quarter in dispute to anyone else. It could be proved during inquiry by associating him with the inquiry and by collecting some direct or tangible evidence or during the proceedings before the trial court. But, amazingly, he could not discharge the burden of proof as required by the Qanun-e-Shahadat Order, 1984. Reference can be made to the case law reported in 2008 SCMR 139 wherein it has been held that:-

"Burden of proof as to any particular fact lies on the person who wishes to believe the court in its existence unless it is provided by law that proof of the fact lies on another person"

Initially, it was to be proved by the defendants/petitioners that the allotted quarter has been sublet by the plaintiff/respondent Fazal Wahab but the record reveals that the defendants/petitioners have never taken it seriously, so, mere alleging a particular fact is not sufficient unless it is proved by the reliable evidence which is lacking on the part of the defendants/petitioners."

In case of **NAIMATULLAH and others----Petitioners Versus MIR JAMAL and others----Respondents 2024 C L C 75 [Balochistan]**

the legal notion that the burden of proof lies with the party making the claim has been reinforced, holding that failure to prove the claim cannot be remedied by pointing out weaknesses in the opposing party's evidence. It would be advantageous the copy of exact words of the judgment here under:-

8.....The weaknesses of the evidence of the petitioners Nos. 1 to 10 do not entitle respondents for out-right decretal of their suit. Reliance is laced on the case of Agha Co-operative Housing Society Limited v. Syed Akhtar Ali and others (1994 MLD 1747). In this case, the respondents failed to discharge burden of proof of purchase of the suit land through a contract, therefore, they cannot refer to the weaknesses of the petitioners' side. The respondents also failed to prove fraud in relation to the mutations in the names of the petitioners Nos. 1 to 10."

Following case also underscores the principle that a plaintiff must succeed based on their own evidence and not on the deficiencies in the defendant's case.

AGRA COOPERATIVE HOUSING SOCIETY LIMITED---Plaintiff versus Syed AKHTAR ALI and others---Defendants 1994 M L D 1747 [Karachi]

"I am afraid I cannot subscribe to this contention of the learned counsel as it is a cardinal principle of law that the plaintiff has to stand on his own legs and succeed on the basis of his own case. The principles of evidence also lay down that the burden to prove a certain fact lies on the party who comes to the Court or who would otherwise fail if no evidence was brought in support of his contention."

It is significant to observe that that the burden of proof lies with the party, not necessarily the plaintiff, making a claim. In the case of **GOVERNMENT OF PAKISTAN, MINISTRY OF HOUSING AND WORKS Versus FAZAL WAHAB 2020 P L C (C.S.) 708 [Peshawar High Court]** the defendants had the responsibility to prove that the plaintiff had sublet the quarter in dispute. The court held that the defendants failed to meet this burden because they did not provide sufficient or reliable evidence to substantiate their claim, demonstrating that mere allegations without proof are insufficient. In order to have a fuller understanding of the principle, it is deemed appropriate the reproduce the observation of the Court in verbatim as under:-

8.....The onus was on the defendants/petitioners to prove the factum of subletting in accordance with the provision of Article 117 of the Qanun-e-Shahadat Order, 1984, which reads as under:-

"Burden of proof (1) whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist,

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

The petitioner was required to prove that the plaintiff/respondent has sublet the quarter in dispute to anyone else. It could be proved during inquiry by associating him with the inquiry and by collecting some direct or tangible evidence or during the proceedings before the trial court. But, amazingly, he could not discharge the burden of proof as required by the Qanun-e-Shahadat Order, 1984. Reference can be made to the case law reported in 2008 SCMR 139 wherein it has been held that:-

"Burden of proof as to any particular fact lies on the person who wishes to believe the court in its existence unless it is provided by law that proof of the fact lies on another person"

Initially, it was to be proved by the defendants/petitioners that the allotted quarter has been sublet by the plaintiff/respondent Fazal Wahab but the record reveals that the defendants/petitioners have never taken it seriously, so, mere alleging a particular fact is not sufficient unless it is proved by the reliable evidence which is lacking on the part of the defendants/petitioners.

Rebuttal evidence in Election Disputes (Standard of Proof)

In reply to the second part of the query, it is submitted that in a chain of judgments of the apex court of the country has held that in election matters the standard of proof required is akin to that of criminal cases, where allegations must be proved beyond reasonable doubt. This high threshold is necessitated by the severe consequences that may ensue, such as the annulment of an election, the loss of civic rights, and the negation of the electoral will. The following precedents elaborate the concept of standard of proof in election matters, the relevant paras are given below for ease reference.

NAWAB ALI WASSAN---Appellant Versus Syed GHOU ALI SHAH and others Respondents 2018 S C M R 87 [Supreme Court of Pakistan]

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 is applicable to a criminal charge. The evidence should be absolutely credible by the standards of the appreciation applicable to criminal cases and should be able to stand the test of strict and scrupulous scrutiny. It is also now well settled that the party seeking to challenge the validity of an election should essentially specify in the election petition the incident(s) of corrupt practice with as much

precision as is possible and with all necessary details and particulars. The petitioner should keep in mind that no fresh charge or incident can be introduced during the trial. The other well pronounced principle is that the evidence in proof of the alleged corrupt practices is to be restricted to the instances as set out in the petition, and in order to succeed, the petitioner has to prove such ingredient of the corrupt practice alleged, affirmatively. Statement of allegation contained in the petition should therefore be precise and should clearly contain all the necessary details as required in terms of section 55 of the ROPA.

Mst. SUMAIRA MALIK---Petitioner Versus Malik UMAR ASLAM AWAN and others---Respondents 2018 S C M R 1432 [Supreme Court of Pakistan]

6. After having heard learned counsel for the parties, we concluded that the review ought to be allowed. We begin by referring to a point of fundamental importance, namely, the standard of proof applicable in election matters. The law in this regard is well settled, based on judgments of this Court going back several decades. We may note that a specific query in this regard was put to learned counsel for respondent No. 1 during the course of the hearing. The position was recently reaffirmed in Muhammad Siddique Baloch v. Jehangir Khan Tareen and others PLD 2016 SC 97, from which the following passages are relevant:

"15. The law regarding the quality of evidence necessary to prove an allegation of corrupt and illegal practices committed by a candidate during his election is by now well settled.... 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 and others (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. Circumstantial evidence is to be believed if all reasonable hypotheses which are consistent with the non-commission of corrupt or illegal practices have been excluded. The said rule has been reiterated with approval in Muhammad Yusuf v. S.M. Ayub (PLD 1973 SC 160) and in Muhammad Afzal v. Muhammad Altaf Hussain (1986 SCMR 1736)." (pp. 111-2)

"29. At this juncture, it is important to emphasize that in cases involving a finding of fact about the disqualification of a returned candidate in election matters, such finding must be based on affirmative evidence and not on presumptions, inferences and surmises. That does not mean that proceedings in an election petition before an Election Tribunal are strictly criminal proceedings. **It is settled law that even in civil proceedings, a finding of fact must be based on positive and affirmative evidence.** This requirement rests in the basic principles of the Qanun-e-Shahadat Order, 1984 and is articulated in Allah Din v. Habib (PLD 1982 SC 465). For that

reason and the serious consequences that follow a finding of disqualification under Article 62(1)(f) of the Constitution, an additional evidentiary safeguard is adopted by the Court, namely, that any reasonable hypothesis available in the recorded evidence to avoid the disqualification of the returned candidate ought to be adopted by the Court of law. The foregoing safeguards have already been laid down in relation to the proof of corrupt practice by a candidate in an election. Section 78(3)(d) of the ROPA treats a false statement by a candidate about his educational qualification to be a corrupt practice.

30. The earliest pronouncement on this subject is rendered by this Court in Muhammad Saeed's case (PLD 1957 SC 91), wherein it is held that:

"... the burden of proof of corrupt practices is on the petitioner; that the evidence of proof of such practices must be restricted to the charges or instances mentioned in the petition and the particular; that each ingredient of a corrupt practice so charged must be affirmatively proved by evidence, direct or circumstantial; and that where the evidence is wholly circumstantial, the commissioners before finding a corrupt practice proved must exclude all reasonable hypotheses which are consistent with that corrupt practice having not been committed... ."

31. A case directly pertaining to disqualification of a returned candidate was heard by this Court in Mohammad Yusuf's case (PLD 1973 SC 160) wherein whilst adopting the view taken in Muhammad Saeed's case (PLD 1957 SC 91) this Court has observed that finding of disqualification must be based on positive evidence and should not be rendered inferentially on mere surmises; that since a disqualification was penal in nature, therefore, the terms thereof were subject to strict interpretation; and the benefit of doubt was to be extended in favour of a returned candidate. The later judgments of this Court rendered in Saeed Hassan's case (PLD 1976 SC 6) and Muhammad Afzal's case (1986 SCMR 1736) approve the principles enunciated in the afore-noted two judgments." (pp. 119-20)

7. In our view, the foregoing passages encapsulate the bedrock principles that apply in relation to the standard of proof required in election matters. It will be seen that the standard is much higher than the well-known civil standard (balance of probabilities) though short of the criminal standard (beyond reasonable doubt). However, one thing is clear. If there be a (notional) halfway point between the civil and criminal standards, the standard laid down for election matters is well above and beyond that. Any evidence tendered in an election matter must be considered and "appreciated" by adhering to this standard, and not otherwise. Applying the correct standard of proof is crucial and goes to the very root of the decision. This brings us to the nub of the matter, i.e., the visual examination by the Court itself of the photographs and the signatures. As noted, in this regard reference was made in the judgment under review to Article 84 of the QSO in para 37, where three earlier decisions of the Court were also cited. With respect, all three decisions were in relation to civil matters, where the

standard of proof is substantively different. Had the Court been properly assisted, and the record examined in the perspective of the requisite standard, we are in no doubt that the matter would have been referred for expert consideration and analysis. Once such report was received, then the totality of the record would have been dealt with by applying the standard of proof required of election matters. That situation has now come about. With respect, the objections taken to the Agency's report by learned counsel for respondent No. 1 are not at all convincing. The report unequivocally concludes that all the photographs are those of the petitioner. Most crucially, that includes the photographs taken from the University record in relation to the B.A degree. That at once puts paid to the respondent No. 1's case that the degree was obtained by impersonation. No other conclusion is possible on an application of the requisite standard.

Syed HAFEEZUDDIN---Appellant Versus ABDUL RAZZAQ and others-- P L D 2016 Supreme Court 79

5.....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**, as held been held by this Court in the cases reported as Muhammad Saeed and 4 others v. (1) Election Petitions Tribunal, West Pakistan, (2) Mehr Muhammad Arif Khan, (3) Ghulam Haider and (4) West Pakistan Government and others (PLD 1957 SC (Pak.) 91); Mian Jamal Shah v. (1) The Member Election Commission, Government of Pakistan, Lahore, (2) The Returning Officer, Constituency of the National Assembly of Pakistan No. NW-II, Peshawar II, and (3) Khan Nasrullah Khan (PLD 1966 SC 1); Khan Muhammad Yusuf Khan Khattak v. S. M. Ayub and 2 others (PLD 1973 SC 160) and Pyar Ali

Syed KHALIQ SHAH---Appellant Versus ABDUL RAHEEM ZIARATWAL and others--Respondents P L D 2017 Supreme Court 684

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 Usman Dar and others v. Khawaja Muhammad Asif and others (2017 SCMR 292) we held as follows:-

"Reference may be made to Muhammad Saeed v. Election Petitions Tribunal, West Pakistan, etc. (PLD 1957 SC (Pak.) 91) wherein it was held that, "The law relating to the trial of elections petition, though volumes have

been written on it, in so far as it is relevant to the present case, is so simple that it can be summed up in one sentence, namely, where an election is sought to be set aside on the ground of commission of corrupt practices, the party challenging its validity must specify in the petition the corrupt practices committed, giving in the list attached to the petition or in his statement before the settlement of issues full particulars of those corrupt practices; that no fresh charge or instance of a corrupt practice can be added at the trial, that the burden of proof of corrupt practices is on the petitioner; that the evidence in proof of such practices must be restricted to the charges or instances mentioned in the petition and the particulars; that each ingredient of a corrupt practice so charged must be affirmatively proved by evidence, direct or circumstantial; and that where the evidence is wholly circumstantial, the commissioners before finding a corrupt practice proved must exclude all reasonable hypotheses which are consistent with that corrupt practice having not been committed". Reference may also be made to the case of Hafeezuddin v. Abdul Razzaq (PLD 2016 Supreme Court 79) in which this Court 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, as held by this Court in the cases reported as Muhammad Saeed and 4 others v. (1) Election Petitions Tribunal, West Pakistan, (2) Mehr Muhammad Arif Khan, (3) Ghulam Haider and (4) West Pakistan Government and others (PLD 1957 SC (Pak.) 91); Mian Jamal Shah v. (1) The Member Election Commission, Government of Pakistan, Lahore, (2) The Returning Officer, Constituency of the National Assembly of Pakistan No.NW-11, Peshawar II, and (3) Khan Nasrullah Khan (PLD 1966 SC 1); Khan Muhammad Yusuf Khan Khattak v. S. M. Ayub and 2 others (PLD 1973 SC 160)".

USMAN DAR and others---Appellants Versus Khawaja MUHAMMAD ASIF and others---Respondents 2017 S C M R 292 [Supreme Court of Pakistan]

24. We therefore find that even if there may have been negligence or inefficiency on the part of the election staff, such acts/omissions did not occur on account of any act of respondent No.1. Further, the same neither materially affected the result of the election nor substantially contributed to the appellant's loss. It is settled law that the election petitioner 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. Reference may be made to Muhammad Saeed v. Election Petitions Tribunal, West Pakistan and others (PLD 1957 SC (Pak) 91),

wherein it was 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 law is to the effect that such an allegation must be treated, for the purposes of evidence on the principles applicable 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".

MUHAMMAD SIDDIQUE BALOCH---Appellant Versus JEHANGIR KHAN TAREEN and others---Respondents P L D 2016 Supreme Court 97

15. The law regarding the quality of evidence necessary to prove an allegation of corrupt and illegal practices committed by a candidate during his election is by now well settled. "Corrupt practice" is defined in Section 78 of the ROPA while "Illegal practice" is defined in Section 83 of the said statute. The allegation in the present case would, prima facie, fall within the ambit of Section 83(1)(b) of the ROPA. The delinquent conduct under the said provision pertains to, inter alia, procuring the assistance of any person in the service of Pakistan to further or hinder the election of a candidate. The successful proof of the commission of the said wrong by a returned candidate not only annuls his election under Section 68(1)(d) as well as Section 70(b) of the ROPA but also disqualifies him from contesting an election for a period of five years under Section 99(1A)(l) of the ROPA and exposes him to criminal prosecution for an offence carrying punishment of six months imprisonment. 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. Circumstantial evidence is to be believed if all reasonable hypotheses which are consistent with the non-commission of corrupt or illegal practices have been excluded.** The said rule has been reiterated with approval in Muhammad Yusuf v. S.M. Ayub (PLD 1973 SC 160) and in Muhammad Afzal v. Muhammad Altaf Hussain (1986 SCMR 1736).

The End