

quality about them. Their payment was insisted upon as a condition upon which alone the liquor would be supplied with an agreement that they would be repaid on the return of the bottles. They were part of the transactions of sale of liquor which produced the profit and, therefore, they had a profit making quality. Again, a wholesaler was quite free to return the bottles or not as he liked and if he did not return them, the appellant has no liability to refund. It would then keep the moneys as its own and they would then certainly be profit. The moneys when paid were the moneys of the appellant and were thereafter in no sense the moneys of the persons who paid them.

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Having given the matter our anxious consideration which the difficulties involved in it require, we think that the correct view to take is that the amounts paid to the appellant and described as "Empty Bottles Return Security Deposit" were trading receipts and, therefore income of the appellant assessable to tax. We agree with the High Court that the question framed for decision in this case, should be answered in the affirmative.

In the result the appeal fails and is dismissed. The appellant will pay the costs in this Court.

B.R.T.

APPPELLATE CIVIL

Before D. Falshaw and I. D. Dua, JJ.

RAM DIAL,—Appellant

versus

SANT LAL AND ANOTHER,—Respondents

First Appeal from Order No. 173 of 1958.

Representation of the People Act (XLIII of 1951)—
Section 123(2) and (3)—Supreme religious head of a sect
issuing command to his followers to vote for a certain
candidate—Candidate whether guilty of corrupt practice—
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religious but by a personal grievance—Whether makes any difference—Motive, whether material—Charge of corrupt practice—Nature of—Section 123(4)—Publication of posters containing estimate of votes polled in favour of different candidates—Whether constitutes corrupt practice.

Held, that an appeal from a religious head issuing a command to his followers to vote in a particular way by inducement of pious hopes of reward and by promising spiritual benefits and divine pleasures, etc., has implicit in it a suggestion that the followers disobeying such a command are likely to incur divine displeasure and spiritual censure.

The candidate for whose benefit such a command is issued is guilty of corrupt practice under Section 123(2) and (3) of the Representation of the People Act, 1951.

Held, that if a religious head issues a *farman* to his followers, then the effect of such a *farman* cannot be whittled down merely because the religious head has been inspired not by a religious but by a personal grievance. Motive in such circumstances is wholly immaterial. If the influence exercised by the religious and spiritual head has the effect of creating in the minds of the voters a feeling of divine displeasure or spiritual censure then whatever the motive, the influence would amount to undue influence.

Held, that a charge of corrupt practice in election petitions has to be treated just like a *quasi* criminal charge and if the language of Section 123(3) in terms is not attracted, the benefit should, like all criminal trials, be given to the person charged with the commission of the alleged corrupt practice.

Held, that a poster containing an assertion that a certain candidate was winning the election by a large margin during the days of polling does not constitute a corrupt practice as defined in Section 123(4) of the Representation of the People Act, 1951.

First Appeal from the order of Shri K. S. Chaddha. Election Tribunal. Hissar, dated 14th September, 1958, accepting the petition and setting aside the election of Shri Ram Dial to the Punjab Legislative Assembly under section 100(i)(b) of the Act.

F. C. MITTAL and ANAND SWAROOP, for Appellant.

H. L. SIBBAL and MANMOHAN SINGH, for Respondents.

JUDGMENT

DUA, J.—This appeal is directed against the order of the Election Tribunal, Hissar, dated 14th of September, 1958, by which the election petition filed by Sant Lal, respondent was allowed and the election of Ram Dial, appellant declared void. In the grounds of appeal the interim order of the Tribunal, dated 31st October, 1957, by which amendment of the election petition in certain respects was allowed has also been challenged.

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The dispute relates to the election to the Punjab Legislative Assembly from the Sirsa Constituency held in March, 1957. This was a double-seat constituency, one seat being reserved for the members of the scheduled castes; Ram Dial, appellant was elected in respect of the general seat and Kesra Ram in respect of the reserved seat. It appears that after the withdrawal of nominations, there were only sixteen candidates left in the field who contested the above two seats out of whom eight candidates were concerned with the seat reserved for Harijans. Shri Sant Lal, respondent secured 23,329 votes and Ram Dial, appellant, the returned candidate, secured 27,272 votes. The polling took place on the 12th and 14th of March, and the result was declared on the 17th of March, 1957. Kesra Ram, as mentioned above, was declared elected in respect of the reserved seat, but as no relief has been claimed against him, we are not concerned with his election in the present appeal. On the 28th of April, 1957, Sant Lal preferred the election petition challenging the election of Ram Dial, appellant out of which the present appeal has arisen.

The validity of the election was challenged on a large number of grounds, but the only allegations

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with which we are now concerned in this appeal relate to some of the corrupt practices contained in certain sub-paras of paragraph 13 of the election petition. The allegations enumerated therein are divided into seven sub-paras. Sub-para (A) contains instances of corrupt practices by way of bribery. In sub-para (B) the petitioner has enumerated the corrupt practices of undue influence, and in sub-para (C) the corrupt practices of making systematic appeals to all Brahman electors of the constituency in question to vote for Ram Dial on the grounds of caste, etc., are mentioned. Sub-para (D) contains the corrupt practices of publication of false statements of fact both in relation to the candidature and personal character and conduct of Sant Lal, respondent which statements, according to the respondent, the publishers must have believed to be false or could never have believed to be true; sub-para (E) relates to the corrupt practice of hiring or procuring, on payment or otherwise of vehicles for the conveyance of electors to and from the polling stations; sub-para (F) refers to contravention of section 77 of the Representation of the People Act which deals with the mode and extent of incurring or authorising of election expenditure, and sub-para (G) contains allegations of corrupt practices of obtaining and procuring the assistance of persons in Government service, etc., for furtherance of the prospects of the appellant's election. The petition was resisted on the merits and some preliminary objections were also raised by the appellant. The preliminary objections gave rise to the following four preliminary issues:—

- (1) Whether the petitioner had failed to implead the necessary parties, and what was its effect?

- (2) Whether the petition was barred by time ?
- (3) Whether the allegations regarding the corrupt practices lacked in essential particulars as required by section 83(2) of the Act ?
- (4) Whether the petition was not properly verified; and if so, what was its effect ?

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On these preliminary issues the learned Tribunal came to the decision that there were certain defects in respect of essential particulars of some of the corrupt practices alleged in the petition as also in the verification of the petition. The learned Tribunal, however, directed the petition to be amended and the defects removed. As stated above, in the grounds of appeal the appellant has also assailed this order on the ground that the Tribunal had no power to order amendment in the absence of a formal application by the petitioner seeking permission to amend, but in view of a recent decision of this Bench holding that notwithstanding that there is no application asking for amendment of the election petition, it is open to the Tribunal itself to permit amendment, the learned counsel did not pursue his attack against the order, dated 31st of October, 1957. He, however, did not give up this objection, but merely abstained from arguing the matter because of the view expressed by us on this point in the case of *Balwant Rai Tayal v. Bishan Sarup, etc.*, F.A.O. 164 of 1958.

On the merits the pleadings of the parties gave rise to the following issues:—

- (1) Were Shri Gurdev Singh and Chet Ram candidates not qualified to stand for the

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Legislative Assembly on account of the grounds stated in para 12 of the petition and, therefore, their nomination papers were improperly accepted ?

- (2) If so, did it materially affect the result of the election, so far as respondent No. 1 was concerned ?
- (3) Was the respondent No. 1, his agents, or other persons with his consent, guilty of the corrupt practice of bribery as detailed in para 13(A), clauses (i) to (vii) of the petition ?
- (4) Was the respondent No. 1, his agents, or any other person with his consent guilty of the corrupt practice of undue influence as detailed in para 13(B), clauses (i) to (v) of the petition ?
- (5) Was the respondent No. 1, his agents, or any person with his consent, guilty of the corrupt practice of making systematic appeal to voters on the ground of caste, etc., as alleged in para 13(C) clauses (a) to (c) of the petition ?
- (6) Was the respondent No. 1, his agent, or any person with his consent, guilty of the corrupt practice of publication of the false statements relating to the candidature, the personal character and conduct of the petitioner, which statements the publishers believed to be false and did not believe to be true as detailed in para 13(D), clauses (i) to (iv) of the petition ?
- (7) Was respondent No. 1, his agent, or any other person with his consent guilty of

the corrupt practice of hiring or procuring vehicles for the conveyance of the electors to and from the polling stations as detailed in para 13(E), clauses (i) to (xvi) of the petition ?

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- (8) Was the respondent No. 1, his agent, or any person with his consent guilty of the corrupt practice of incurring or authorising of expenditure in contravention of section 77 of the Representation of the People Act as detailed in para 13(F), clauses (i) to (xi) of the petition ?
- (9) Was respondent No. 1, his agent, or any other person with his consent guilty of any of the corrupt practices of obtaining or procuring or abetting or attempting to obtain or procure any assistance for the furtherance of the prospect of his election from persons in the service of the Government as detailed in para 13(G), clauses (i) to (v) of the petition ?
- (10) Was there any non-compliance during the election in dispute with the provisions of the Constitution, the Representation of the People Act and the rules and orders made thereunder as detailed in para 16, clauses (i) to (ix) of the petition and did the said non-compliance materially affect the election of respondent No. 1 ?
- (11) Was the election of respondent No. 1, materially affected by any improper reception of void votes or improper rejection of valid votes ?
- (12) To what relief is the petitioner entitled ?

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The Tribunal has found against the petitioner on most of these issues but has set aside the election on its findings against the returned candidate under issue No. 4 and in part under issue No. 6. The counsel for the respondent has, however, also sought to support the decision of the Tribunal by challenging the finding under that part of issue No. 6 which is against him. It would, in the circumstances, be necessary only to deal with these two issues in the present appeal. Issue No. 4 deals with the corrupt practices of undue influence as detailed in para 13(B), clauses (i) to (vi) and issue No. 6 is concerned with the allegations contained in para 13(D) of the petition. The instances contained in clauses (iv), (v) and (vi) of para 13(B) have been held not to be proved and this finding is not being challenged before us by the learned counsel for the respondent. We are thus only concerned with the allegations contained in clauses (i) to (iii) of para 13(B) which are reproduced below:—

“(i) Satguru Maharaj Partap Singh of Jiwan Nagar, the religious head of the Namdhari sect of the Sikhs had some personal grievances against Shri Devi Lal of Chautala, a prominent Congress Leader of the Constituency, and the chief supporter of the petitioner at this election. Respondent No. 1, fully knowing of this grievance of Satguru Partap Singh approached him and through him also approached Maharaj Charan Singh of Sikandarpur, the religious head of the Radha Swami Samaj, and got issued Farmans (orders) by both these religious heads to their followers in this constituency to the effect that their Dharma required them to whole-heartedly support respondent No. 1 and to oppose the

candidature of the petitioner and that if any of the followers dared to act against their *farmans*, the wrath of the aforementioned Gurus would befall upon him and he would be the object of divine displeasure. These *farmans* of the two Gurus were orally conveyed, through the 'Subas' of Namdharis, Shri Bir Singh, the son of Satguru Partap Singh, and Naginder Singh and Shri Parshotam Singh followers of Guru Charan Singh, throughout the constituency wherever the followers of these two sects resided from the day of withdrawal till the polling began, during their canvassing tours for respondent No. 1. Shri Bir Singh, Parshotam Singh and Naginder Singh aforesaid and Sant Teja Singh, M.L.C., in Dewans held in the various villages and towns of the constituency during their canvassing tour, besides repeating these 'Farmans' of the two Gurus also threatened the followers with expulsion from the sect and Samaj if they went against the wish of the Gurus in this matter.

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- (ii) That Satguru Partap Singh himself in the presence of respondent No. 1 in a big Dewan of his followers held on or about 26th or 27th of February, 1957, at Sirsa in Radha Swami Sat Sangh Hall, preached and commanded to all those present that it was the primary Dharma of all his followers to help the candidature of respondent No. 1 and to oppose the petitioner with all their might by giving their own votes and by canvassing

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among their area of influence in the constituency. The Satguru himself visited villages, Tharaj, Bhiwan, Rori and Phaggu and held Dewans there, after the big Dewan at Sirsa, on different dates. In these Dewans, he besides repeating his 'farman' aforesaid also relied upon the strong appeal of his relationship, he being the son of the daughter of village Tharaj.

- (iii) That respondent No. 1 got issued poster in thousands printed on both the sides in Hindi and Gurmukhi scripts containing the order (*farman*) of Satguru Partap Singh under the signature of Shri Maharaj Bir Singh, son of Satguru Partap Singh. These posters were got published at Bansal Press, Hissaria Bazar, Sirsa. These posters contained in verbatim the order (*farman*) of the Satguru to the effect that it was the primary Dharma of every Namdhari of this constituency to give his own vote as well as to canvass votes of their all acquaintances for Shri Ram Dial, candidate, respondent No. 1. A copy of the poster in original together with its English translation is attached with the petition and may be read as to form its part. These posters were distributed in thousands throughout the constituency after the 26th or 27th of February, 1957, till the polling day in all the villages where Namdharis resided both in the Dewans and through house to house canvassing by the respondent No. 1, himself, his brother Ram Gopal, his brother Brahma Nand, Sheo Karan

Singh of Chautala, Harbel Singh and others. These posters were also distributed at all the polling stations through the polling agents of the respondent No. 1 and his other agents on the days of poll."

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With respect to clause (i) in para 13(B) the learned Tribunal has observed that no evidence has been produced in support of the allegations contained in this clause, namely that the *farmans* or orders of the two religious heads of the Namdharis and Radha Swamis were orally conveyed through Maharaj Bir Singh, son of Maharaj Partap Singh, Naginder Singh and Shri Parshotam Singh to the followers of the two Gurus in the constituency, or that while conveying the *farmans* of the Gurus they threatened the followers with expulsion from the sect if they (the followers) went against the wishes of the Gurus in the matter, except what Naginder Singh said in the Diwans at Sirsa and other places. The learned counsel for the appellant submits that this finding is in his favour and it has not been controverted by the counsel for the respondent. The allegations contained in clause (ii) have, however, been held to be proved and it has been found as a fact that Maharaj Partap Singh and others addressed various Diwans held for the purpose of canvassing in favour of respondent No. 1 at the places and dates mentioned in the petition, though it appeared to the Tribunal to be an exaggeration when it was stated that those who omitted to vote for Ram Dial, appellant would be blackened or disgraced in this world or the next or would be expelled from the *sangat*. In support of this allegation being an exaggeration the Tribunal has also remarked that no such allegations had been made by the petitioner in clause (ii) of

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para 13(B). It has further been found by the Tribunal that Maharaj Partap Singh actively supported the candidature of Ram Dial and addressed his followers, on the basis of religion, to vote for the appellant. With respect to the allegations contained in clause (iii) the learned Tribunal has come to the conclusion that posters like Exhibit P. 1 were issued by the appellant under the authority of Maharaj Bir Singh and his father Maharaj Partap Singh and were widely distributed throughout the constituency. On these findings of fact the learned Tribunal has concluded that the illiterate and ignorant villagers professing Namdhari faith who were voters in this constituency were subjected to the undue influence of Maharaj Partap Singh to vote in favour of the appellant and, therefore, the election in question could not be considered to be a free election. Such a command emanating, as it does, from a Satguru or supreme religious head of a sect to his followers who are mostly illiterate and ignorant villagers, according to the Tribunal, may well be construed as undue influence because in the presence of such a command the disciples cannot vote contrary to the command; election under these conditions cannot thus be called a free election. It has in addition been found that even if there was no spiritual undue influence as defined in section 123(2) of the Representation of the People Act, the evidence certainly proved the commission of corrupt practice of a systematic appeal by the appellant or by his agents, etc., to vote or refrain from voting on the ground of religion, caste or community, and that for this reason it clearly fell within the mischief of section 123(3); the posters, like Exhibit P. 1. in the opinion of the Tribunal, were widely distributed and circulated in the various villages of the constituency. On these

findings the election of the appellant has been held to be void and set aside.

The learned counsel for the appellant has challenged these findings and has taken us through the contents of the poster, Exhibit P. 1. and the relevant evidence including the statement of P.W. 28, Maharaj Nihal Singh, brother of Maharaj Partap Singh and of P.W. 29, Gurdip Singh for the purpose of showing that the contents of this poster are harmless and unobjectionable and thus do not fall within the mischief of section 123, sub-sections (2) and (3) of the Representation of the People Act. He has also challenged the finding of the Tribunal with respect to the various meetings which are said to have been addressed by Maharaj Partap Singh and others, but, after considering the evidence to which reference has been made, we are convinced that most of the meetings as alleged in the petition were actually held and addressed by Maharaj Partap Singh, P.W. 23, Indar Singh, P.W. 25, Gurdial Singh, P.W. 25-A, Gurbachan Singh, a Namdhari, P.W. 26, Karnail Singh, P.W. 27, Gurdip Singh, P.W. 31, Kehar Singh, a Namdhari, P.W. 23, Teja Singh, a Namdhari, P.W. 42, Surjit Singh and P.W. 88, Mehar Chand Ahuja were examined by Sant Lal and the Tribunal has found no reason for disbelieving them; it has further been observed by the Tribunal that the evidence produced by Ram Dial was merely of negative character denying that any Dewans were held and addressed by Maharaj Partap Singh on the dates mentioned; the evidence of P.W. 29 on which great stress was laid on behalf of Ram Dial both before the Tribunal and before us was not accepted by the Tribunal on the ground that the witness had not heard the whole speech of Maharaj Partap Singh, meaning thereby that this witness' testimony could not displace the positive statements

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made by the other witnesses. On going through the evidence of these witnesses I find that there is not much substance in the criticism levelled against their testimony by the learned counsel for the appellant before us. It is true that there are some discrepancies in the matter of details in the evidence of the above witnesses, but it appears to me that those discrepancies are discrepancies of truth and are natural when the evidence has been given by those witnesses after a long time and with respect to speeches delivered at election meetings. In view of the contents of the poster, Exhibit P. 1, and of the position taken up by Maharaj Partap Singh as disclosed in the evidence of Maharaj Nihal Singh, P.W. 28, his real brother, I have no hesitation in believing the evidence produced by the respondent on this point and in holding that the meetings as alleged in the election petition must have been held and addressed by Maharaj Partap Singh. Indeed, it has not been denied before us by the appellant that he did seek the support of Maharaj Partap Singh in his election. The poster, Exhibit P. 1, in my opinion, constitutes a particularly damaging piece of evidence against the appellant. This poster is said to have been printed in thousands. It is agreed at the Bar that admittedly 5,000 such posters were printed and distributed and the expenses thereof have been included in the return of election expenses filed by the appellant. The poster begins at the top with the words—"Ek Onkar Sri Satguru Ram Singhji sahai"; then appears the following subject-matter:—

*"Shri Satguru Sacche Patshah Ji Ki ore se
 halqa Sirsa ke Namdharion keliye*

HUKAM

*Is halqa ke har Namdhari ko Shri Satguruji
ki ore se hukam hai ki Punjab Vidhan
Sabha keliye khare huye ummedwar
Shri*

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*ji vaidya ko apne aur apne mel jol rakhne
wale sajjnon ke kimti vote dekar saphal
karne ka pore pore yatan karen.*

INKO SAPHAL KARNA HAMARA ZARURI
KARTAVAA HAI

Vaidya ka chunay nishan ghorswar hai.

dastkhat Maharaj Vir Singh

*(saputtar Satguru Maharaj Partap Singhji),
Jiwan Nagar (Hissar)."*

The word "Hukam" is contained in very bold letters and so is the name of the candidate "Ram Dial". The two lines at the top beginning with "Shri Satguru" and ending with "keliye", as also the last two lines beginning with "inko" and ending with "hai" have been given very prominent position in this poster. In the left-hand corner at the bottom is the symbol of the appellant. Shri Faqir Chand Mital on behalf of the appellant has contended that the distribution of this poster does not fall within the mischief of section 123, sub-sections (2) and (3) of the Representation of the People Act, 1951. These sub-sections read as follows:—

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

(1) * * * * *
* * * * *

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(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person, with the free exercise of any electoral right; Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate, or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause.

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with

an electoral right, shall not be deemed to be interference within the meaning of this clause,

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- (3) The systematic appeal by a candidate or his agent or by any other person, to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of that candidate's election.

* * * * *

The learned counsel contends that unless there is a threat to an elector or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism or excommunication or expulsion from any caste or community; or unless there is either an inducement or an attempt to induce a candidate or an elector to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure, the poster in question cannot fall within the mischief of sub-section (2) of section 123. His submission is that the threat or inducement must be express and the belief must be that the person concerned would be rendered the object of divine displeasure or spiritual censure which, according to the counsel the language of Exhibit P. 1, does not establish. He further contends that the poster in question does not disclose any appeal to vote or to refrain from voting on grounds of caste, race,

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community or religion so as to bring it within the ambit of sub-rule (3). In support of his contention, the counsel has drawn our attention to four cases: *Moinuddin B. Harris v. B. P. Divigi* (1), a decision by an Election Tribunal, Bombay, *Jagajeevandas Shetty v. Sanjeeva Shetty and others* (2), a decision by an Election Tribunal, Mangalore, *Mathai Mathew Manjuran v. K. C. Abraham* (3), a decision by an Election Tribunal Ernakulam, and *Khan Bhadur Shah Mohammad Yahya v. Chaudhry Muhammad Nazir-ul-Hassan* (4), (Monghyr North Muhammadan Rural Constituency 1937).

In *Moinuddin's case* (5), which was decided by a Bombay Election Tribunal, it was held that a religious leader is entitled to advise his followers about the candidate or party to whom they should give their votes and such advice was held not to amount to the exercise of undue influence so long as it did not amount to an order issued as a religious head with religious sanction attached to it. It was also held that it was open to a person to tell Muslim voters that in view of the attitude which he petitioner (*Moinuddin B. Harris*) had taken or which the speaker believed he had taken, on the question of the teaching of the Koran, he was not a person who could properly represent or further their interests. While construing section 124(5) of the Act as it stood before amendment it has been thus observed in this judgment:—

“The object of section 124(5) of the Representation of the People Act, 1951, was to introduce the principle of non-discrimination between different castes, communities and religions, which was em-

(1) 3 E.L.R. 248.

(2) 3 E.L.R. 358.

(3) 10 E.L.R. 376.

(4) *Indian Election Cases* p. 549.

(5) 3 E.L.R. 248.

phatically laid down in the Constitution of India and the said clause has merely carried into effect in the sphere of the law of elections the provisions of articles 15, 16, 29 and 325 of the Constitution of India. The mischief which section 124(5) aimed at preventing was the voting for or against a candidate only because of his religion, caste, race or community and that being the real object of the section, we must put a restrictive interpretation upon the unduly wide terms of section 124(5). Looked at from this point of view it could not have been the intention of the Legislature by this section to prevent all reference to religion in electioneering speeches especially when the right to conserve the culture of a section of the citizens is expressly conceded in article 29(1) of the Constitution. The real intention of the section was to prevent attacks on a particular religion, or a candidate only on the ground that he is a follower of a particular religion. Consequently an attack on a candidate on the ground that in his attitude on the question of the teaching of the Koran in municipal schools he took a view which was against the Koran, or against Islam, or against religion in general, would not fall within the purview of section 124(5)."

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Without expressing any final opinion as to how far this observation lays down the law correctly, I think the reported case is distinguishable from the instant one insofar as in the reported case there was no order issued by anyone claiming to be a

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religious head with religious sanction attached to it. In the present case there is unimpeachable evidence that Maharaj Partap Singh is the most highly respected and supreme religious head of the Namdhari sect and his followers attach the greatest religious sanctity to his orders which are treated as religious commands. In *Mathai's case* (1), decided by Ernakulam Tribunal it was observed as follows—

“A Catholic priest has great influence and in the proper exercise of that influence on electors the priest may counsel, advise, recommend, entreat, and point out the true line of moral duty, and explain why one candidate should be preferred to another, and may, if he thinks fit, throw the whole weight of his character in the scale; but he may not appeal to the fears, or terrors or superstition of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or of disadvantage, or of punishment hereafter. He must not threaten to ex-communicate or withhold the sacraments.”

In connection with the above observation reference in the reported case was made to certain observations in Parker's Election Agent and Returning Officer, 1950, edition, at page 305, and to certain other English cases. After making the above observation the judgment proceeds that “law does not strike at the existence of influence or its due exercise over others, such influence being implicit in human personality and that it is only the abuse of such influence with which the law is concerned”. With the observations just quoted there can hardly

(1) 10 E.L.R. 376.

be any dispute, but as to how far and in what circumstances interference with the election process in this Republic by religious heads on grounds of religion, caste or community can be considered to be due or undue interference under the law as laid down in section 123, sub-sections (2) and (3), of the Representation of the People Act, 1951, is a question which, in my opinion, has to be considered uninfluenced by the observations made in the English cases.

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It is noteworthy that in the English Law there is no provision similar to the one that we are considering in the present case. The decision in *Sanjeeva Shetty case* (1), also proceeds on similar grounds as *Moinuddini's case* (2). The learned Tribunal in *Sanjeeva Shetty's case* (1), has, however, laid stress on the intention of the person who has been charged with having exercised undue influence, and in this connection it has been observed that the mere holding out of an inducement of pious hopes, spiritual benefits, divine pleasures, etc., in the absence of spiritual threats would not constitute undue influence. With the utmost respect to the learned Tribunal, I cannot persuade myself, as at present advised, to subscribe to the narrow construction suggested in the last portion of their observation. Besides, an appeal from a religious head issuing a command to his followers to vote in a particular way by inducement of pious hopes of reward and by promising spiritual benefits and divine pleasures, etc., has in my view, implicit in it a suggestion that the followers disobeying such a command are likely to incur divine displeasure and spiritual censure. However, insofar as the test based on the intention of persons alleged to have exercised the undue influence is

(1) 3 E.L.R. 358.

(2) 3 E.L.R. 248.

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concerned, in my opinion, this test is fully satisfied in the instant case as will be shown a little later.

In *Khan Bahadur Shah Muhammad Yahya v. Choudhury Muhammad Nazirul Hassan* (1) (Monghyr North Muhammadan Rural Constituency), decided by a Bihar Election Tribunal, the counsel has relied on the following head-note:—

- “3. The appearance of a high religious dignitary, such as the Amir Sariat, in supporting a party or its candidates, does not by itself amount to ‘undue influence’, so as to invalidate an election. In such cases, the question for consideration is whether the religious dignitary has, in fact, surpassed the bounds of legitimate use of his character, power and position, with particular reference to the class of voters sought to be influenced.”

With this abstract proposition of law, there can hardly be any dispute. It is undoubtedly true that the question in such cases is how far the religious dignitary has kept himself within the bounds of legitimate use of his character, power and position, with particular reference to the class of voters sought to be influenced.

In the reported case, the Amir Sariat had issued a *farman* and injunction but they were defended by the returned candidate on the ground that they were issued not to coerce voters but merely to guide them by giving reasons while leaving to them full and free choice to exercise

(3) Indian Election Cases (1935—51) at p. 549.

franchise. The learned Tribunal at page 557 of the book, however, observe as follows—

“But we think, having regard to the high and exalted position the Amir holds among the Muslims, and having regard to the fact that there are many people who believe him to be the Amir within the meaning of the expression, ‘*Ulil amr minkum*’ he must be careful in what he expresses so that there may be no interference with the electoral right and he must not induce or attempt to induce an elector to believe that the latter will be an object of divine displeasure or spiritual censure. The question, therefore, is whether he overstepped the legal bounds by what he did in this matter.

Bearing these principles in mind, the Tribunal examined the Firman (Exhibit 2) issued by the Amir, wherein the following occurs:—

‘Accordingly I direct all the voters and preachers of Amrat Sharia that they should support and help all the candidates of the Independant Party and they should fully explain the manifesto of that party among the constituency of the respective candidates and direct the voters to give their votes to these candidates by relying upon that party; and along with this I specially address all the Mohamedans of Bihar, my dear ones and brothers, that it is incumbent on you who are voters that you should give your vote to the candidates from others and you

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should consider this work as religious service, bearing in mind that with the success of these candidates is linked the communal life and honour and religious safety of almost about 42 lakhs of mohamadans in this province.'

It is clear to our mind that the Amir has surpassed the bounds of legitimate use of his character, power and position and that it will be impossible to conceive of a case where such words, when addressed to the class of voters normally found among the Muhammadan voters of this province and specially of this constituency, will fail to have the tremendous effect as contended for by the petitioner; and in view of the position or the assumed position of the Amir, it must follow that words addressed in this form would leave no manner of choice to the voters who would believe that such words are really commands from a person of such high authority and undoubted respectability in the religious world. It was pointed out in more than one case in India that the religious preachers should be careful in selecting the words which they employ in election times. Attention may be called to three of them:—

'The influence exercised by moulvis or pirs over their disciples is comparable in its extent at least, if not in its nature, to that exercised by the Roman Catholic clergy over their flock.'

Lahore City case (Hammond, P. 467 at 470)—

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* * we think that candidates should exercise great caution in invoking the aid of spiritual leaders to assist their candidature, and that spiritual leaders themselves, before addressing their followers, should weigh carefully the effect which their words would have upon each and every section of his followers.'

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Dacca West M. R: case (Jagat Narain, Vol: III, page 175 at 177)—

'It is a matter of common knowledge that the Pirs in India have an extraordinary influence over their disciples. It is, therefore, not unlikely that the disciples of Nawab Miah thought that they would be sinning if they do not listen to his request as made in the manifesto.'

Adopting this view of the law, which is to be found in the extracts from these three cases, we are satisfied that the Amir was not justified by virtue of his position (real or assumed) in using the words quoted above. The *firman* was published in many parts of the constituency, and if the matter rested there, it would have been impossible to hold that this election was a free election.

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The point of the Quoranic verse at the top of the *firman* is a matter of serious complaint by the petitioner. The text, in our view, could not be said to have been quoted with an intent to coerce the voters or to have had such effect because:—

- (a) the Amir in his evidence denies his having such intention;
- (b) the document on the face of it does not show such intention;
- (c) the words are Arabic which only the learned few could understand and no Urdu translation is given;
- (d) no witness says that he was influenced by these words;
- (e) some words were found in another *farman* issued by the Amir in 1925, but no question of coercion arose;
- (f) there is no reference in the *farman* to any threat or denunciation, no penal clause and no mention that disregard would be an irreligious or sinful act.

On a discussion of evidence the tribunal held that there was no proof that the Quoranic words (even if they reached the voters) had such an effect on them as to deter them from voting in favour of the petitioner and coerce them to vote in favour of the respondent.”

Again without expressing any opinion about the correctness of the final decision of the Tribunal, I think this decision is also distinguishable on facts as is clear from the reasons given by the Tribunal in items (a) to (f) reproduced above. But for these reasons, according to the Tribunal, it would have been impossible to hold the election in the reported case to be a free election. The ratio of the reported case therefore, in my opinion, goes against the appellant and supports the view that in the present case, the *farman* is hit by the provisions of section 123(2).

The intention in the present case of both Maharaj Partap Singh in issuing the *farman* and in canvassing in favour of Ram Dial and the intention of Ram Dial in seeking Maharaj Partap Singh's support in favour of his election appears to me, in the circumstances of the case, to be fairly clear. The language of the mandate and the general background and circumstances of this case including the obvious consciousness of Maharaj Partap Singh and Ram Dial of the probable and likely effect of such commands on the illiterate, ignorant and credulous followers of the Maharaj can lead but to one conclusion that it was intended to convey to them the threat of divine displeasure and spiritual censure if they dared to disobey the *farman* of their supreme spiritual and religious head. In the case before us as already mentioned, it is in evidence that Maharaj Partap Singh who is the supreme religious head of Namdhari sect of Sikhs had issued a *farman* or a command to the *satsangis* that they must vote for Shri Ram Dial, and it is not disputed that Maharaj Partap Singh is a Guru of this sect, who commands almost universal reverence from his followers. His real brother Maharaj Nihal Singh, has appeared in the witness-box as P.W. 28 and has stated that Maharaj

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Partap Singh had some grievance against Ch. Devi Lal, P.W. and for this reason he was not willing to permit any candidate of Ch. Devi Lal to succeed in the election. It may be stated that the respondent was a candidate supported by Ch. Devi Lal. In spite of Maharaj Nihal Singh's request to his brother, of Maharaj Partap Singh, not to carry on door to door propaganda against the Congress candidate, Maharaj Partap Singh persisted in using his influence to the utmost and is said to have used very strong words while asserting that he had decided to oppose the Congress candidate in the election and that his decision was irrevocable. Maharaj Partap Singh also informed his brother, Maharaj Nihal Singh, that he had already got printed and distributed to the public a poster and, therefore, it was too late for him to withdraw. It can hardly be denied that such simple-minded followers cherish almost blind and implicit faith in their religious heads and they can hardly discriminate in a rational way between a command relating to a secular matter and one confined exclusively to the religious sphere.

The learned counsel for the appellant has, contended that since the motive which inspired Maharaj Partap Singh to oppose the respondent was a purely personal motive, the *farman* issued by the Maharaj in such circumstances cannot fall within the mischief of section 123. I cannot sustain this contention. If a religious head issues a *farman* to his followers, then the effect of such a *farman* cannot be wittled down merely because the religious head has been inspired not by a religious but by a personal grievance. Motive in such circumstances is wholly immaterial. If the influence exercised by the religious and spiritual head has the effect of creating in the minds of the voters

a feeling of divine displeasure or spiritual censure then whatever, the motive, the influence would amount to undue influence. The contents of the poster reproduced earlier unequivocally establish the mandatory nature of the command. Religious sanction is, in my opinion, implicit in it and I think, on a reasonable construction of its contents, it must be held that Maharaj Partap Singh intended to convey to his followers who are mostly illiterate, ignorant, credulous and unsophisticated villagers, having blind and implicit faith in their religious head that if they did not vote for Ram Dial, they would incur divine displeasure and spiritual censure. With this class of villagers the displeasure of the religious head is usually associated with divine displeasure. To adopt the words used in *Dacca West M. R.*, case such disciples are likely to have thought that they would be sinning if they did not listen to the *Hukam* issued by the Maharaj. I am not unmindful of some cases which have construed section 123(2)(a) in a restricted sense, holding that it is only a positive threat of social ostracism and excommunication, etc., or inducing a belief of rendering oneself an object of divine displeasure and spiritual censure alone which is covered by the language of this provision; and if there is no express suggestion of divine displeasure or spiritual censure, according to those decisions, the case is not hit by the definition of "undue influence" even though there be a positive suggestion of winning divine pleasure or spiritual goodwill. Without expressing any opinion on the correctness of this view, I have no hesitation in holding that on the language of the poster itself, construed in the light of the oral evidence led in the present case which I am inclined to believe, it must be held that Maharaj Partap Singh's *farman* did necessarily imply divine displeasure and spiritual censure for those who would

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choose to disobey the *farman* with the result that the provisions of sub-section (2) of section 123 of Act XLIII of 1951, are attracted. In this connection it is noteworthy that the poster, Exhibit P. 2, does not contain any reason as to why it is the paramount duty of the Namdharis of Sirsa to whom the mandate had been issued by their religious head to make Ram Dial's election successful. The mandate comes from the most highly respected religious head of the Namdharis who has actually been described in the poster as "Shri Satguru Sache Patshah Ji". The speeches delivered by Maharaj Partap Singh in the various meetings organised in support of the appellant's election are from the very nature of things likely to be more forceful and effective and less restrained in their language as they were meant to induce the Namdhari voters to vote for Ram Dial; it can hardly be denied that when a person is addressing such public meetings his language is likely to be less controlled and balanced than when he is conveying a message through a written document. I would, in the circumstances as already stated, believe the evidence led on behalf of the respondent on this point and hold that Maharaj Partap Singh, when canvassing for votes in support of Ram Dial in public meetings, did use language purporting in substance to convey a clear impression that those who did not vote for Ram Dial in accordance with Maharaj Partap Singh's mandate would incur divine displeasure and spiritual censure. Maharaj Partap Singh has not appeared as a witness with the result that we are completely in the dark about his explanation as to the circumstances in which the mandate in question had been issued by him and the nature of canvassing carried on by him in securing the support of his followers for the appellant's success in the election. His real brother, as already stated, has corroborated the

respondent's version. The learned Tribunal in this connection appears to have placed too strict and narrow a construction on the pleas contained in para 13(B)(ii) of the petition and has wrongly refused to read together clauses (i) and (ii) of this para. The *farmans* have been explained in clause (i) and, therefore, clause (ii) of para 13(B) has to be read in conjunction with the former clause. Thus, in my opinion, it is also established that in the meetings addressed by Maharaj Partap Singh and others in support of the election of Ram Dial appellant, the commission of corrupt practice of inducing a belief that the voters would incur divine displeasure or spiritual censure if they did not vote in accordance with the mandate issued by Maharaj Partap Singh, has been established.

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Coming next to the question whether or not the commission of corrupt practice falling under section 123(3) of the Representation of the People Act, 1951, has also been established, the learned counsel for the appellant has contended that there is no express appeal on religious ground and no express religious sanction is contained in the poster. This may be so. But the real question is if, as held above, Maharaj Partap Singh, who is the acknowledged supreme religious and spiritual head of the Namdharis, has in a systematic way appealed to his followers by issuing a command to vote for Ram Dial failing which they would incur divine displeasure or spiritual censure, then does this finding, in the present context; not, from the very nature of things, included or imply a systematic appeal to vote on ground of religion? There appear to be two ways of looking at this question. One is that the appeal to the voters should induce them to cast their votes on grounds of religion, etc., in other words the appeal should direct them to vote for their co-religionists or to vote or refrain

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from voting for a candidate on the ground that he does or does not profess a particular religious faith, and the other is that the appeal to vote or to refrain from voting should be based on or supported by or should necessarily imply religious or communal sanctions. If the former view is correct, then the present case may not fall within the scope of section 123(3), but if the latter be the more correct view, then, in my opinion, the present case would be hit by the above provision of law. The latter view appears to be more in consonance with the spirit of secularism which pervades throughout the entire fabric of the Constitution of India and this view is also calculated to promote and effectively carry out the basic principles of elimination of racial, religious or communal passions, prejudices and emotions from the conduct or practical working of the Government as it would purify and secularise the process of electing the citizens' representatives to the Parliament and the State Legislatures and render it completely free from forces which derive sanction from appeals based on religious and communal emotions and passions and the former view appears to be supported by the plain grammatical construction of sub-section (3) of section 123. It is true that the Constitution has sought to place the Government on a high ethical and secular pedestal of strict religious and communal impartiality, but at the same time the Courts have generally speaking, to construe the language of a statutory provision in its ordinary and natural sense. In this connection it has also to be borne in mind that a charge of corrupt practice in election petitions, according to the well recognised rule laid down in decided cases has to be treated just like a *quasi* criminal charge and if the language of section 123(3) in terms is not attracted, the benefit should like all criminal trials be given to the person charged with the commission of the

alleged corrupt practice. I, however, must confess that I am not quite clear if this canon of interpretation should also prevail in cases where the alternative construction would be more in consonance with the basic and fundamental ideals of the Constitution. But this aspect has not been argued at the Bar with the result that I would prefer to abstain from pursuing this matter any further. As at present advised, therefore, I am constrained, though not without hesitation, to hold that corrupt practices as envisaged in this sub-section has not been proved.

It may not be out of place at this stage to notice the amendment made in Act XLIII of 1951 in 1956. Before the amendment of the Representation of the People Act of 1951 by means of Act XXVII of 1956, Part VII of this Act was headed as "CORRUPT AND ILLEGAL PRACTICES AND ELECTORAL OFFENCES". Chapter I of Part VII dealing with corrupt practices contained two sections; section 123 dealing with major corrupt practices and section 124 with minor corrupt practices. Section 125 which constituted Chapter II dealt with illegal practices. In the amended Act in place of Chapters I and II only the amended section 123 has been substituted, and the old sub-section (5) of section 124 dealing with the minor corrupt practice of systematic appeal to vote, etc., on grounds of caste, race; religious; etc., has been reproduced as constituting a corrupt practice and re-numbered as sub-section (3) to section 123. There are thus now no minor corrupt practices or illegal practices; section 123 having been enlarged by including some other minor corrupt practices and illegal practices in the only category of corrupt practices. This amendment, in my opinion, clearly

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reflects the anxiety of the Parliament to completely eliminate the use of systematic appeals by the candidates seeking election to the Legislatures, as citizens' representatives, for securing votes in the course of their election. It appears that in the light of the experience gained during the last 10 or 11 years of state administration and more particularly during the first general elections held under the Constitution, the Parliament realised the necessity of making this provision more stringent. That the use of systematic appeals based on religious sentiments and prejudices or accompanied by religious sanctions in seeking election to the Legislatures is inconsistent with the basic principles of secularism and religious impartiality on which the Constitution of this social welfare State is based can hardly admit of doubt. It also appears to be undesirable that alliance between religion and politics in the shape of communalism which does not distinguish or discriminate between a rule of religion and a rule of law does tend to lead to an anti-secular and anti-democratic blood in the nation which must, from its very nature obstruct its progress on strictly secular and truly democratic lines. Such an alliance can only be encouraged in a society in which transgression of a religious ordinance or command is punishable by civil law and breach of a civil duty makes the wrong-doer or the delinquent liable to divine correction. But at the same time it cannot be forgotten that while considering the desirability of making such systematic appeals, sufficient by themselves, to avoid an election, no change has been effected by the Parliament in the language of this sub-section. It can thus be argued that the Parliament did not intend to further curtail, by this amendment, the freedom of canvassing for votes on the basis of systematic appeals with religious sanction behind it. It may be urged

that such appeals when addressed by the supreme heads of religious sects to their illiterate and devout followers, who cannot in a rational way distinguish between the *farmans* of their Guru on religious questions and his advice in the form of commands on matters pertaining to his political or other activities, do not fit in with the spirit of secularism which runs throughout the Indian Constitution. But, as I have already stated, this aspect of the matter was not debated at the Bar and I should prefer as at present advised to leave it at that and keep the matter open.

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It is, however, hoped that if the Parliament considers that appeals based on religious and communal influences, or prejudices or supported and backed by religious sanctions and which are calculated to induce and influence voters on account of pressure of such sanctions to vote or to refrain from voting, are also intended to fall within the ambit of section 123(3) of Act XLIII of 1951, then necessary steps would be taken to make its intention more explicit.

It is next contended by Mr. Mital that Maharaj Partap Singh was a "Gow Bhagat" (worshipper of cow) and since the Congress Government had not enacted any law for cow protection, the Maharaj was justified in issuing a mandatory direction to his followers not to vote for the Congress candidate and that the influence thus exercised by him in this background should be considered to be due and not undue influence. In other words, the contention is that the aforesaid influence has been exercised by Maharaj Partap Singh for the purpose of protecting the culture of the "Gow Bhagat Cult" and therefore it could not be termed as undue influence. This contention too has, in my

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opinion, no merit and must be repelled. There is evidence on the record and indeed it has not been denied that Maharaj Partap Singh while opposing Sant Lal, respondent was at the same time supporting the candidature of Pandit Thakar Das Bhargava, a Congress candidate, for a seat in the Parliament. It would thus be obvious that it was not just opposition to the Congress Government but some other force which impelled Maharaj Partap Singh to use his influence as the supreme religious head over his followers and to issue the mandate in favour of Ram Dial. It is true that Article 29 of the Constitution provides that any section of citizens having a distinct culture of its own shall have the right to conserve the same, but, as stated above, this was not the ground mentioned in the poster, Exhibit P. 1, for supporting Ram Dial; besides I am doubtful if this sentiment of cow-protection can at all be considered to constitute a distinct culture peculiar to the Namdharis. In any case, even if it were so, in my opinion, it would hardly be open to any citizen for achieving this purpose to exercise influence over the voters by inducing belief of divine displeasure or spiritual censure or to make systematic appeal with religious sanction attached to it in the course of election process.

Mr. Mital has next challenged the finding of the learned Tribunal on issue No. 6 insofar as it relates to the allegation contained in para 13(D) (i) and (ii) of the petition. Para 13(D) of the petition contains allegations about false statements of fact relating to the candidature and personal character and conduct of respondent Sant Lal. The learned Tribunal while dealing with issue No. 6 has observed that the evidence of the petitioner (respondent in the present appeal) is confined to the allegations made in clauses (ii) to (iv) of para 13(D), but curiously enough at the close of para 33 of the

impugned judgment, allegations in clauses (i) and (ii) of para 13(D) have been held to have been established. Mr. Mital has contended that clause (i) relates to the meeting alleged to have been held at Dabwali on 13th March, 1958, but there is not an iota of evidence on the record in support of this allegation. This assertion has not been controverted by Mr. Sibal on behalf of the respondent. The learned Tribunal is thus quite wrong in holding that the allegation contained in clause (i) of para 13(D) has been established. Similarly with respect to the allegation contained in clause (ii) of para 13(D) Mr. Mital has submitted that there is no evidence on the present record with respect to the meetings alleged to have been held at Kalanwali and Chautala. This assertion has also not been controverted by Mr. Sibal. As regards the meeting alleged to have been held at Sirsa on the 3rd of March, 1957, the learned counsel for the appellant has taken us through the evidence of Banarsi Das P.W. 51, and Lal Chand P.W. 52, who alone have deposed about it. According to these witnesses Panna Lal had presided at this meeting but Panna Lal, who has appeared as R.W. 68, has emphatically denied. We have also been taken through the evidence of some other witnesses appearing for Ram Dial, appellant who have controverted the version given by P.W. 51 and P.W. 52. After fully considering the evidence led on this point, I am of the view that the learned Tribunal is not right in holding the allegations contained in para 13(D) (ii) to have been established. The evidence produced by Sant Lal, respondent does not appear to me to come up to the standard required for proving the charge of a corrupt practice. Mr. Mital has also drawn our attention to the statement of Ram Dial as R.W. 120 where he has denied having made any allegation against Sant

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Lal as stated by the latter. The counsel has contended, and, in my opinion, rightly; that the learned Tribunal erroneously thought that Ram Dial had not denied the aforesaid allegation.

Mr. Sibal appearing for the respondent has also challenged the second part of the finding of the learned Tribunal on issue No. 6 which is against his client and has submitted that the publication of the poster, Exhibit P. 2, falls within the mischief of sub-section (4) of section 123 of the Representation of the People Act, 1951. This poster, the counsel argues, contained an assertion that Ram Dial was winning the election by a margin of 11,613 votes with the result that the Congress camps were presenting deserted appearance. It is contended that this poster was actually given for printing on the 10th March, 1957, and was circulated on the 13th March, 1957, before the polling concluded, the polling admittedly took place on the 12th and 14th March, 1957. In the circumstances, the statement of facts contained in this poster must, according to the counsel, be held to be false and, therefore, hit by section 123(4). I am unable to sustain this argument. The statement contained in Exhibit P. 2, can hardly be considered to relate to the candidature or withdrawal or retirement of the Congress candidate and it is not the respondent's case that it relates to his personal character or conduct. The poster merely purports to represent the estimate of Ram Dial's supporters regarding the position of voting as visualised by them and there is hardly anything wrong if the poster had been given for printing on the 10th of March, 1957. The polling was going on when this poster was distributed or published; publication of such estimates of the votes polled is not prohibited. I cannot believe that any voter could have considered the statement in question to be anything but

merely an interested and inspired estimate knowingly circulated because counting of votes had admittedly not yet taken place. Indeed, the practice of giving currency to such estimate is not uncommon, and it is not infrequently resorted to for the purpose of demoralising the workers of the opponent and for keeping up the morale of a candidate's own workers, such interested estimates are in fact hardly ever taken seriously. Thus, the publication of the poster, Exhibit P. 2, does not constitute a corrupt practice as defined in section 123(4) of Act XLIII of 1951. There is no question of its being a fraudulent device on account of which the election can under the law be set aside. As a matter of fact Ram Dial has even denied in the witness-box that he ever got printed, distributed, exhibited or pasted poster like P. 2, anywhere and Mr. Mital has submitted that there is no trustworthy evidence on the record justifying a conclusion that the appellant got this poster printed. The learned Tribunal has relied on the evidence of Prithi Raj, P.W. 34, the Manager of Bansal Printing Press where P: 2, is stated to have been printed, but Mr. Mital contends that his evidence is inconclusive and is insufficient to support the *quasi* criminal charge of the commission of a corrupt practice. I think there is force in this contention, but, as I have already held, that the contents of Exhibit P. 2, are not hit by the provisions of section 123(4) of Act XLIII of 1951, I need not pursue this matter any further.

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For the reasons given above; the appeal fails and is dismissed with costs.

FALSHAW, J.—I agree.

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