
(1967) 12 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Election Petition No. 33 of 1967

Tirlochan Singh

APPELLANT

Vs

Karnail Singh and Another

RESPONDENT

Date of Decision : 12-12-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2
Evidence Act, 1872 — Section 114, 133
Penal Code, 1860 (IPC) — Section 107, 108, 161, 171B
Representation of the People Act, 1951 — Section 123(1), 123(1)(A), 123(2), 90(1)

Citation : AIR 1968 P&H 416 : (1968) CriLJ 1199

Hon'ble Judges : Harbans Singh, J;D.K. Mahajan, J;A.N. Grover, J

Bench : Full Bench

Advocate : R. Sachar and Mohinderjit Singh Sethi, for the Appellant; B.S. Dhillion, S.S. Dhaliwal, Kuldip Singh and B.S. Shant, Sr. Counsels and J.N. Kaushal, for the Respondent

Final Decision : Allowed

Judgement

Harbans Singh, J.—In the above mentioned election petition filed by the defeated candidate Tarlochan Singh for setting aside the election of Karnail Singh from Pakka Kalan Constituency of the Punjab Legislative Assembly, one of the allegations was that the respondent entered into an agreement with the Harijan voters of village Jodhpur Ramana through their leaders Sunder Singh and Munsha Singh to place at the disposal of the Harijan community Rs. 1,500 for the construction of their dharamsala for a consideration of the Harijan villagers voting for him. Sunder Singh and Munsha Singh above-mentioned were examined by the petitioner and they admitted that the Harijans had all decided to vote for a candidate who would assist them in getting their dharamsala erected and these two persons met Karnail Singh, respondent, at the house of Ganda Singh, the evening before the date of polling and demanded Rs. 2,000 for the dharamsala. Bargain was settled for Rs. 1,500, which amount was paid by Karnail Singh. In the petition it was alleged that the aforesaid amount was left in

deposit with one Manohar Lal, brick-kiln owner for supply of bricks, but in the trial the evidence led was to the effect that the money was left in deposit with Ganda Singh, who subsequently supplied the bricks, iron girders as well as paid for the labour of the masons. Apart from the question of this discrepancy between the two versions, with which we are not concerned the question arose as to whether these two witnesses were accomplices, and, if so, whether the rule, which is well settled so far as the criminal cases are concerned, that the evidence of an accomplice requires independent corroboration in material particulars, is applicable to the trial of an election petition, to which CPC applies.

2. One Ajaib Singh, a relation of Ganda Singh, also appeared as a witness and said that he was present at the time of the aforesaid bargain between the Harijan leaders and the respondent. He admitted that he did not raise an objection at that time, nor did he inform the petitioner subsequently. On him also a question was raised on behalf of the respondent that he also was no better than an accomplice, whose evidence could not be treated as an independent corroboration.

3. Lastly, an argument was raised on behalf of the respondent, that in any case even according to the allegations of the petitioner, which were stoutly denied by the respondent, the gift of Rs. 1,500 was made for the benefit of the entire Harijan community and not in any individual or individuals and that consequently such a gift could not fall within the definition of "bribery" as given in Clause (A) of Sub-section (1) of Section 123 of the Representation of the People Act, 1951 (hereinafter referred to as an "Act"). As I considered these matters to be of considerable importance, the following three questions were referred by me for an authoritative decision by a larger Bench and that is how the matter is before us:--

(1) Whether, in the circumstances of the case, Munsha Singh and Sunder Singh fall in the category of accomplices and, if so, whether the rule applicable to criminal trials requiring independent corroboration of the evidence of an accomplice, holds good in the case of election petitions in relation to a charge of a corrupt practice of bribery?

(2) Whether, in the circumstances of this case, Ajaib Singh would also fall in the category of an accomplice?

(3) Whether a gift or promise made for a public purpose and not for the benefit of any individual or individuals, but the object of which is to make himself popular amongst a section of the electorate as a whole and thus directly or indirectly induce them to vote in his favour, would fall within the definition of bribery as given in Section 123 of the Representation of the People Act or not?

4. Apart from any special provisions made in the Act, the trial of the election petition is governed by the procedure laid down in the Civil Procedure Code. However, it is now well settled that a charge of corrupt practices is in the nature of a criminal charge and the standard of judging evidence has to be the same as

in a criminal trial. Reference in that connection may be made to the observations of the Supreme Court in *Harish Chandra Bajpai Vs. Triloki Singh*, , to the following effect:--

"Charges of corrupt practices are quasi-criminal in character and the allegations relating thereto must be sufficiently clear and precise to bring home the charges to the candidates."

Again, in *Jagdev Singh Sidhanti Vs. Pratap Singh Daulta*, , it was observed as follows:--

"It may be remembered that in the trial of an election petition, the burden of proving that the election of a successful candidate is liable to be set aside on the plea that he was responsible directly or through his agents for corrupt practices at the election, lies heavily upon the applicant to establish his case, and unless it is established in both its branches, i.e., the commission of acts which the law regard as corrupt, and the responsibility of the successful candidate directly or through his agents or with his consent for its practice not by mere preponderance of probability, but by cogent and reliable evidence beyond any reasonable doubt, the petition must fail."

Under Clause (A) of Sub-section (1) of Section 123 of the Act, a candidate who himself or through his agent or any other person with his consent, makes any gift, offer or promise of any gratification with the object of directly or indirectly inducing an elector to vote or refrain from voting at any election is guilty of corrupt practice of bribery. Under Clause (B), a person whosoever receives or agrees to receive such a gratification as a motive or reward for voting or refraining from voting or inducing any elector to vote, is also guilty of bribery. It was consequently urged by the learned counsel or the petitioner that the giver of the bribe and the receiver thereof are guilty of the distinct offences and consequently the receiver of the bribe cannot be said to be an accomplice of the giver. From this he argued that a receiver cannot be an accomplice and, therefore, the rule of prudence, which is followed by the Courts in case of a criminal charge, of looking for material and independent corroboration before relying on the evidence of an accomplice would not be applicable in the case of *Munsha Singh and Sunder Singh*. The word "accomplice" is not defined either in the Indian Evidence Act or in the Indian Penal Code. In the Criminal Procedure Code, the marginal note to Section 887 is to the following effect:--

"Tender of pardon to accomplice". and in the body of the section, it is provided that certain types of Magistrates mentioned therein may, at any stage of the investigation or enquiry, etc., "with a view to obtaining the evidence of any person "supposed to have been directly or indirectly concerned" in or privy to the offence", tender a pardon to such person The test, therefore, for finding whether a person is or is not an accomplice of another who has committed a particular offence, is to see whether the person concerned is directly or indirectly concerned in or privy to the offence, for which the main accused is charged.

Illustration (a) to Section 109 of Indian Penal Code, which provides punishment for abetment, is as follows:--

" "A" offers A bribe to "B", a public servant, as a reward for showing "A" some favour in the exercise of B's official functions, "B" accepts the bribe. "A" has abetted the offence defined in Section 161."

This is no doubt a converse case, but it shows that if the receiving of the bribe is an offence, the giver is an abettor and consequently if giving of the bribe be an offence, the receiver would be an abettor, provided the receipt of money is with the corrupt motive. In the present case, there can be no manner of doubt that on their own showing, Munsha Singh and Sunder Singh were out to sell the votes of the Harijans. It is in their evidence that they had also approached the applicant with the request to pay them money for the construction of dharamsala and on his refusal they approached the respondent and settled a bargain with him at Rs. 1,500. In the circumstances of the present case, there can be no manner of doubt that these two witnesses were directly concerned and privy to the offence of giving of the bribe, as defined in the Act. It was through the effort and instrumentality of these two persons that the respondent is said to have been persuaded to pay the amount for the construction of dharamsala. There is, therefore, hardly any difficulty in answering the first part of the question, that Munsha Singh and Sunder Singh are in the nature of accomplices.

5. In the charge of corrupt practice, which includes charge of bribery is in the nature of a quasi-criminal charge involving very serious consequences and the same has to be established beyond reasonable doubt, by clear and satisfactory evidence then it follows as a natural corollary, that the rule of prudence, which impels a Court to seek for independent corroboration, on material points, of the evidence of an accomplice and it is not considered safe to rely on the sole testimony of an accomplice who is tainted witness should equally apply in the trial of a corrupt practice in election cases. This matter was dealt with at length by the Andhra Pradesh High Court in Chadalavada Subba Rao Vs. Kasu Brahmananda Reddy and Others, and the Bench of that Court came to the conclusion after reviewing the entire case-law on the point that dictum of the Supreme Court in relation to the testimony of the accomplices applies to the persons, who in election cases say that they received bribe.

Reference was made to the observations of the Supreme Court in Rameshwar Vs. The State of Rajasthan, , about the desirability of looking for corroboration of the statement of an accomplice. At page 57 of the report, reference was made by their Lordships of the Supreme Court to the case of Baskerville, in which it was laid down that "uncorroborated evidence of an accomplice was admissible. But it has long been a rule of practice at common law, which has become virtually equivalent to a rule of law for the Judge to warn the Jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice," and it was said that the law was the same in India. At this page, their Lordships further pointed out as follows:--

"The only clarification necessary for purposes of this country is where this class of offence is sometimes tried by a Judge without the aid of a Jury. In these cases, it is necessary that the Judge should give some indication in his judgment that he has had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he consider it safe to convict without corroboration in that particular case."

After referring to the above-mentioned case of Rameshwar Vs. The State of Rajasthan, , the learned Judges of the Andhra Pradesh High Court went on to observe as follows:--

"The same consideration must prevail in weighing the evidence of the receiver of bribe in an election proceeding for his position is no different from that of an accomplice in relation to the offence committed by the giver. The tainted nature of his testimony must subject his evidence to strict scrutiny before it can be accepted. It should not be accepted without the usual safeguards unless the circumstances of the case lend assurance to it."

Privy Council in W.C. Macdonald v. Fred Latimer AIR 1929 PC 15, applied this rule of caution, even in a civil suit for damages based on fraud. At p. 18, it was observed as under:--

"Moreover, the trial Judge has very reasonably taken into account the fact that Deacon, upon whose evidence the plaintiffs must base their case, was, on his own admission a party to a series of transactions in which he was deceiving the farmers and betraying the confidence of his employers, the Dominion Company. By every code of evidence the testimony of a professed accomplice requires to be carefully scrutinized with anxious search for possible "corroboration "

A Division Bench of the Orissa High Court in Bankabehari Das Vs. Chittaranjan Naik, , also took the view that the charges of corrupt practices being quasi-criminal in character the principles of criminal jurisprudence are applicable. With regard to accomplices and the desirability of corroboration of their evidence, the relevant part of the head-note runs as follows:--

"On accomplice evidence, which is an almost normal feature in an election petition, it is to be generally kept in view that the law in India with regard to accomplice evidence is not different from the law in England. It is the rule of practice so invariable and peremptory that it must be regarded as having hardened into a rule of law that the Judge must be fully and expressly alive to the need for independent corroboration in material particulars both with regard to the offence and (the offender, that one accomplice cannot corroborate another. Save in most exceptional circumstances, no Court will record a finding of corrupt practice on such evidence."

6. Election creates partisan feelings at a very high pitch and it is unfortunately well known that it is not difficult to get substantial number of witnesses to

depose to altogether false matters and partisan witnesses---even respectable persons--would not hesitate to give a twist if it suits the party producing them. In such cases, therefore, it will be altogether unsafe to base a finding of a corrupt practice having been committed by a successful candidate on the uncorroborated testimony of accomplices, except possibly in very exceptional circumstances. Both parts of the first question, therefore, must be answered in the affirmative.

7. As regards Ajaib Singh, no active part is assigned to him. He was a silent spectator to what passed between Munsha Singh and Sunder Singh on one side and respondent No. 1 on the other. He, however, did not protest and did not subsequently disclose to the petitioner what happened on that date. This would certainly not make him directly or indirectly concerned in or privy to the offence of either giving bribe or receiving bribe and, therefore, cannot be categorized as an accomplice. The learned counsel for the respondent did not seriously press that Ajaib Singh was an accomplice, but referring to a decision of the Madras High Court in *Emperor v. Edward William Smith* ILR (1903) Mad 1, added that in similar circumstances such a witness would be a tainted witness. That would, however be a question of appreciation of evidence of Ajaib Singh with which we are not concerned in this Full Bench. We are only called upon to record an opinion as to whether Ajaib Singh is an accomplice or not and this question must be answered in the negative. The weight to be attached to his evidence is a matter of appreciation which is for the trial Judge and will depend on the peculiar circumstances of this case

8. Section 123 of the Act details various "corrupt practices" Sub-section (1) defines "bribery" The relevant part in Clause (A) read with Sub-clause (b). This runs as follows:--

"(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly, of inducing--

(a)

(b) an elector to vote or refrain from voting at an election, or as a reward to . .

9. The third question referred to the Bench is worded in general terms. But, in the case out of which reference has been made the allegations are of a gift of gratification and not merely of an offer of promise thereof. Similarly, gift is said to have been made by the candidate himself and not by his agent for other person. The question for determination, therefore, is whether the payment of a sum of money or setting apart of such a sum, for the construction of a dharamsala for the entire Harijan community does or does not fall within the definition of "bribery" as given in the aforesaid clause.

The contention of the learned counsel for the respondent was really two-fold: first that the gift of gratification has to be to a person and secondly, a gift of

gratification to the entire community of Harijans by getting a dharamsala erected cannot possibly be treated as a gift to a person or persons. Harijan community of the village Jodhpur Ramana consisted not only of the Harijan voters but also minors and other non-voters. Secondly, he urged that "bribery" and "undue influence" are intimately connected. "Undue influence", as defined in Sub-section (2) of Section 123, means any direct or indirect interference with the free exercise of any electoral right including the right to vote and Subsection (1) deals with "bribery", which is only one particular form of exercise of undue influence. Now, there are two provisos to sub-sec. (2): The first proviso clarifies that, without prejudice to the generality of the provisions of the definition of "undue influence", threat to any person with injury of any kind including social ostracism and excommunication or expulsion from any caste or community and inducing to believe that a person would be rendered an object of divine displeasure shall be deemed to be interference with the free exercise of the electoral right of a candidate or elector, as the case may be. The second proviso lays down that inter alia "a declaration of public policy or a promise of public action. shall not be deemed to be interference within the meaning of this clause". On the face of it. this second proviso relates only to Sub-section (2) which defines "undue influence". The argument of the learned counsel is that inasmuch as "bribery", as defined in Sub-section (1), is merely one form of undue influence, this proviso is applicable to a case of alleged bribery also.

10. Developing these points, the learned counsel referred to the definition of "person" is given in the Representation of the People Act, 1950. Clause (g) of Section 2 of that Act provides that "person" "does not include a body of persons" It was, therefore, argued that when by making a gift of money, a candidate benefits, not an individual or individuals, but the community or the constituency or the country at large, he is not in fact offering any gift of gratification to any person within the meaning of Sub-section (1) of Section 123 He urged that the idea of the Legislature obviously was that no candidate should be allowed to corrupt an individual voter or voters by offer of money or of they type of gratification. That, in no way, prevented a candidate from being charitably inclined and making contributions to the general good of the community by erecting hospitals, schools or the like or by making promises to his constituency or any part thereof to get such public works executed by the Government or partly by the Government and partly by the contributions made by him personally. In all such cases, it would be akin to a declaration of his public policy or public action and would be expected from the definition of "undue influence" by the second proviso to Sub-section (2) and the same proviso would apply to any allegation of bribery, which is only a form of undue influence.

11. On the other hand, the argument of the learned counsel for the petitioner was that in the first place the definition of "person", as given in the Act of 1950. is not applicable to this sub-section, because, as provided in the Act of 1951. words defined in the Act of 1950 and not in the Act of 1951, shall have the same meaning as in that Act unless "the context otherwise requires" and that the

context in this Clause (A) by using the words "to any person whomsoever" clearly indicates a contrary indication and the word "person", as used here, cannot be given the limited meaning of an individual and. therefore, also covers a Body of persons. Secondly, that in any case, what the definition provides is that gift of gratification is to be to a person and that an elector may be gratified not necessarily by payment of money to him directly but he may be gratified in a number of other ways, one of which may be some charitable or philanthropic work, which is for the benefit of the entire community of which he forms a part.

12. The counsel urged that the word "gratification" has a very wide meaning. Explanation to Sub-section (1) provides that--

"For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward. ..."

The word "gratification", therefore, at least includes four different categories: --

- (1) pecuniary gratification;
- (2) gratifications which are not pecuniary but estimable in money;
- (3) all forms of entertainment, and
- (4) all forms of employment for reward. A Division Bench of this Court in *Mool Chand Vs. Rulia Ram Panna Lal and Another*, , further held that these four categories are not exhaustive and that the explanation does not give complete definition. Mr. Justice Mehar Singh, as he then was. while delivering the judgment of the Court, with which Dua J., agreed, though with hesitation, came to the conclusion that the word "gratification" as used in this paragraph has been used in the ordinary dictionary meaning, which is a very wide one and will cover "any return which pleases for some favour done" In that case, respondent No. 1 induced the other candidates namely, Jai Singh and Zila Singh to withdraw from the contest of Gharaunda constituency for promise of a support for Jai Singh's brother in Samalkha constituency and this was held to be within the meaning and scope of Sub-section (1) of Section 123.

13. Section 181 of the Indian Penal Code explains illegal gratification by a public servant. The explanation with regard to word "gratification" is in similar terms as the explanation to Sub-section (1) of Section 123 of the Act and runs as follows:--

"The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money".

14. The learned counsel for the petitioner referred to Court's Commentary on Penal Law of India, 8th Edition, paragraph 11 at p. 1124, who, while dealing with the question as to "what is gratification" observes as follow: --

"The word "gratification" is not defined in the section or the Code but its sense is

extended by the explanation which says that the word "is not restricted to pecuniary gratification, or to gratification estimable in money". The word "gratification" is thus used in its larger sense as connoting anything which affords gratification or satisfaction or pleasure to the taste, appetite or the mind. Money is, of course, one source of affording pleasure, inasmuch as it implies command over things which afford pleasure but there are various other objects which afford gratification. The satisfaction of one's desires, whether of body or of mind, is a gratification in the true sense of the term. The craving for an honorary distinction, or for sexual intercourse is an example of mental and bodily desires, the satisfaction of which is gratification not estimable in money. A person may desire to marry his son to another's daughter, who may consent to the match on condition of his doing him some official favour. It is bribery. A person may be taken into a caste on his promising to do an official act as a motive or reward for his re-admission. It is bribery. In short, gratification is any benefit or reward given to influence one in one's behaviour in office, and incline one to act contrary to the rules of honesty and integrity. Anything, whether a sum of money, an object which appeals to one's senses, a dinner, a plateful of fruit, a medicinal pill, is gratification within the meaning of the term, though the recipient may not be punishable on that account. The expression "gratification" is used in this section in the sense of anything which gives satisfaction to the recipient"

15. The word "gratification" is thus used in its larger sense, as "an act, which affords gratification or satisfaction or pleasure to the taste, appetite or the mind". He therefore, contended that an elector may be gratified in a number of ways. It may be by the payment of money. If the money is paid directly to him, that would be a simple case and it would be bribe; or he may not like to accept any money for himself but may like the same to be paid to a poor relation of his. This would be an indirect payment to him and in no way different from the first case. In another case, there may be no payment of money to the elector, directly or indirectly but he may feel gratified by the candidate getting a well sunk in Ins village, where there is no satisfactory arrangement for drinking water. Here, no doubt, the benefit is not directly to him and his object in getting the well sunk is very laudable and not reprehensible as it may be in the case of his receiving money himself directly or through his relation, but all the same, it cannot be said that he is not gratified. The counsel further urged that if a person becomes charitable-minded only during the days of election, the main motive of the candidate is obviously to influence the electors to vote in his favour and not to satisfy his conscience by allaying the distress of the needy. He referred to paragraph 378 of Halsbury's Laws of England, Third Edition. Volume 14, where, on the basis of the decided English cases, it was observed as follows: --

"The imminence of an election is an important factor to be taken into consideration in deciding whether a particular act of charity amounts to bribery. A charitable design may be unobjectionable so long as no election is in prospect; but if an election becomes imminent the danger of the gift being regarded as

bribery is increased. It has been said that charity at election times ought to be kept in the oack-ground by politicians".

The learned counsel for the respondent, however, urged that the English cases do not afford any proper guide because the definition of "bribery" in EnTand is not the same and further there is no proviso like proviso (2) which excepts a promise of public action from being hit by the definition of "undue influence". He laid great stress on the fact that in a large number of decided cases, promise by a candidate to a section of his constituency that after his election, he will get land allotted to them, or get public development works like, schools and hospitals done in the constituency, by using his influence as a member of the legislature, it has been held that such promises would not fall within the definition of bribery but are mere declarations of public policy or public action. He referred to two decisions of this Court, in *S. Mehar Singh Vs. Umrao Singh and Another*, and *Balwant Rai Tayal v. Bishan Saroop* (1958) ELR P&H 101, wherein promises made generally for the benefit of the electors in the constituency were held not to fall within the definition of bribery. In the first case, the candidate held out a promise that he would get the allotment made to Bahawalpuri refugees, who were voters in the constituency, changed to Sirsa and also get the valuation of the land left by them in Pakistan in Bahawalpuri altered if they voted for him. The Bench of this Court observed as follows:--

"It is, however, clear, as the learned Tribunal has observed, that this demand of the Bahawalpuri refugees as a body was of long standing, and their grievances, if any, could Only be met by the Central Government, and I agree with the view of the learned Tribunal that even if the candidate did make a promise that he would try to get grievances remedied and got the Revenue Minister to reinforce his promise "this amounts to only a promise of public action and not individual benefit to such persons as the promise was made to". In my opinion it was correctly found that this did not amount to a corrupt practice". In the second case, Harijans wanted to retain a mosque, which they were using as their temple, and they were anxious to get land for building their houses. The candidate promised to do his best to have both their demands acceded to. At p. 108 of the report, it was observed as follows:--

"A promise to the Harijans of a locality by a candidate when he is canvassing for votes, that he would do his best to help them in the matter of retaining an old mosque as a temple and for getting land for building houses does not amount to bribery". "It is a kind of promiso which any candidate is entitled to give to any section of his electors".

Again, in *Gangadhar Maithani v. Narendra Singh Bhandari*, (1958) ELR (All) 124, a Division Bench of Allahabad High Court held that a promise by the candidate that he would have development work done in his constituency and that he would see that a large amount of money was spent on the development plan is the constituency did not amount to "bribery". At p. 127, Bhargava J., observed as follows:--

"In Clause (d) of paragraph 7 the allegation was that the respondent had promised that he would be able to procure personal advantage to the voters, but during the trial of the petition, no evidence at all was led to establish that any such promise had been made. The evidence given on behalf of the appellant was, on the other hand, to the effect that the promise by the respondent was that he would have development work done in his constituency and he would see that a large amount of money was spent on the development plans in the constituency. There being no evidence at all of any promise by the respondent that any voter would receive any personal advantage because of the respondents Influence with the ministers, learned counsel for the appellant in the appeal had to give up that plea and try to connect the issue with the pleading contained in Clause (e) of paragraph 7 of the petition because in that clause the pleading related to the promise by the respondent that he would have development work done in the constituency. If evidence had been given of a - promise of obtaining personal advantage to the voters, it might have been possible to hold that, in making such promise the respondent had committed a corrupt practice of bribery as defined in Section 123(1) of the Representation of the People Act. The promise for which evidence "has been given is, however, one under which no personal advantage could be obtained by any voter; the advantage was to the benefit of the whole constituency, if at all. That advantage to the constituency was also to be obtained by the respondent by using his influence in such a way that public action by the State Government in its development plans was to ensure to the benefit of the residents of his constituency. This means that his promise" was a promise relating to a public action and was not a promise relating to any private or personal benefit to any voter. Such A promise cannot possibly be deemed to be an offer of a gratification to any of the voters within the meaning of the word "gratification" as used and defined in Section 123(1) of the Representation of the People Act".

The learned counsel, therefore, urged that if as in the above mentioned cases, a promise by the candidate to get allotments made to Baliawalpuri refugees changed to Sirsa and get their valuation of land left by them in Pakistan raised; or promise to Harijans that he would do his best to enable them to retain the old mosque for being used as then temple, and to get them land for building houses; or get development work done in the constituency, does not amount to promise of gratification to a person or persons, within the meaning of Sub-section (1) of Section 123, then, if the candidate holds out a promise that he, if elected, would get, through his influence as a legislator, the Government or the Zila Parishad, to construct a Dharamsala for the Harijans, such a promise would also be excepted from the definition of bribery, as being only a declaration of public action.

16. In the light of the above decisions, the above-mentioned contention of the learned counsel would be unexceptionable that a promise of this type would not fall within the definition of "bribery" He, however, .urged that this would show that proviso (2) of Sub-section (2) of Section 123 is equally applicable to Sub-section (1), because in each of the above-mentioned cases, what is promised by

the candidate is meant to "gratify the persons to whom the promise is made". The learned counsel then went on to argue, that if a promise to get a Dharamsala built by the Government is a mere declaration of public action and not bribery, the case would not be different if the candidate further adds a promise that if the State Government of the Zila Parishad would not construct the Dharamsala, he would himself contribute a sum of Rs. 1,500 towards the cost of the same. If a promise to get something done by the Government for the general good of the Harijan community is only a declaration of public action and not an offer of bribe, then he urged, that a promise to do something by the candidate himself and out of his own resources, would still be a declaration of public action, so long as the promise made is not for the individual benefit of an elector but for the general good of the community as a whole.

17. The argument is certainly plausible. Without deciding the question whether proviso 2 of Sub-section (2) of Section 123 is applicable to Sub-section (1), Clause (A) also or not it has to be kept in mind that in all the three cases noted above on which reliance has been placed, the promise made by the candidate was in respect of an action by him in his public capacity as a legislator. In each case, the candidate held out a promise that if elected then as a member of the legislature, he would use his influence with the authorities concerned -- Rehabilitation. Department of the Central Government in the first two cases and State Government in the third case. Such use of his influence as an elected representative for the benefit of the constituency from which he has been elected, can certainly be expected by the electors of the constituency and as remarked in Tayal's case a promise to use such an influence is the one which a candidate is certainly entitled to make.

18. However, a promise to contribute or actual contribution by the candidate to the construction of a Dharamsala or a well, even if it be for the benefit of a section of the constituency, say, Harijans of a village, would fall in an entirely different category. It would not be a promise of an action by him in his capacity as an elected representative. The promise, in fact, would be in his personal and individual capacity and I think that will make all the difference. It is not the normal expectation of the electors in the constituency that the elected representative should necessarily be a rich person who can spend or who may promise to spend money on charitable or other public works in the constituency. Such gifts for public charitable and other philanthropic purposes would certainly be laudable objects, if made in the ordinary circumstances. Even though such gifts may have the effect of making a candidate popular and thus be instrumental in getting him votes of the electors, yet they would not be treated as gifts with a view to get votes. However, when such charity is shown during the election days, in effect, it may be only a method of gratifying the electorate with a view to induce them to vote for him. Charity does not become bribery so long as it is not made with a view to get votes. Where such charity is given as a consideration for an elector or electors to vote for him, the same would certainly come within the mischief of Sub-section (1) of Section 123. The facts of the

decided cases cited above, therefore, are distinguishable from a case like the one before us. where money is alleged to have been paid by the candidate in his personal capacity during the election days as consideration for Harijans" voting for him.

19. Stress was, however, laid on the words in the observations in the above-mentioned cases which have been underlined (here in " ") by me in the extracts reproduced above, that the promise made therein gave "no individual benefit to such persons as the promise was made to", S. Mehar Singh Vs. Umrao Singh and Another, , or from which "no personal advantage could be obtained by any voter", Maithani"s case. (1958) ELR 124 . The counsel argued that in case of contribution by the candidate for the construction of dharamsala also, no individual benefit accrued to Sunder Singh and Munsha Singh, the 2 representatives of Harijans. Having given our anxious thought to the argument, we feel that the observations referred to above, must be taken and understood in the context in which they have been made and the same are no authority for the wide proposition, as was advanced by the learned counsel for the respondent that in no case any gift or promise of such a gift for purposes which are beneficial to the community or to a section of the community as a whole, as distinguished from conferring benefit on individual or individuals, can be bribery, as defined in the Act. The obvious idea of the legislature in making "bribery" and undue influence" as corrupt practices is to ensure that the institution of election is not corrupted by gratifications offered as consideration for getting votes and it will be defeating the very object of the legislature if the interpretation sought to be put forward by the learned counsel is accepted. The argument that no gift made to a body of persons or to a section or the community of electorate can be bribe, cannot be accepted. A gift of gratification to a person with the corrupt object mentioned therein is all that is necessary for the gift falling within the purview of "bribery". Gratification, as already indicated, can be any act which gives to an individual satisfaction or pleasure. In the present case, the satisfaction or pleasure would, in the first instance, be of Sunder Singh and Munsha Singh, who allegedly approached respondent No. 1 and told him that they would be gratified and would vote in his favour if the respondent constructed or contributed towards the construction of, Dharamsala, of which the Harijan community was greatly in need. As alleged by the petitioner, if thereafter the respondent paid a sum of Rs. 1,500 then such a gift, by respondent, would certainly be to the gratification of Sunder Singh and Munsha Singh, if not also to the gratification of other Harijan electors, on whose behalf the representation was made by Sunder Singh and Munsha Singh. In Mohan Singh Vs. Bhanwarlal and Others, , Shah J., while delivering the judgment of their Lordships of the Supreme Court, at p. 1369 observed as follows:--

"Gratification in its ordinary connotation means satisfaction. In the context in which the expression is used and its delimitation by the Explanation, it must mean something valuable which is calculated to satisfy a person"s aim, object or desire, whether or not that thing is estimable in terms of money".

In that case, it was alleged that Mohan Singh had offered to help Himmat Singh "in procuring a job in Dalauda Sugar Factory or elsewhere" and that as a consequence of that offer Himmat Singh had withdrawn his candidature from the election. The question before their Lordships was whether this constituted a corrupt practice on behalf of Himmat Singh or not and this again turned on the question whether the promise made by Mohan Singh to help Himmat Singh in procuring a job in Dalauda Sugar Factory or elsewhere, amounted to gratification within the meaning of Sub-section (1) of Section 123 and, therefore, amounted to a corrupt practice of bribery. After explaining the meaning of gratification, as quoted above, their Lordships went on to observe as follows:

""The acceptance of offer which constitutes a motive or reward for withdrawing from the candidature must be acceptance of gratification; and if gratification does not include all offers and acceptances of mere promises, but requires, to constitute it an offer and acceptance relating to a thing of some value, though not necessarily estimable in terms of money, a mere offer to help in getting employment is not such offer of gratification, within the meaning of Section 123(1)(B) as to constitute it a corrupt practice".

20. In view of the above, therefore, for finding out whether a particular promise or act amounts to gratification, within the meaning of the Act, two tests have to be satisfied. First, that the gratification must be something which is calculated to satisfy a person's aim, object or desire and secondly, such a gratification must be of some value, though it need not be something estimable in terms of money. In the present case, a sum of Rs. 1,500 is alleged to have been offered for the construction of a Dharamsala. There can be no manner of doubt that if this amounts to gratification, it is of value, which is even estimable in terms of money. Even if it be taken that so far as individual electors, like Sunder Singh and Munsha Singh are concerned the construction of a Dharamsala is not estimable in money, even then it is certainly of some value. In the present case, Dharamasala, if constructed, will be as useful to Sunder Singh and Munsha Singh as to other members of the community, who may or may not have been voters. It is not necessary that the gratification offered should be of value only to the person to whom it is offered and not to anybody else. Again, the second test is also satisfied, because it was apparently the aim and object of Sunder Singh and Munsha Singh to get Dharamsala constructed or to obtain contribution or funds for the construction of the same and this aim and object was certainly satisfied by the action of the respondent.

21. Maganlal Radhakishan Bagdi Vs. Hari Vishnu Kamath, , is a case directly in point. A Division Bench of the Madhya Pradesh High Court, to which Hidayatullah, C.J., (as he then was) was a party, held that a promise by a candidate of assistance in the digging of a well for the Harijans in the village during the election would fall within the definition of "bribery". In this case, the candidate from the Hoshangabad Parliamentary Constituency, with another congress candidate, who was from another constituency, addressed a public meeting at

village Singhpur. The villagers said that they needed a well as there was dearth of water supply in the village. A site was selected and thereafter the appellant and the other candidate performed the ceremony of consecrating and digging the well and promised to construct the well after the election. At pages 215-216 (of ELR) = (at p. 367 of AIR), it was observed by the Bench as follows:

"....the necessary effect of the gift being to induce the electors to vote for a particular candidate, we see no reason why it does not constitute corrupt practice within the meaning of Section 123(1) of the Act. As held in Wigan, "charity at the election time ought to be kept by the politicians in the background", as, in truth, "it will generally be found that the feeling which distributes relief to the poor at the election time, though those who are the distributors may not be aware of it, is really not charity, but party feeling. Following in the steps of charity, wearing the dress of charity and mimicking her gait". We are accordingly of the opinion that while we endorse the view of the Tribunal that the circumstances of the case clearly reveal a case of a promise of reward to the voters, the case also otherwise falls within the mischief of Section 123(1) of the Act".

Reference was also made to a number of cases decided by the Tribunal. These are, Amritsar and Sialkot (General Rural) Constituency, 1937, Sen and Poddar Indian Election Cases, p. 21, wherein a promise for building a water channel and a contribution to the Sanatan Dharam Sabha; Agra City Constituency, Hammond Indian Election Cases, page 18, wherein contribution for repairs of a temple; and Shankare Gowda v. Marlyappa, (1953) ELR Mys 101, wherein offer of Rs. 4,000 by the candidate to the Managing Committee of the Gurukula Ashram High School evidently for consideration to influence the voters in his favour in the surrounding villages, was held in each case to fall within the definition of "bribery". Similarly, in Kataria Takandas Heinraj v. Pinto Frederick Michael (1958) ELR 403 (Ele. Tri. Surat), an offer to repair Dargah was also held to fall within the mischief of Sub-section (1) of Section 123. There is not a single decided case in which a gift of money made for public charity during the election with the corrupt motive was held not to fall within the definition of "bribery" on the ground that it is not made for the benefit of an individual.

22. In view of the above, we are of the considered opinion, that the answer to the question whether a gift or promise of such a gift made for a public purpose does or does not fall within the definition of "bribery" under Sub-section (1) of Section 123, would mainly depend on the facts and circumstances of each case, but, broadly speaking, it would so fall, if it satisfies the following conditions:--

- (1) That it gives satisfaction or pleasure to an individual or individuals;
- (2) The gift or promise, which is to give such a gratification or pleasure to the individual, is of some value; and lastly,
- (3) The gift or promise by a candidate is made with the corrupt motive of directly or indirectly inducing the persons gratified to vote in his favour or to induce other electors to vote in his favour.

We consequently answer Question No. (3) accordingly. The case will now go back to the trial Judge for further proceedings in the light of the above answers.

Grover, J.

23. I agree.

D.K. Mahajan, J.

24. I agree.

FINAL ORDER, DATED 12-12-1967

Harbans Singh, J.

25. This election petition has been filed by Tarlochan Singh, a defeated candidate from Pakka Kalan Constituency in Bhatinda district, against the election of Karnail Singh. respondent No. 1. The petitioner fought the election as a nominee of the Congress whereas respondent No. 1 was a candidate of Sant Fateh Singh Akali Dal. The main grounds of attack were, first, that Amar Singh, respondent No. 2, who was another candidate from this constituency his nomination paper having been accepted and who had not withdrawn his candidature within the time allowed, was later on made to withdraw from the active contest by undue influence exercised through Sant Fateh Singh in the name of Sikh religion, divine displeasure and spiritual censure. Secondly, that Jarnail Singh, who subsequently worked as the polling agent of respondent No. 1, published a poster with the consent of respondent No. 1 on 14th of February 1967. This poster contained a statement that Amar Singh, respondent, had withdrawn from the contest because it was indicated to him that anybody opposing a Panthak candidate or not voting for such a candidate would be the object of spiritual wrath; and that this poster was distributed after 14th of February in a number of villages in the constituencies, as detailed in the petition; thirdly, that the respondent had incurred expenses with regard to petrol, etc., in connection with the jeeps and other vehicles used by him during the election which he has not shown in the return filed by him and that the total expenses exceed the limits laid down by the law; fourthly, that respondent No. 1, through his agent Ganda Singh, entered into an agreement with the Harijan voters of the village Jodhpur Ramana in the constituency and made them a gift of Rs. 1,500 for the construction of a dharamsala for the Harijans in the village after the result of the election had been declared with a view to influence the Harijan voters of that village to cast their votes in his favour and that the money was kept in deposit with Manohar Lal, brickkiln owner, who actually supplied the bricks for the dharamsala after the polling; and, lastly, that the respondent hired three jeeps and used the same for free conveyance of tna electors from different villages to the respective polling booths.

26. These, allegations were controverted on behalf of the respondent, according to whom, Sant Fateh Singh never stated any words as are attributed to him and, in fact, Sant Fateh Singh never met Amar Singh, nor did he withdraw from the

contest. It was further denied that the poster complained of was ever published by or with the consent of respondent No. 1 or that Jarnail Singh ever worked as the polling agent of respondent No. 1. The distribution of the poster was also denied. It was stated that the only expenses incurred were as detailed in the return and that no other expenses were at all incurred. The story about any agreement with Harijans of Jodhpur Ramana or payment of Rs. 1,500 or any other payment to them was also denied. It was further stated that no jeeps were hired or used for free conveyance of electors. Certain preliminary objections were taken in regard to the lack of particulars. These were supplied and amendments made in the petition. As a result of these pleadings, following issues were settled:--

(1) (a) Did respondent No. 1 accompany Sant Fateh Singh on 6th of February, 1967, and through the aforesaid Sant Fateh Singh exercise undue influence on Amar Singh respondent No. 2, in the name of Sikh religion and divine displeasure and spiritual censure and made him to withdraw from the contest?

(b) Did Sant Fateh Singh and respondent No. 1 further give an understanding to Amar Singh, respondent No. 2, that the case pending in the Court regarding Gurdwara Jassibaghwal, of which he was the priest, shall be withdrawn?

(c) Did Amar Singh, respondent No. 2, actually withdraw from the contest as a result of the influence exercised over him as mentioned in the above issues?

(d) If any of the above issues (a), (b) and (c) is proved, is respondent No. 1 not guilty of corrupt practice?

(2) (a) Did Jarnail Singh, who subsequently worked as polling agent of respondent No. 1, with the consent of respondent No. 1, publish the poster annexure "B" with the petition?

(b) Was this poster distributed on the dates and places mentioned in paragraph 12 of the petition by the persons named therein with the consent of respondent No. 1?

(c) If (a) and (b) are proved, does the publication of the poster not amount to corrupt practice?

(3) (a) Did respondent No. 1 incur expenses, detailed in paragraph 14, or any one or more of them, which are not included in the return?

(b) If so, did the total expenses exceed the limit laid down by law, by the inclusion of the expenses proven to have been incurred in addition to those mentioned in the return?

(c) If so, is respondent No. 1 not guilty of corrupt practice?

(4) (a) Did respondent No. 1, through his agent Ganda Singh, enter into an agreement with the Harijan voters of village Jodhpur Ramana, named in Sub-clause (b) of para 15, to make a gift of Rs. 1,500 to them for the construction of

a dharamsala for the Harijans in that village after the result of the election had been declared, with a view to influence the Harijan voters of that village to cast their votes in favour of respondent No. 1?

(b) Was this aforesaid sum deposited with Manohar Lal, brick-kiln owner, with instruction to supply the bricks after the election was over? If so, were the bricks so supplied or are being supplied for the Harijan dharamsala in pursuance of the above-mentioned agreement?

(c) If so, is respondent No. 1 not guilty of corrupt practice of bribery?

(5) (a) Did respondent No. 1 hire jeeps Nos. PNF 7518, RJK 158 and RSL 5383 and use the same for the free conveyance of the electors, as detailed in Clauses (a), (b) and (c) of para 16?

(b) If so, is respondent No. 1 not guilty of corrupt practice?

Only issues 1, 2 and 4 require consideration and adjudication, because with regard to the remaining two issues, namely, 3 and 5, though considerable evidence was laid on behalf of the petitioner, it was conceded that at the time of the arguments, that the petitioner has not been able to establish these two issues. I will, therefore, take up the remaining three issues. (27-36) (His Lordship considered the evidence and proceeded:)

37. For the reasons given above, therefore the petitioner is held to have failed to establish issue No. 1 and the same is decided against him.

38. Issue No. 2.--In the petition, the allegations were that the poster (Annexure "B"), the original of which was subsequently marked Exhibit P.W. 3/1, purporting to have been issued by Mahant Amar Singh, but in fact the same was got printed, published and distributed by the respondent and his agents. An objection being taken that the allegations in this para 12 of the petition are vague, a statement was made on 18th of May, 1967 by the counsel for the petitioner making it clear that it was Jarnail Singh, who subsequently worked as his polling agent, who got the thing printed and published with the consent of respondent No. 1, and that later on, as already alleged in the petition, Karnail Singh accompanied by his other supporters, distributed the poster in the villages on the dates mentioned in the petition.

39. The manuscript Exhibit P.W. 3/1 of this poster is in the handwriting of Gursewak Singh. According to him some seven or eight days after the withdrawal of Mahant Amar Singh in pursuance of the talk of Sant Fateh Singh with him, as mentioned above, Karnail Singh, respondent, accompanied by his nephew Bir Devinder Singh and some others went to him at the Gurdwara Pathsala and suggested that some persons in the constituency still doubted whether Mahant Amar Singh was contesting or not and that it would, therefore, be better if a poster was got published. Thereafter, Karnail Singh, respondent, dictated to Gursewak Singh this draft of the poster which he wrote down at his dictation. Thereafter, the draft was taken by Karnail Singh. The next link of the story is

given by Mahant Amar Singh as follows:-

"Some two or three days (hereafter, Bir Devinder Singh came with a draft of a pamphlet stating that I had withdrawn and told me to sign it, so that it could be published to avoid misunderstanding amongst people, whether I have withdrawn or not and on this I signed that draft at the Gurdwara. He then took me to the Press and there I signed another form. Bii Devinder Singh, Surjit Singh, Gurdev Singh and Karnail Singh, respondent, were present. Garish Gupta. P.W. 3, is the proprietor of Janata Printing Press at Bhatinda, where the poster was actually printed. According to this witness, on 14th of February, 1967, Mahant Amar Singh came to his press accompanied by Surjit Singh and Gurdev Singh, both of Ruldusinghwara, and Karnail Singh, respondent. The manuscript. Exhibit P.W. 3/1, according to him, was signed by Mahant Amar Singh at the press, and so was the declaration form. Exhibit P.W. 3/2. On the latter, signatures of Surjit Singh and Gurdev Singh were taken as attesting witnesses of the signatures of Mahant Amar Singh. Karnail Singh told him to have the poster printed on that very day. Later, one Jarnail Singh, whom he did not know, called on the same day, He delivered the posters, which were 1,000 in number to the aforesaid Jarnail Singh and took his signatures on the manuscript as well as on the counterfoil of the cash memo No. 889 issued to him for Rs. 21-20 paise, being the cost of the printing and the paper. The counterfoil was produced by him and marked Exhibit P.W. 3/3. He produced his account books in support of the fact that the cash entry was duly entered in the cash register and subsequently in the ledger.

40. Leaving aside the question of details as to who went to get the poster printed, the first question for consideration is whether on the evidence produced it can be reasonably held that the poster was in fact printed roundabout the date suggested. The contention of the respondent, however, was that no such poster was at all printed, it being suggested that possibly the poster was printed either after the election or if it was printed before the election, it was never distributed and it was meant only to be utilised in case the petitioner was unsuccessful in the contest. So far as the contents of this poster are concerned, there can be no manner of doubt that the same are hit squarely by Clause (ii) of proviso (a) to subsection (2) of Section 123 of the Representation of the People Act. This proviso runs as follows:--

"(a) Without prejudice to the generality of the provisions of this clause, any such person as is referred to therein who--

(i).....

(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."

The relevant portion of the poster may be re-produced:

" I might state to all the brethren and voters of Pakka Kalan Constituency that I stood up as a candidate from this constituency to contest the election with your unanimous approval. Now at the instance of Shri Karnail Singh, candidate from Pakka Kalan. Saut Baba Fateh Singh Ji disclosed to me that God had ordained to him at the Akal Takhat. Amritsar. He (Sant Fateh Singh) told me in presence of, Shri Karnail Singh that I am a Sikh of the Gum and this has been ordained by the Guru at the Akal Takhat to Sant Fateh Singh that if any Sikh candidate fights an election against a Panthak candidate he would be committing a sin. In accordance with the afore said orders of Sant Baba Fateh Singh, fearing the God, I Am withdrawing in favour of Shri Karnail Singh. I further appeal to the voters of Pakka Kalan Constituency that they should vote in favour of Karnail Singh, the Panthak candidate and thus avoid the wrath of the Almighty God. Save yourselves from the un kindness of the God. Whosoever would not obey the orders of Sant Fateh Singh Ji, ha would be excommunicated from the Sikh community and would be socially boycotted."

This has been purported to have been signed by Mahant Amar Singh, but the poster bears a pair of scales, which is the symbol of Karnail Singh and of Sant Fateh Singh's Party.

41-44. (After considering the evidence as to who was responsible for the poster, his Lordship continued.) Position, therefore, is that the evidence of Gursewak Singh and Mahant Amar Singh relating to the circumstances in which the manuscript came to be written and printed, does not appeal to reason and appears to be highly improbable, for the reasons put forward by the learned counsel for the respondent. Apart from this, Gursewak Singh and Amar Singh are inimically disposed to the respondent, as discussed above and in a serious matter like this, in which the evidence has to be of such a nature as would bring home the charge of a corrupt practice beyond all reasonable doubt to the person accused thereof, I do feel that their evidence even coupled with that of Garish Gupta, does not establish that it was Jarnail Singh who got the poster published, and in any case there is no evidence on the record to show that this Jarnail Singh was the polling agent of Karnail Singh, or that otherwise the poster was published with the consent of Karnail Singh. It has to be seen that the evidence, as brought out, is to the effect that it was Karnail Singh himself who got the draft scribed and went to Amar Singh to get his signatures and it was he again, who went to the press to have the poster pointed, whereas in the petition, as amended by the statement of the counsel, the case of the petitioner was to the effect that it was Jarnail Singh who. with the consent of Karnail Singh, got the poster printed. This is not the same thing as Karnail Singh himself getting the poster printed. Part (a) of issue No. 2, therefore, as it is, cannot be said to have been established and the same must be decided against the petitioner.

45-52. Now, with regard to the publication, evidence again is highly unsatisfactory. (His Lordship considered the evidence and continued.) I,

therefore, feel that the evidence on the record is far below the standard of evidence required to prove beyond all reasonable doubt that this objectionable poster was distributed by or at the instance of Karnail Singh. The second part of this issue is also decided against the petitioner

53. Issue No. 4.--This issue was framed in the light of the allegations made by the petitioner in paragraph 15 of the petition, it was alleged that Harifans of village Jodhpur Ramana were in need of a dharamsala building and Karnail Singh, respondent No. 1. through his agent Ganda Singh. a resident of that village, entered into an agreement with Sunder Singh and Munsha Singh. the Harijan leaders of that village, by which Karnail Singh offered a sum of Rs. 1500 as a gift to the Harijans for the construction of the aforesaid dharamsala, if the Harijan electors of that village voted for him. It is further averred that as a result of the above-mentioned agreement, Rs. 1,500 were deposited with a brick-kiln owner, Manohar Lal, with instruction from respondent No. 1 to supply bricks, after the election is over and that as a result of this arrangement, bricks were being supplied after the election, for the construction of the dharamsala.

54. At the trial, the latter part of the story was not supported and the position taken was that the amount of Rs. 1,500 was, in fact, not deposited with any brick-kiln owner, but was kept in deposit with Ganda Singh himself and it was Ganda Singh who, subsequent to the election, supplied the bricks, cement and two iron girders which were required for the dharamsala building and, in addition, he paid for the labour charges of the masons employed. The work of the labourers was done by the Harijans themselves free of charge. Though this change in the story as put forward in Sub-clause (c) of paragraph 15, was made at the trial, no objection was taken on behalf of the respondent that this evidence should not be allowed to come on the record, because it ran counter to the allegations in the aforesaid sub-clause, or that the evidence led was different from the particulars of the corrupt practice, as given in the petition.

55. Four witnesses were examined with regard to this issue, namely, Sunder Singh and Munsha Singh, the two Harijan leaders, Ajaib Singh, a relation of Ganda Singh, who happened to be present at village Ramana on 18th of February, 1967, when the deal was settled and when, as a result thereof, Karnail Singh is said to have passed on the sum of Rs. 1,500 to Ganda Singh, and Manohar Lal, proprietor of a brick-kiln, near Jodhpur Ramana. This Manohar Lal (P.W. 21) stated that his kiln is the nearest to Jodhpur Ramana, being two miles from that village. He, however, stated that, according to the books maintained by him at the kiln by his munshi, there was no stock of bricks during the months of February and March and the first sale of bricks was on 6th April, 1967, when 11,750 bricks were supplied to the School Committee, Jodhpur Ramana and subsequent supplies were made to the school on different dates in April and June, and final supply was made on 8th of August, 1967. He had no personal knowledge as to who actually came to the brick-kiln to take the bricks and who made the payment, because, according to him, he was away during those days

and returned only on 10th of June and during his absence, payments, etc.. were all received by his munshi He was not. therefore, in a position to say whether Ganda Singh made the payment on behalf of the School Committee or the Panchayat.

56. We are, therefore, left only with the evidence of the two Harijan leaders and Ajaib Singh, with regard to this issue.

57-59. (His Lordship reviewed the evidence and proceeded:)

60. On behalf of the petitioner, baring out Manohar Lal, P.W. whose evidence has been discussed above, the main witnesses, in support of this issue are the two Harijan leaders. Sunder Singh and Munsha Singh and Ajaib Singh. The learned counsel for the respondent urged that Sunder Singh and Munsha Singh would fall in the category of "accomplice" witnesses and that it would not be safe to rely on their evidence for recording a finding of corrupt practice having been committed, without independent corroboration on material points, and that so far as Ajaib Singh is concerned, he was a silent witness to the bribe being given by Karnail Singh and accepted by Munsha Singh and Sunder Singh and he did not inform anybody else and was, therefore, also no better than an accomplice, apart from the fact that the reason given by him for being present at the spot was highly improbable. In addition, it was urged that even if the gift or an offer of Rs. 1,500 by Karnail Singh to the Harijans for the construction of their dharamsala is held to be proved, the same would not fall within the definition of "bribery" under Sub-section (1) of Section 123, because it is a gift or a promise of a gift for a public charitable purposes, which in no case amounts to "bribery. As the last point raised was of considerable importance, I referred the following three questions for a decision by a larger Bench:--

"(1) Whether, in the circumstances of the case, Munsha Singh and Sunder Singh fall in the category of accomplices and, if so, whether the rule applicable to criminal trials requiring independent corroboration of the evidence of an accomplice, holds good in the case of election petitions in relation to a charge of a corrupt practice of bribery?

(2) Whether, in the circumstances of this case, Ajaib Singh would also fall in the category of an accomplice?

(3) Whether a gift or promise made for a public purpose and not for the benefit of any individual or individuals, but the object of which is to make himself popular amongst a section of the electorate as a whole and thus directly or indirectly induce them to vote in his favour, would fall within the definition of "bribery" as given in Section 123 of the Representation of the People Act or not?"

The Full Bench, vide its judgment, dated 14th of November, 1967, returned the answer to the first question in the affirmative and the second question in the negative and with regard to the third question, the reply given was as follows:--

"The answer to the question, whether a gift or promise of such a gift made for a

public purpose does or does not fall within the definition of "bribery" under Sub-section (1) of Section 123, would mainly depend on the facts and circumstances of each case, but, broadly speaking, it would so fall, if it satisfies the following conditions:--

- (1) That it gives satisfaction or pleasure to an individual or individuals;
- (2) The gift or promise, which is to give such a gratification or pleasure to the individual, is of some value; and lastly
- (3) The gift or promise by a candidate is made with the corrupt motive of directly or indirectly inducing the persons gratified to vote in his favour or to induce other electors to vote In his favour."

61. In view of the above, the evidence of Munsha Singh and Sunder Singh, in the first place, has to be judged by the usual test applicable to all witnesses, namely, whether they appear to be reliable and the evidence given by them is probable. If their evidence passes that test, then, in view of the rule of caution, which has hardened into a rule of practice, we must look for some independent corroboration, which gives reassurance to the mind of the Court, before accepting their evidence for recording a finding of a corrupt practice having been established.

62-68. (His Lordship considered the evidence of Munsha Singh and Sunder Singh and continued.)""

64. There can be no manner of doubt that both Munsha Singh and Sunder Singh do appear to be partisan witnesses, because they have had affinities with the Congress Party and had also taken loan from the previous Congress Government and Munsha Singh was also connected with a Khadi Board. Again, they were going about asking for gratification from any candidate, who was willing to offer. and, as already held by the Full Bench, they are accomplices and consequently complete reliance cannot normally be placed on their statements. In the present case, however, it was urged on behalf of the petitioner that the circumstantial evidence of the dharamsala having come into existence soon after the election, the clear and definite denial as to the very existence of the dharamsala building by Ganda Singh and his evasive replies with regard to the, supply of bricks and their utilization for the purpose of room at the school, supply sufficient corroboration to the evidence of these two witnesses. As was held in Jnanendra Nath Ghose Vs. The State of West Bengal, , Head-note "C": "There should be corroboration in material particulars not only concerning the crime but corroboration of the approver's story by evidence which connects or tends to connect an accused with the crime. It is this corroborative evidence which determines the mind of the Court or a jury that the approver's evidence that the accused committed the crime is true. However, this corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime: Rameshwar Vs. The State of Rajasthan, .

65-66. In the present case, the main and important part of the circumstantial evidence is provided by the report of the Local Commissioner. (His Lordship considered this part of the evidence and continued.)

67. Be that as it may, there is ample corroboration afforded by the circumstantial evidence on the record, as discussed above, which gives reassurance to the main story put forward on behalf of the Harijan witnesses even if Ajaib Singh's evidence is excluded from consideration.

68. The learned counsel for the respondent, however, urged that in the petition it was definitely averred that the promised money was kept in deposit with Manohar Lal and part (b) of issue No. 4 was framed accordingly and that was the issue on which the parties went to trial and that at the trial, the petitioner took a somersault and led evidence to the effect that the money was kept in deposit with Ganda Singh, and that the petitioner cannot be allowed to prove a case other than the one that was set up by him in the petition. Reference was made by him to an election case reported in *Gurbanta Singh v. Piara Ratn Jaggu Ram* AIR 1960 P&H 611. Reliance is placed on the observations made at p. 617, the relevant part of which is as follows:--

"It is doubtful whether a petitioner, who, in an election petition, puts forward allegations with regard to actual payment of money by way of illegal gratification to procure the withdrawal of the candidature of a rival candidate, can be allowed to prove at the trial that, in fact, no money was actually paid, but that only an attempt was made to make such payment. The two allegations are not exactly the same, and, unless the petitioner applies for an amendment, and such an amendment is allowed to be made in the petition, we are of the view that the petitioner is not entitled to propound a case at the trial different from the one set up by him in the petition. In that case, the Bench, to which I was a party, did not actually believe the evidence of two witnesses, with regard to the attempt at making payment to the rival candidate and in view of that, it was hardly necessary in that case to go into the question whether the petitioner could be allowed to prove an attempt, when in the election petition, he had put forward an allegation of actual payment made. Again, the Bench did not decide the question and merely expressed doubt whether the petitioner could be allowed to prove an attempt in the above-mentioned circumstances. No doubt. it is generally well settled now that no amount of evidence on a point which is not in the pleadings can be taken into consideration. AIR 1930 57 (Privy Council) . The head-note runs as follows-

"Where a claim was never made in the defence presented, no amount of evidence can be looked into upon a plea, which was never put forward "

On behalf of the petitioner, however, it was vehemently urged that part (b) of issue No 1 contains really a matter of detail, which the petitioner need not have pleaded in the petition, because he could have just averred that negotiations took place, as a result of which, it was agreed by respondent No. 1 to pay a sum

of Rs. 1,500 for the construction of the dharamsala. Whether the money was left with "A" or "B" is not of much consequence. In any case, he urged that from the very beginning, when the first witness on this issue was examined, the position taken up by the petitioner was that the money was in fact deposited with Ganda Singh and this evidence was allowed to be brought on the record without any objection and the respondent had ample opportunity, which he did in fact utilise, for disproving this part of the story and that it cannot be said that the respondent had been taken by surprise. In fact, he urged, both the parties went to trial mainly with regard to the question whether there had been any agreement between the Harijans and respondent No. 1 and secondly, whether the money was deposited with Ganda Singh or not. Both the Harijan witnesses were cross-examined at length as regards the part played by Ganda Singh and supply of bricks and other material by him. In this connection, he referred to Nagubai Ammal and Others Vs. B. Shama Rao and Others, , in which Privy Council's decision in AIR 1930 57 (Privy Council) was duly considered and explained. One of the contentions before the Supreme Court in that case was "that the question of *Us pendens* was not raised in the pleadings and is not open to the plaintiff." With regard to the contention of the plaintiff that para 4 of the plaint and para 5 of the reply statement meant to raise the plea of *lis pen-dens*, their Lordships observed as follows:--

"Even if the plaintiff meant by the above allegations to raise the plea of *lis pendens* he has not expressed himself with sufficient clearness for the defendants to know his mind, and if the matter had rested there, there would be much to be said in favour of the appellant's contention. But it does not rest there." Their Lordships then went on to observe as follows:--

"The question of *lis pendens* was raised by the plaintiff at the very commencement of the trial on 8th March, 1947, when he went into the witness-box and filled in his examination-in-chief Exhibits J series. . . . This evidence is relevant only with reference to the plea of *Us pendens*, and it is significant that no objection was raised by the defendants to its reception. Nay, more.

On 13th March, 1947, they cross-examined the plaintiff on the collusive character of the proceedings in Exhibits J series, and filed documents in proof of it. .

We are satisfied that the defendants went to trial with full knowledge that the question of *lis pendens* was in issue, had ample opportunity to adduce their evidence thereon, and fully availed themselves of the same, and that, in the circumstances, the absence of a specific pleading on the question was a mere irregularity which resulted in no prejudice to them."

Reliance was placed on the observations of Lord Dunedin in AIR 1930 57 (Privy Council) , that "no amount of evidence can be looked into upon a plea which was never put forward." It was further observed:

"The true scope of this rule is that evidence let in on issues on which the parties

went to trial should not be made the foundation for decision of another and different issue, which was not present to the minds of the parties and on which they had no opportunity of adducing evidence. But that rule has no application to a case where parties go to trial with knowledge that a particular question is in issue, though no specific issue has been framed thereon, and adduce evidence relating thereto."

69. As stated above, there can be no manner of doubt that the respondent was not taken by surprise and from the moment the first witness on this question was examined to the end of the trial, the respondent fully knew the case that he was required to meet. On behalf of the respondent, it is contended that what is sought to be proved in this case is altogether different from the specific issue settled and without the petitioner getting; the pleadings and the issue amended, no finding can be given by the Court, which runs counter to the case set up by the plaintiff and actually put in issue. Having given my best consideration to the point, I feel that so far as issue No. 4 (b) is concerned, the petitioner must be taken to have failed to prove the same and he cannot ask the Court to give a finding different from the pleadings in the petition and the issue settled there, although, as stated above, there is no manner of doubt that the evidence ran contrary to the allegation in the plaint and the matter in issue was allowed to be led in without objection and effort was made on behalf of the respondent to meet the case that was set up by the petitioner at the trial.

69A. It was, however, contended on behalf of the petitioner that merely because he is held not to have proved part (b) of issue No. 4, and a finding cannot be given that in fact the money was kept in deposit with Ganda Singh, that would not in any way demolish his case on issue No. 4 (a). His failure to prove issue 4 (b) may be a matter to be taken into consideration for believing or disbelieving the evidence led by him on issue No. 4 (a), yet this failure of his does not automatically entail the finding on issue No. 4 (a) being given against him. I feel there is a considerable force in this argument. The allegations in para 15 of the petition, on which issue Nos. 4 (a) and 4 (b) have been settled fall into two distinct parts; first, that an arrangement was arrived at by which Karnail Singh agreed to pay a sum of Rs. 1,500 for the construction of a dharamsala in consideration of the Harijans voting for him, and secondly, that in pursuance of this arrangement, money was deposited with Manohar Lal, brick-kiln owner. There is no manner of doubt that if the second part is proved, that will afford strong corroboration of an arrangement having been arrived at. However, if the petitioner is unable to establish the second part of the story either because due to wrong information he gave a different story in the petition and due to the failure of his legal advisers to advise him to have that part of the petition amended, or because the Court refuses to allow the amendment, that would not necessarily mean that he must be held to have failed in establishing even the first part, if otherwise the evidence led with regard to the first part is sufficient to give a finding in his favour. In the present case, therefore, issue No. 4 (b) must be found against the petitioner for his failure to lead any evidence in support

thereof, yet so far as issue No. 4 (a) is concerned, in view of my discussion above, direct evidence of the Harijan witnesses Sunder Singh and Munsha Singh finds corroboration from the circumstantial evidence and, therefore, this issue must be found in favour of the petitioner and the respondent No. 1 held guilty of having committed the corrupt practice of "bribery" as defined in Clause "A" of Sub-section (1) of Section 123 of the Representation of the People Act.

70. The result of my finding on issue No. 4 (a), therefore, is that the petition must be accepted and the election of respondent No. 1 declared void and I order accordingly. In accordance with Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 99, respondent No. 1 Karnail Singh is named as a person proved to be guilty of the corrupt practice of bribery, as detailed above.

71. Munsha Singh and Sunder Singh on their own showing are also guilty of corrupt practice of bribery, as defined in Sub-clause (b) of Clause (B) of subsection (1) of Section 123, but they are not parties to this petition and I do not consider that it will be desirable to further prolong the proceedings of this petition by giving them a notice to appear. Were the High Court and show cause why they should not be named.

72. As regards the costs, the petitioner has failed on all other issues and the major part of the evidence was led on those issues. I feel that it will be proper to leave the parties to bear their own costs and I order accordingly.

73. Notice to issue to Ganda Singh, R.W. to show cause why action be not taken against him for giving false evidence on oath. Separate proceedings to be started in this respect.