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been drawn under s. 4(1), assuming again that such a presumption can be drawn where there is simple passing of money. But when there is no indication whatever that any public servant was to be approached or influenced by the accused there can, in our opinion, be no question of making a presumption that the payment was as a motive or reward for rendering service with any public servant. In this view of the matter we are of opinion that the offence under s. 161 of the Indian Penal Code is not made out against the accused, for one of its essential ingredients is missing and no presumption can be drawn in the circumstances in that connection. We therefore dismiss the appeal though for reasons different from those which commended themselves to the learned Judicial Commissioner.

Appeal dismissed.

RAM DIAL

v.

SANT LAL AND OTHERS

(B. P. SINHA, J. L. KAPUR and
M. HIDAYATULLAH, JJ.)

1959

April 23.

Election Petition—Allegation of corrupt practice—Mandate to voters by religious leader—Undue influence—Representation of the People Act, 1951 (27 of 1951), s. 123(2), proviso (a)(ii).

This appeal was directed against concurrent orders of the Election Tribunal and the High Court on appeal, setting aside the appellant's election to the Punjab Legislative Assembly on an election petition filed by the respondent No. 1, on the ground of corrupt practice of undue influence within the meaning of proviso (a)(ii) to s. 123(2) of the Representation of the People Act, 1951. A large number of voters of the constituency were Namdhari Sikhs and the appellant, under the authority of the supreme religious leader of the Namdhari Sikhs and his son, issued the following poster and distributed it widely throughout the constituency,—

"A command from Shri Sat Guru Sacha Padshah to the Namdharies of Halqa—Sirsa".

"Every Namdhari of this Halqa is commanded by Shri Sat Guru that he should make every effort for the success of Shri Ram Dayal Vaid, a candidate for the Punjab Vidhan Sabha, by giving his own vote and those of his friends and acquaintances, it being our primary duty to make him successful in the election. The election symbol of Shri Vaid is a riding horseman.

Sd. Maharaj Bir Singh
S/o. Sat Guru Maharaj Pratap Singh,
Jiwan Nagar (Hissar)."

Both the Tribunal and the High Court found that the religious leader not only issued the said *hukam* or command, but also delivered speeches to the effect that every Namdhari must vote for the appellant implying that disobedience of his mandate would carry divine displeasure or spiritual censure and practically left no free choice to the Namdhari electors.

Held, that the case clearly fell within the purview of proviso (a)(ii) to s. 123(2) of the Representation of the People Act and the appeal must be dismissed.

The law in England relating to undue influence at elections, was not the same as the law in India. While the law in England laid emphasis upon the individual aspect of the exercise of undue influence, under the Indian law what was material was not the actual effect produced but the doing of such acts as were calculated to interfere with the free exercise of an electoral right.

North Durham's case, (1874) 2 O'M. & H. 152, referred to.

Decisions of the English Courts in this regard, therefore, could not be used as precedents in India.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 108 of 1959.

Appeal from the judgment and order dated November 25, 1958, of the Punjab High Court in F.A.O. No. 173 of 1958.

A. V. Viswanatha Sastri and *Naunit Lal*, for the appellant.

M. C. Setalvad, Attorney-General for India, *V. A. Syed Mohammad* and *M. K. Ramamurthi*, for respondent No. 1.

R. H. Dhebar, for respondent No. 3.

* 1959. April 23. The Judgment of the Court was delivered by

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SINHA, J.—When the hearing of the appeal had been concluded on March 18, 1959, we had informed the parties, as also the counsel for the Election Commission of India, that the appeal is dismissed with costs, and that the reasons would follow. We now proceed to give our reasons.

This is an appeal on a certificate of fitness granted by the High Court of Judicature for the State of Punjab at Chandigarh, against the judgment and order dated November 25, 1958, of that Court, dismissing an appeal against the order of the Election Tribunal, Hissar, dated September 14, 1958, setting aside the appellant's election to the Punjab Legislative Assembly. The appellant was the successful candidate from the general seat which was a double-member constituency of Sirsa, the other successful candidate being a Harijan candidate—respondent No. 2 in this Court. The first respondent contested the general seat. The Election Commission of India was added as the third respondent by an order of this Court, dated February 27, 1959, when this Court was moved in the stay matter. This Court directed the case itself to be heard before the date fixed for the fresh election as a result of the order of the Election Tribunal.

It appears that for the double-member constituency of Sirsa, there were a large number of candidates. One of the two seats was reserved for members of the scheduled castes. After the usual withdrawals, sixteen candidates were left in the field to contest the two seats, eight candidates being for the general seat, and the other eight, for the reserved seat. We are not here concerned with the seat reserved for members of the scheduled castes. In respect of the general constituency, the appellant secured 27,272 votes, whereas the first respondent secured 23,329, as a result of the election which took place on March 12 and 14, 1957. The result of the election was declared on March 17, 1957.

The first respondent filed an election petition on April 28, 1957, challenging the election of the appellant. The election was challenged on a large number of grounds—practically exhausting all available

grounds under the election law—but as a result of the findings of the Election Tribunal and of the High Court, we are only concerned with the allegations relating to “corrupt practices”, contained in sub-paras. 1 to 3 of para. 13B of the election petition, which formed the basis for issue No. 4. The relevant allegations may be stated *in extenso* in the words of the election petition, as under :—

“(B): That respondent No. 1 himself, his agents and other persons with the consent of the respondent No. 1 and his agents have committed the corrupt practice of undue influence by interfering directly or indirectly with the free exercise of the electoral right of the electors of this constituency. The known details of these corrupt practices are given in the various clauses under the sub-para. :—

(i) Sat Guru Maharaj Pratap Singh of Jiwan Nagar, the religious head of Namdharis sect of the Sikhs had some personal grievances against Shri Devi Lal of Chautala a prominent Congress Leader of the constituency, and the chief supporter of the petitioner at this election. Respondent No. 1 fully knowing of this grievance of the Sat Guru approached him and through him also approached Maharaj Charan Singh of Sikanderpur the religious head of the Radha Swami Samaj and got issued Farmans (orders) by both these religious heads to their followers in this constituency to the effect that their Dharma required them to wholeheartedly support respondent No. 1 and to oppose the candidature of the petitioner and that if any of the followers dared to act against their Farmanṣ, the wrath of the aforementioned Gurus would fall upon him and he would be the object of Divine displeasure. These Farmans of the two Gurus were orally conveyed, through the ‘Subas’ of Namdharis, Shri Bir Singh the son of Sat Guru Partap Singh and Naginder Singh and Shri Purshotam Singh followers of Guru Charan Singh, throughout the Constituency wherever the followers of these two sects resided from the day of withdrawal till the polling began, during their canvassing tours for respondent No. 1, Shri Bir Singh, Purshotam Singh and Naginder Singh aforesaid and Sant Teja

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Singh M.L.C. in Diwans held in the various villages and towns of the Constituency during their canvassing tour, besides repeating these 'Farmans' of the two Gurus also threatened the followers with expulsion from the sect and Samaj if they went against the wish of the Gurus in this matter.

(ii) That Sat Guru Pratap Singh himself in the presence of respondent No. 1 in the Big-Diwan of his followers held on the 25th of February, 1957, at Sirsa in Radha Swami Sat-Sangh Hall, preached and commended all those present that it was the primary Dharma of all his followers to help the candidature of respondent No. 1 and to oppose the petitioner with all their might by giving their own votes and by canvassing among their area of influence in the constituency. The Sat Guru himself held Diwans at villages Tharaj on the 6th of March, 1957, at village Dhiwan on the 5th March, 1957, at village Rori on the 6th March, 1957, and at Phaggu on the 6th March, 1957. In these Diwans he besides repeating his Farmans aforesaid also relied upon the strong appeal of his relationship, he being the son of the daughter of village Tharaj. A very big diwan of his followers also held at Khairpur on the 26th February, 1957, for the same purpose where the Sat Guru himself commended his followers in the like tune.

(iii) That respondent No. 1 got issued posters in thousands printed on both the sides in Hindi and Gurumukhi scripts on the 26th of February, 1957, containing the orders 'Farmans' of Satguru Partap Singh under the signature of Shri Maharaj Bir Singh son of Satguru Partap Singh. These posters were got published at the instance of respondent No. 1 at Bansal Press Hissaria Bazar, Sirsa. These posters contained in verbatim the orders 'Farmans' of the Satguru to the effect that it was the primary Dharma of every Namdhari of this constituency to give his own vote as well as to canvass votes of their all acquaintances for Shri Ram Dayal candidate respondent No. 1. A copy of the poster in original together with its English translation is attached with the petition and may be read as to form its part. These posters were distributed

throughout the constituency after the same were got printed till the polling day in all the villages where Namdhari reside."

In support of all his allegations quoted above, the first respondent adduced a large volume of oral evidence, besides some documentary evidence as well. The Tribunal came to the conclusion that Maharaj Pratap Singh had issued *farmans* to his *satsanghis* that he, who will not vote for the appellant, would suffer not only in this world but in the next also, but it found it not proved that the *farmans* or orders of the two religious heads of the Namdharis and Radhaswamis, were orally conveyed through Maharaj Bir Singh, son of Maharaj Partap Singh, Naginder Singh and Shri Purshotam Singh, to the followers of the two *Gurus* in the constituency, or that they, while conveying the *farmans* of the *Gurus*, threatened the followers with expulsion from the sect, if they went against the wishes of the *Gurus*, except what Naginder Singh had said in the *Diwan* at Sirsa and at other places. It also recorded the finding that the *Diwans* were held for the purpose of canvassing in favour of the appellant at the time and place mentioned in the petition, and that those *Diwans* were addressed by Maharaj Partap Singh and others. It was also found that Maharaj Partap Singh actively supported the candidature of the appellant, and addressed his followers on the basis of religion and asked them to vote for the appellant, and that all this was done at the instance and in the presence of the appellant. It was further found that posters, like exh. P. 1, were issued by the appellant under the authority of Maharaj Bir Singh and his father, Maharaj Partap Singh, and widely distributed throughout the constituency. The Tribunal also discussed the question as to whether, on those findings, the provisions of s. 123(2) of the Representation of the People Act, 1951 (which will hereinafter be referred to as 'the Act'), relating to "undue influence", could be said to have been satisfied; and alternatively, whether those findings would bring the case within the provisions of cl. (3) of s. 123 of the Act,

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relating to systematic appeal on grounds of caste, race, community or religion, etc. The Tribunal appeared to be inclined to the view that a command in terms of exh. P. 1, emanating from a religious head, like the Sat Guru, to his followers—mostly illiterate and ignorant persons—may well be construed as “undue influence”. But alternatively, it also held that even if the provisions of cl. (2) of s. 123 of the Act, had not been satisfied, the case had been brought well within the purview of cl. (3) of s. 123. Other issues were either not pressed or were decided against the petitioner in that court. The Tribunal, therefore, declared the appellant’s election void under s. 100(1)(b) of the Act. In view of the fact that the petitioner had failed to substantiate many of his allegations, the Tribunal directed the parties to bear their own costs.

The appellant preferred an appeal which was heard by a Division Bench (Falschaw and Dua, JJ.) of the High Court of Judicature for the State of Punjab at Chandigarh. The High Court substantially affirmed the findings of the Election Tribunal on issue No. 4 aforesaid. The High Court also accepted the oral evidence adduced on behalf of the respondent, with particular reference to the publication and wide distribution of the poster, exh. P. 1. In the course of its judgment, the High Court observed :

“The language of the mandate and the general background and circumstances of this case including the obvious consciousness of Maharaj Pratap Singh and Ram Dial of the probable and likely effect of such commands on the illiterate, ignorant and credulous followers of the Maharaj can lead but to one conclusion that it was intended to convey to them the threat of divine displeasure and spiritual censure if they dared to disobey the *farman* of their supreme spiritual and religious head.”

In answer to the contention that the *farman* had been motivated not by religious considerations but by a personal grievance, the High Court did not attach any importance to the alleged difference in the motive, and observed :

“If the influence exercised by the religious and

spiritual head has the effect of creating in the minds of the voters a feeling of divine displeasure or spiritual censure then whatever the motive, the influence would amount to undue influence. The contents of the poster reproduced earlier unequivocally establish the mandatory nature of the command. Religious sanction is, in my opinion, implicit in it and I think, on a reasonable construction of its contents, it must be held that Maharaj Pratap Singh intended to convey to his followers who are mostly illiterate, ignorant, credulous and unsophisticated villagers, having blind and implicit faith in their religious head that if they did not vote for Ram Dial, they would incur divine displeasure and spiritual censure. With this class of villagers the displeasure of the religious head is usually associated with divine displeasure."

Dealing with the scope of s. 123(2), it held that the language of the poster, exh. P. 1, construed in the light of the oral evidence, left the Court in no doubt that Maharaj Partap Singh's *farman* did necessarily imply divine displeasure and spiritual censure for those who chose to disobey the *farman*. In its view, therefore, the facts, as found, attracted the provisions of s. 123(2) of the Act. It also held that the evidence led in the case, established that the meetings addressed by Maharaj Partap Singh and others, in support of the election of the appellant, induced the belief that the voters would incur divine displeasure or spiritual censure if they did not vote in accordance with the mandate issued by the Maharaj; thus, clearly establishing the commission of corrupt practice of "undue influence". The High Court also examined the question whether the corrupt practice falling under cl. (3) of s. 123 of the Act, had been established, and decided the question in the negative, though not without some hesitation. It further held that the publication of the poster, exh. P. 2, did not bring the case within the purview of s. 123(4) of the Act. In the result, the High Court agreed with the conclusion of the Tribunal, declaring the election void, and dismissed the appeal with costs. The appellant applied to the High Court, praying for the necessary certificate that the

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case was a fit one for appeal to this Court, and that Court granted the certificate. Hence, this appeal.

After the decision of the Tribunal and of the High Court, the only question for determination in this appeal, is whether, on the findings of fact recorded, as stated above, the corrupt practice of "undue influence", as defined in s. 123(2), has been made out. It has been argued on behalf of the appellant that the main cl. (2) of s. 123, is out of the way of the parties in this case, because it applies only to threats of injury to person or property and not to what may be termed "spiritual undue influence", which is specifically covered by sub-cl. (ii) of *proviso* (a) to cl. (2) of s. 123. It was further argued that the word "deemed" would show that the *proviso* is by way of an addition to the main provision of cl. (2) of s. 123; that is to say, what was not actually covered by the main cl. (2), has been added to the ambit of the definition by the *proviso*. It has further been argued that cl. (2) is directed against unduly influencing *individual* voters, and reliance was placed upon the cases of *Cheltenham* ⁽¹⁾, *Nottingham* ⁽²⁾ and *North Durham* ⁽³⁾. Reference was also made to the observations in "*Rogers on Elections*" ⁽⁴⁾, and it was argued that an electoral right, as defined in s. 79(d) of the Act, is a personal individual right, including the right to vote or to refrain from voting at an election. Hence, there should have been pleading by the petitioner and finding by the Court on evidence that certain named individuals had been subjected to the corrupt practice of undue influence. Secondly, in the absence of any such pleading or finding, a general allegation of the corrupt practice of undue influence, without reference to individuals, is not enough in law to vitiate an election.

The corrupt practice of undue influence has been defined in cl. (2) of s. 123 of the Act, in these terms:—

"(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other

(1) (1869) 1 O'M. & H. 62, 64.

(2) (1869) 1 O'M. & H. 245, 246.

(3) (1874) 2 O'M. & H. 152, 156.

(4) Vol., II 20th Ed., p. 329.

person, with the consent of a candidate or his election agent, with the free exercise of any electoral right :

Provided that—

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

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

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause ;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause ”.

It should be observed, at the outset, that the law in England, relating to undue influence at elections, is not the same as the law in India, as will appear from the following definition of “undue influence” contained in s. 2 of 46 & 47 Vict. c. 51, which substantially re-enacted the former s. 5 of 17 & 18 Vict. c. 102 :—

“Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any

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elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence”.

The words of the English statute, quoted above, lay emphasis upon the individual aspect of the exercise of undue influence. It was with reference to the words of that statute, that Bramwell, B., made the following observations in *North Durham* ⁽¹⁾ :—

“When the language of the Act is examined it will be found that intimidation to be within the statute must be intimidation practised upon an individual”. The Indian law, on the other hand, does not emphasise the individual aspect of the exercise of such influence, but pays regard to the use of such influence as has the tendency to bring about the result contemplated in the clause. What is material under the Indian law, is not the actual effect produced, but the doing of such acts as are calculated to interfere with the free exercise of any electoral right. Decisions of the English Courts, based on the words of the English statute, which are not strictly *in pari materia* with the words of the Indian statute, cannot, therefore, be used as precedents in this country.

In the present case, we are not concerned with the threat of temporal injury, damage or harm. On the pleadings and on the findings of the Tribunal and of the High Court, we are concerned with the undue exercise of spiritual influence which has been found by the High Court to have been such a potent influence as to induce in the electors the belief that they will be rendered objects of divine displeasure or spiritual censure if they did not carry out the command of their spiritual head. It was argued that exh. P. 1, on which so much stress was laid by the Tribunal and by the High Court, did not contain any such direct threat as would bring the case within the second paragraph of *proviso* (a) to s. 123(2). Exhibit P. 1, as officially translated, is in these terms :—

“A command from Shri Sat Guru Sacha Padshah to the Namdharies of Halqa—Sirsa”.

“Every Namdhari of this Halqa is commanded by Shri Sat Guru that he should make every effort for

(1) (1874) 2 O.M. & H. 152, 156.

the success of Shri Ram Dayal Vaid, a candidate for the Punjab Vidhan Sabha, by giving his own vote and those of his friends and acquaintances, it being our primary duty to make him successful in the election. The election symbol of Shri Vaid is a riding horse-man.

Sd. Maharaj Bir Singh
S/o Sat Guru Maharaj Partap Singh,
Jivan Nagar (Hissar)".

We have looked into the original document also, and we agree with the High Court that the crucial words, like *hukam* of Shri Sat Guru Sacha Padshah, etc., have been printed in very bold letters, conveying the distinct impression to the large number of Namdharis, who are voters in the constituency, that it was a mandate from their spiritual *guru* who wielded great local influence amongst them, that it was their bounden duty, under the strict orders of their religious leader, not only to cast their own votes in favour of the particular candidate, but also to exert their influence amongst their friends and acquaintances in favour of that candidate; and that any infringement of that mandate had implicit in it divine displeasure or spiritual censure.

It was contended on behalf of the appellant that a religious leader has as much the right to freedom of speech as any other citizen, and that, therefore, his exhortation in favour of a particular candidate should not have the result of vitiating the election. There cannot be the least doubt that a religious leader has the right freely to express his opinion on the comparative merits of the contesting candidate and to canvass for such of them as he considers worthy of the confidence of the electors. In other words, the religious leader has a right to exercise his influence in favour of any particular candidate by voting for him and by canvassing votes of others for him. He has a right to express his opinion on the individual merits of the candidates. Such a course of conduct on his part, will only be a use of his great influence amongst a particular section of the voters in the constituency; but it will amount to an abuse of his great influence if

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the words he uses in a document, or utters in his speeches, leave no choice to the persons addressed by him, in the exercise of their electoral rights. If the religious head had said that he preferred the appellant to the other candidate, because, in his opinion, he was more worthy of the confidence of the electors for certain reasons good, bad or indifferent, and addressed words to that effect to persons who were amenable to his influence, he would be within his rights, and his influence, however great, could not be said to have been misused. But in the instant case, as it appears, according to the findings of the High Court, in agreement with the Tribunal, that the religious leader practically left no free choice to the Namdhari electors, not only by issuing the *hukam* or *farman*, as contained in exh. P. 1, quoted above, but also by his speeches, to the effect that they must vote for the appellant, implying that disobedience of his mandate would carry divine displeasure or spiritual censure, the case is clearly brought within the purview of the second paragraph of the *proviso* to s. 123(2) of the Act. This aspect of the case has been dealt with at length by the High Court in a well-considered judgment, and we do not think it necessary to repeat all those observations, beyond saying that we agree with them. In that view of the matter, it is not necessary for us to consider the further question whether cl. 2 of s. 123 of the Act, apart from the *proviso*—para. (ii), discussed above—covers a case, like the present, where the undue influence is of a spiritual character as distinguished from threats of injury to person or property. As the main ground urged in support of the appeal against the judgment of the High Court, fails, the appeal must be dismissed with costs to the respondent No. 1.

Appeal dismissed.
