
(1967) 11 P&H CK 0020
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 : 14-11-1967

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 161

Representation of the People Act, 1951 — Section 123, 123(1), 123(2), 123(3), 123(4)

Citation : (1968) 1 ILR (P&H) 496

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

Bench : Full Bench

Advocate : Rajinder Sachar and Mohinderjit Singh Sethi, for the Appellant; J.N. Kaushal B.S. Dhillon, B.S. Shant and Kuldip Singh, 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 afore-said bargain between the Harijan leaders and the Respondent. He admitted that he did not raise any objection at that time, nor did he inform the Petitioner subsequently. Qua 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 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 to 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 ? Apart from any special provisions made in the Act, the trial of the election petition is governed by the procedure laid down in the Code of Civil Procedure. 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 there to must be sufficiently clear and precise to bring home the charges to the candidates.

4. 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 regards 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.

5. 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 an 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 for the Petitioner that the giver of the bribe and the receiver thereof are guilty of two 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 denned either in the Indian Evidence Act or in the Indian Penal Code. In the Code of Criminal Procedure, the marginal note to Section 337 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.

7. 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 the 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.

8. If 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 a 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 considers it safe to convict without corroboration in that particular case.

9. 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.

10. Privy Council in W.C. Macdonald v. Fred Latimer AIR 1929 P.C. 15, applied this rule of caution, even in a civil suit for damages based on fraud. At page 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.

11. A Division Bench of the Orrissa High Court in Bqrikabehari Das v. Chittaranjan Naik AIR 1963 Ori 83, 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.

12. 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.

13. 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 categorised 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 Smither* ILR 26 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.

14. Section 123 of the Act details various "Corrupt Practices". Sub-section (1) defines "bribery". The relevant part is 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.

15. 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 or promise thereof. Similarly, gift is said to have been made by the candidate himself and not by his agent or 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 Sub-section (1) deals with "bribery", which is only one particular form of exercise of undue influence. Now, there are two provisos to Sub-section (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 ex-communication 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.

16. Developing these points, the learned Counsel referred to the definition of "person" as 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 other 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 excepted 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.

17. 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.

18. 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....

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

- (1) pecuniary gratification,
- (2) gratifications which are not pecuniary, but are estimable in money,
- (3) all forms of entertainment, and
- (4) all forms of employment for reward.

20. A Division Bench of this Court in Mool Chand Jain v. Rulia Ram etc. AIR 1963 P&H 516, 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.

21. Section 161 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.

22. The learned Counsel for the Petitioner referred to Gour's Commentary on Penal Law of India, 8th Edition, paragraph 11 at page 1124, who while dealing with the question as to "What is gratification" observed as follows:

The words "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.

23. 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 and he may feel gratified by the candidate getting a well sunk in his 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 background by politicians.

24. The learned Counsel for the Respondent, however, urged that the English cases do not afford any proper guide because the definition of "bribery" in

England 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 *Mehar Singh v. Umrao Singh* AIR 1961 P&H 244 and *Balwant Raj Tayal v. Bishan Saroop and Anr.* 17 E.L.R. 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 Bahawalpur 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.

25. 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 page 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 promise which any candidate is entitled to give to any section of his electors.

26. Again, in *Gangadhar Maithani v. Narendra Singh Bhfandari* 18 E.L.R. 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 in the constituency did not amount to "bribery". At page 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 Respondent's influence with the ministers, learned Counsel for the Appellant in the appeal had to given 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 has 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 denned 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 Bahawalpuri 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 their 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.

27. 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 or 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 is for the general good of the community as a whole.

28. 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 Tyal's case, a promise to use such an influence is the one which a candidate "is certainly entitled to make.

29. 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 Harijan's voting

for him.

30. Stress was, however, laid on the words in the observations in the above-mentioned cases, which have been underlined 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" (Mehar Singh's case), or from which "no personal advantage could be obtained by any voter" (Maithani's case). 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 two 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 denned 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 of the community of electorate can be bribed, 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 Hariian 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 Suoreme Court, at page 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.

31. In that case, it was alleged that Mohan Singh had offered to help Himmat Singh "in procuring a job in Dalauda Sugar Factorv or elsewhere" and that as a conseauence 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.

32. 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 the 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. Dharamsala. 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 a 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 of funds for the construction of the same and this aim and object was certainly satisfied by the action of the Respondent.

33. *Magan Lal Bagdi v. Hari Vishnu Kamath* 15 E.L.R. 205, 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, 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 for the voters, the case also otherwise falls within the mischief of Section 123(1) of the Act.

34. 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 I.E.C., page 21, wherein a promise for building a water channel and a contribution to the Sanatan Dharam Sabha; Agra City Constituency Hammond I.E.C. page 18. wherein contribution for repairs of a temple; and Shankare Gowda v. Marlyappa and Anr. 11 E.L.R. 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 Hemraj v. Pinto Frederick Michael 18 E.L.R. 403. 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.

35. 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.

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

A.N. Grover, J.

37. I agree.

D.K. Mahajan, J.

38. I agree.