KANTI PRASAD JAYSHANKER YAGNIK

v.

PURSHOTTAMDAS RANCHHODDAS PATEL AND OTHERS

January 24, 1969

[S. M. SIKRI, R. S. BACHAWAT AND K. S. HEGDE, JJ.]

Representation of the People Act (43 *of* 1951), *s.* 123 (2) *and* (3)—*Appeal to voters to vote in the name of religion—If corrupt practice —Appeal to vote on the basis of candidate's caste—If corrupt practice— Statement that voting for a party would amount to the continuance of cow slaughter and consequent incurring of divine displeasure—If corrupt practice.*

Evidence Act (1 *of* 1872), *s.* 160—*Reports made from notes taken down at meetings—If admissible—Method of proof—Weight to be attached to reports.*

The poll for election to the Gujarat State Assembly from Mehsana State Assembly constituency was taken on February 21, 1967. On February 18, 1967 one S.M. addressed public meetings at various villages which were part of the constituency. The appellant, who was the successful candidate was present at those meetings and did not dissociate himself from any of the remarks in the speeches. Police constables, under instructions of the Government, took down notes of the speeches and reported to their superior officers. These police constables did not take down every word spoken by S.M. but whatever was taken down was spoken by S.M.; and in the reports, though the exact words were not reproduced the substance of the speeches was correctly reproduced. These reports showed that S.M. made the following statements in his speeches :—

(i) He appealed to the Hindu voters as such not to vote for the Congress Party lest they might be betraying their religious leader (Jagadguru Sankaracharya of Puri), particularly when he had fasted for 73 days in the cause of preventing cow slaughter;

(ii) He put forward an appeal to the electors not to vote for the Congress Party but to vote for the Swatantra Party in the name of religion;

(iii) He said that a relationship of cause and effect existed between the slaughter of 33,000 bullocks every day and natural calamities like famine and flood;

(iv) He asked his voters to vote for the appellant because he was a Brahmin; and

(v) He said that if the voters voted for the Congress who are responsible for 24 crore of cows being slaughtered then God will be displeased.

On the questions : (1) Whether the reports made by the police constables were admissible in evidence; (2) Whether any weight should be attached to them; and (3) Whether they showed that the appellant was guilty of corrupt practice within the meaning of s. 123(2) and (3) of the Representation of the People Act, 1951

HELD (*Per* Sikri and Bachawat, JJ.) : (1) The reports were properly used under s. 160 of the Evidence Act, 1872, and were admissible in evidence. [406 C—D]

A Before a witness testifies to facts stated in a document, under s. 160 of the Evidence Act, two conditions must be satisfied namely : (a) that the witness had no specific recollection of the facts themselves; and (b) the witness says that he is sure that the facts were correctly recorded in the document. For satisfying the conditions it is however not necessary that the witness should specifically state that he has no specific recollection of the facts and that he is sure that the facts were correctly recorded in the B document. It is enough if it appears from the evidence of the witness that those conditions are established. [405 C—E]

In the present case, it could be implied from the circumstances that the conditions of s. 160 were satisfied. The witnesses were giving their testimony in Court after a lapse of 9 months after the speeches were made and it is implicit that they could have no specific recollection of the speeches, especially when they attended and reported many similar meet- C ings as part of their duty during the election campaign. The second condition is also satisfied because, the witnesses made notes on the spot and made out reports from those notes when the speeches were fresh in their memory. The reports are, strictly not substantive evidence as such and could only be used as part of the oral evidence on oath. The reports should therefore have been read out in Court and not marked as exhibits. But the practice of marking such a report as an exhibit is well-established and avoids the useless formal ceremony of reading it out as D part of the oral evidence. [405 E-G; 406 D-E]

Wigmore on Evidence (Third Edn. Vol. III pp. 97-98),

Mylapore Krishnaswami v. *Emperor*, 32 Mad. 384, 395 and *Mohan Singh Laxmansingh* v. *Bhanwarlal Rajmal Nahata*, A.I.R. 1964, M.P. 137, 146, referred to.

E *Public Prosecutor* v. *Venkatarama Naidu*, I.L.R. [1944], Mad. 113, approved.

Jagannath v. *Emperor*, A.I.R. 1932 Lah. 7 and *Sodhi Pindi Das* v. *Emperor*, A.I.R. 1938 Lah. 629, disapproved.

(2) Though the reports were not taken down in short-hand nor were the exact words spoken by S.M. taken down by the various police constables. F the reports show a remarkable similarity of approach, appeal and attack on the Congress Party; and in those circumstances it must be held the police constables correctly reproduced the substance of the speeches. It is not necessary that the exact words must be reproduced before a speech can be held to amount to corrupt practice. [414 A—C]

(3) (i) This statement does not amount to corrupt practice, because there was no proof that the Jagadguru was the religious head of the majo- G rity of the electors in this constituency or that he exercised great influence on them, and so, it could not be held that an ordinary Hindu voter of the constituency would feel that he would be committing a sin if he disregarded the alleged directive of the Jagadguru. [410 A—C]

Ram Dial v. *Sant Lal*, [1959] Supp. 2 S.C.R. 748, distinguished.

(*Per* Hegde, J. dissenting) : The statement amounted to corrupt practice.

H What s. 123(2) requires is to induce or attempt to induce 'an elector' —which means even a single elector—that he will be rendered an object of spiritual censure if he exercises or refuses to exercise his electoral right in a particular manner. While undoubtedly the inducement or attempt

to induce complained of should be such as to amount to a direct or indirect interference with the free exercise of the electoral right it is not in the public interest to cut down the scope of the sub-section. Whether a particular statement comes within it or not depends on various factors such as the nature of the statement, the person who makes it and the persons to whom it is addressed. Therefore, when a respected religious preacher induces or attempts to induce the illiterate and superstitious voters who form the bulk of the voters that they will become objects of divine displeasure if they do not exercise their franchise in a particular manner, though his statements are not supported by religious books and he himself may not be a religious head of the majority of electors, the statements may yet amount to a corrupt practice in law. [415 C—G]

(*Per* Sikri and Bachawat, JJ.) : (ii) There is no bar to a candidate or his supporters appealing to the electors not to vote for the Congress in the name of religion, or appealing to vote for the Swatantra Party because the people in that party are fond of their religion. What s. 123(2) of the Representation of the People Act bars is—that a candidate or his agent or any other person with the consent of the candidate or his agent should appeal to the voters to vote or refrain from voting for any person on the ground of *his* religion, that is *the religion of the candidate.* [410 C—D; 411F]

(iii) This statement does not amount to corrupt practice within s. 123(2) proviso (a)(ii), because, the law does not place any bar on describing a party as irreligious or saying that because that political party is irreligious natural calamities had resulted on account if its disregard of religion. [411 E-F]

(iv) Asking the voters to vote for the appellant because he was a Brahmin, fell within the mischief of s. 123(3). [411 F-G]

(*Per* Hegde, J. dissenting) : When he stated that there should be at least one Brahmin Minister in the Cabinet, S.M. was merely giving expression to the fact that communal and regional representations in our political institutions have come to stay and was not appealing to the voters to vote on the basis of the appellant's caste. [415H]

(By Full Court) : (v) As this statement constitutes an attempt to induce the electors to believe that they would become objects of divine displeasure if they voted for the Congress and thereby allowed cow slaughter to be continued, and as in the circumstances of the case, it must be deemed to have been made with the appellant's consent, the appellant was guilty of corrupt practice within the meaning of s. 123(2) proviso (a)(ii). [413C; 415B-C]

Narbada Prasad v. *Chhagan Lal*, [1969] 1 S.C.R., 499 followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 979 of 1968.

Appeal under s. 116-A of the Representation of the People Act, 1951 from the judgment and order dated December 5, 1967 of the Gujarat High Court in Election Petition No. 3 of 1967.

S. T. Desai, A. K. Verma, A. L. Barot, and *J. B. Dadachanji,* for the appellant.

Purshottamdas Trikamdas and *I. N. Shroff,* for respondent No. 1.

A

The Judgment of SIKRI and BACHAWAT, JJ. was delivered by SIKRI, J. HEGDE, J. delivered a sejarate Opinion.

Sikri, J. This appeal under s. 116-A of the Representation of the People Act, 1951, is directed against the judgment and order of the High Court of Gujarat in Election Petition No. 3 of 1967, B setting aside the election of Kanti Prasad Jayshankar Yagnik, appellant before us, to the Gujarat State Assembly from Mehsana State Assembly Constituency under s. 123(2), s. 123(3) and s. 100(1)(b) of the Representation of the People Act, 1951—hereinafter referred to as the Act.

C The High Court held that certain speeches made by Shambhu Maharaj, with the consent of the appellant, amounted to 'corrupt practices' within the meaning of ss. 123(2) and 123(3) of the Act. Since we are in agreement with some of the conclusions arrived at by the High Court it is not necessary to deal with all the speeches made by Shambhu Maharaj, but only with the D speeches which the High Court held to amount to 'corrupt practices' within the meaning of ss. 123(2) and 123(3). Before we set out the impugned passages from the speeches we may give a few preliminary facts.

The poll for the election was taken on February 21, 1967, E and the result of the election declared on February 22, 1967. Purshottamdass Ranchoddas Patel, the petitioner in the High Court and respondent before us, secured 16,159 votes whereas the appellant secured 23,055 votes. The other candidates, who were respondents to the petition secured 720 votes, 1,017 votes and 454 votes, respectively. The petition out of the which this appeal arises was filed on April 5, 1967, and the petitioner prayed F for the relief that the election of the appellant be declared void and further prayed that he be declared duly elected to the Assembly. Various grounds were urged in the petition but we need only deal with the ground that the appellant and his agents arranged public meetings of Shri Shambhu Maharaj on February 18, 1967, at various villages which were part of the Mehsana G Assembly constituency, and Shambhu Maharaj made a systematic appeal in his speeches to a large section of the electors to vote for the appellant on ground of religion, caste, and community, and the electors were told that it would be an irreligious act to vote for the petitioner who was a Congress candidate as Congress allowed slaughtering of cows and bullocks. It was also alleged H that Shri Shambhu Maharaj had used undue influence and interfered with the free electoral rights of electors by inducing or attempting to induce them to believe that they would become object of divine displeasure or spiritual censure by his speeches.

The petitioner sought to prove the speeches by producing members of the Police Force, as witnesses, who had under instructions of Government taken down notes of the speeches and reported them to their officers. The High Court relied on the reports of these members of the Police Force and held that their reports were correctly recorded and fairly represented the speeches made by Shambhu Maharaj. In this connection, the High Court discarded the testimony of the petitioner's witnesses (P.W.s 25 to 33) on the ground that it would be safe not to accept the evidence of partisan witnesses unless it was corroborated by independent witnesses.

The learned counsel for the appellant, Mr. S. T. Desai, contends, first, that the reports made by the members of the Police Force are not admissible in evidence, and secondly, that in the circumstances of the case no weight should be attached to these reports. We may first deal with the question of the admissibility of the evidence before we set out the speeches.

The learned counsel contends that under the Indian Evidence Act written reports of speeches can only be used in two ways; one, to refresh a witness's memory under s. 159, and secondly, under s. 160 after satisfying two conditions : (1) that the witness has no specific recollection of the facts themselves and (2) the witness says that he is sure that the facts were correctly recorded in the document. He urges that in this case the reports were not used to refresh any witness's memory, and that the conditions requisite under s. 160 had not been satisfied. It is true that these reports have not been used for the purpose of refreshing the memory of any witness under s. 159, but these have been used under s. 160.

We may here set out ss. 159, 160 and 161 of the Indian Evidence Act.

> "S. 159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.
>
> The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.
>
> Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such decument :

A Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

S. 160. A witness may also testify to facts mentioned
B in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

S. 161. Any writing referred to under the provisions of the two last preceding sections must be produced
C and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon."

In this case it is clear that the reports were written by the witnesses themselves at the time of the speeches or soon afterwards when the speeches were fresh in their memory. It seems to us
D that it is not necessary that a witness should specifically state that he has no specific recollection of the facts and that he is sure that the facts were correctly recorded in the document, before the document can be used under s. 160. It is enough if it appears from his evidence that these conditions are established. In this particular case the witnesses were giving their testimony in Court after a lapse of nearly nine months and one would have to have
E super-human memory to specifically recollect the details of the speeches, especially when the witness may have attended and reported many similar meetings as a part of his duty during the election campaign. It may be implied in this case that the witnesses had no specific recollection of the facts.

F The second requirement would be satisfied if the Court comes to the conclusion that the witness was in a position to correctly record the facts in the document.

Are then the requirements of s. 160 satisfied in this case? As an example we may consider the evidence of P.W. 7, who testified regarding the speech, Ex. J., delivered at village Motidav.
G He stated that Shambhu Maharaj addressed the meeting at Motidav at about 5.30 p.m. on February 18, 1967, and the appellant was present at that meeting; Maganlal A. Patel was also present at the time when Shambhu Maharaj was speaking; while the speeches were being delivered he was making notes of what was being spoken; in this manner he had written out a report regarding
H all that had happened at the meeting; after returning to Mehsana he submitted his report of the meeting to P.S.I. Choudhary. He was shown two reports about the meetings at Motidav, and he stated :

"Both these reports, part of 'X', are in my handwriting. I wrote out the contents of these two reports at Motidav when the meetings were going on." (The two reports put in and marked Ex. "J" collectively).

In cross-examination questions were directed to establishing that the reports were not exact reports. He stated that he was taking down all the speeches of Shambhu Maharaj who was speaking at medium pace and he wrote whatever Shambhu Maharaj spoke. He further stated that he was writing down from memory immediately after the words were spoken by Shambhu Maharaj. He admitted that "it is true that every word spoken by Shambhu Maharaj was not taken down by me in my report but what I have taken down was in fact spoken by him." He, however, added that "it it not true that what I have written out in Ex. 'J' was not written down at Motidav village."

On this evidence it seems to us that it is quite clear that both the conditions required by s. 160 have been compiled with. While the speech was delivered on February 18, 1967, he was giving his evidence on November 7, 1967. It is implicit that he had no specific recollection of the speeches, and the second condition is also satisfied because he made notes and then made out the report from his notes. It may be that the counsel would have been well-advised to have read out Ex. 'J' rather than produce it as an exhibit, but this is apparently done in some Indian Courts to save time and it is now too late in the day to condemn such practice, specially as it is a difference without any substance. It is true that the report is, strictly speaking, not substantive evidence as such, and the document can only be used as a part of the oral evidence sanctified by the oath.

The position seems to be the same in some States in U.S.A., *vide* Wigmore on Evidence (Third Edition; Vol. III; pp. 97-98, extracted below :

"1871, Per Curiam in *Moots* v. *State*, 21 Oh. St. 653: The entry in the book and the oath of the witness supplement each other. The book was really a part of the oath, and therefore admissible with it in evidence."

"1879, Earl, J., in *Howard* v. *McDonough* 77 N.Y. 592 : After the witness has testified, the memorandum which he has used may be put in evidence,—not as proving anything of itself, but as a detailed statement of the items testified to by the witness. The manner in which the memorandum in such a case may be used is very much in the discretion of the trial Judge."

A "1882, Cooley, J., in *Mason* v. *Phelps,* 48 Mich. 126, 11 N.W. 413, 837 : After she had testified that she knew it to be correct, she might have read the entries or repeated them as her evidence. Showing the book was no more than this".

B "1886, Smith, C.J., in *Bryan* v. *Moring,* 94 N.C. 687 : The memorandum thus supported and identified becomes part of the testimony of the witness, just as if without it the witness had orally repeated the words from memory."

There is much to be said for the modern doctrine in some of the C States in the United States, which "seems to be that such documents are admissible evidence and that the Court will not go through the useless ceremony of having the witness read a document relating to a fact of which he had no present recollection, except that he knew it was correct when made." (*see* McCormick on Evidence; p. 593; footnote 3).

D The learned counsel relied on the dissenting judgment of Sankaran-Nair, J., in *Mylapore Krishnasami* v. *Emperor*(1) where he observed :

"If therefore the constable has not recorded correctly the words used by the speaker but only his impression, then the notes would be inadmissible under section E 160 of the Indian Evidence Act to prove the words used. They may be admissible to prove the impression created in the mind of the constable, which is very different."

We are unable to appreciate how this passage assists the appellant. If it is proved that the constable did not correctly F record the words, *a fortiori* one of the conditions of s. 160 has not been satisfied and the writing cannot be used to prove the words.

The learned counsel also referred to the decision of the Madhya Pradesh High Court in *Mohansingh Laxmansingh* v. *Bhanwarlal Rajmal Nahata*(2). The High Court seems to have held that G on the facts, the statements prepared by the witness in that case did not become primary evidence of the speech said to have been delivered by the speaker and cannot be used as such. Later on the High Court seems to have held that the notes were taken down for a particular purpose, to wit, for an election petition, and raise a reasonable suspicion that what the witness recorded H was not a correct record of the speech. If the High Court meant to say that Ex-P-12 (the notes in that case) could not be used

(1) 32 Mad. 384; 395. (2) A.I.R. 1964 M.P. 137, 146.

under s. 160 we must hold that the case was wrongly decided, but if the High Court meant to say that there was suspicion that the speech was not a correct record then nothing can be said against the decision on this point.

Blacker, J. in *Sodhi Pindi Das* v. *Emperor*(1) held, relying on *Jagan Nath* v. *Emperor*(2) that it is essential that the witness must state orally before the Court that although he had no specific recollection of the facts themselves, he was sure that the facts were correctly recorded in the document. We are unable to agree with this interpretation. As we have already stated, if the requisite conditions can be satisfied from the record, the lack of an express declaration by witness does not make the evidence inadmissible.

In *Public Prosecutor* v. *Venkatarama Naidu*(3) Mockett, J., rightly dissented from the judgment of the Lahore High Court in *Sodhi Pindi Das* v. *Emperor*(1).

In England the Law of Evidence has been changed and many of such documents made directly admissible (*see* Phipson on Evidence, Tenth Edition, Ch. 22).

It seems to us that on the facts the report, Ex. J., was properly used under s. 160 of the Indian Evidence Act. The question of the weight to be attached to the various reports of the speeches is another matter and we will deal with the question presently.

The High Court has found three speeches to constitute "corrupt practices". The following three passages in Ex. 'J'—speech delivered by Shambhu Maharaj at village Motidav on February 18, 1967—were complained of by the learned Counsel in the High Court :

> "(1) I will say one fact and that is that at present the Congress is stating everywhere that nobody else will make the people happy except themselves. But I say that apart from God no other Government either Congress or Swatantra Party can make people happy. An agriculturist may have one bigha of land (about half an acre) and he might have sown wheat but if there is heavy frost or locusts or if one bullock worth Rs. 1000/- dies, Government may give him money, may give him bullock, but I do not think that that man can be happy; but nature can make him happy. Today in our India, everyday 33,000 cows are being slaughtered throughout the country. Ten to eleven lacs of bullocks are being slaughtered during the year and in Ahmedabad Town alone 10,000 bullocks are slaughtered.

(1) A.I.R. 1938 Lah. 629. (2) A.I.R. 1932 Lah. 7.
(3) I.L.R. [1944] Mad. 113.

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(2) This unworthy Congress Government has cut the nose of Hindu Society. Sant Fateh Singh, the religious preceptor of the Sikhs, fasted for 10 days; where as Jagadguru fasted for 73 days, still this Government is not even thinking of opening negotiations. This unworthy Government accepted the contention of the Sikhs
B after the fast of 10 days; whereas in spite of the penance undertaken by Jagadguru by his fast of 73 days, the Government has not considered any topic in this connection. Your Jagadguru had full confidence that, except for ten crores who are the followers of the Congress, twenty to thirty crores from the Hindu Society would
C help him.

(3) For example, if any Maulvi from Mucca had fasted for 73 days and had given such a mandate to our Muslim brothers, then would they have voted for the Congress. That you have to consider. In the same manner, if Fateh Singh, the religious leader of Sikhs,
D had fasted for 73 days, would they (Sikhs) have voted for the Congress? In the same manner if there were Parsis or Christians, then they also would vote for their religious preceptor. This is what you have to consider. The mandate of your religious preceptor is that do not cast your vote for anyone, the mandate of the Jagadguru is that let cows be slaughtered, let bullocks be
E slaughtered. In Gujarat State though there is ban, still bullocks are allowed to be slaughtered, the bullocks which give every individual happiness throughout the life. This Government asks for votes in the name of the bullocks (the Congress Party election symbol being a pair of bullocks with yoke on) and I
F am, therefore, having an experience. Do not vote for the Congress and by putting the mark of vote on the symbol of bullocks amounts to cutting the throat of a bullock by a knife symbolized by your vote. It is my mandate that you should not do this dastardly act."

The High Court did not find the first two passages to consti-
G tute "corrupt practices". The third passage was held by the High Court to constitute "corrupt practice" on the ground that "though there is no proof that Shankaracharya had any religious following as such in this particular constituency, there is no mandate in writing from the Jagadguru and there is no direct address to his followers by the Jagadguru, Shambhu Maharaj has clearly appeal-
H ed to the Hindu voters as such not to vote for the Congress Party lest they might be betraying their religious leader, particularly when he had fasted for 73 days in a cause which had some basis in the religious beliefs of the Hindus."

We are unable to agree with the High Court in this respect. The decision of this Court in *Ram Dial* v. *Sant Lal*(1) is clearly distinguishable because there it was held by this Court that Shri Sat Guru wielded great local influence among the large number of Namdharis who were voters in the Sirsa constituency. In the present case there is no proof that Jagadguru Shankaracharya of Puri was the religious head of the majority of the electors in this constituency or exercised great influence on them. It cannot be held on the facts of this case that an ordinary Hindu voter in this constituency would feel that he would be committing a sin if he disregarded the alleged directive of the Jagadguru.

One other ground given by the High Court is that "there can be no doubt that in this passage (passage No. 3) Shambhu Maharaj had put forward an appeal to the electors not to vote for the Congress Party in the name of the religion." In our opinion, there is no bar to a candidate or his supporters appealing to the electors not to vote for the Congress in the name of religion. What s. 123(3) bars is that an appeal by a candidate or his agent or any other person with the consent of the candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, *i.e.*, the religion of the candidate.

The following four passages in Ex. K, a speech delivered by Shambhu Maharaj at Kherwa after midnight of February 18, 1967, were objected to :

> "(1) The Congress says that it has brought happiness and will give happiness in future; but even a father cannot give happiness to his son, nor can a son give happiness to his father. Giving happiness rests in the hands of God. But God gives happiness where there is religion. He does not give happiness to the irreligious.
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> (2) Formerly there were no famines. Possibly once in 100 years there might be one famine. As against that nowadays every year there is some natural calamity like a famine. Either there is no rain or there is frost or there is visitation of locust or there is some disease in the crops and some calamity or the other is constantly visting us. The reason for this is that Congress permits slaughter of 33,000 bullocks everyday. When slaughter of cows is banned, bullocks are allowed to be slaughtered. In Gujarat 12,000 bullocks are being slaughtered.
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> (3) Nobody would sit till 12-30 at night to listen to any talks by the Congress-walas. But I have come

(1) [1959] Supp. 2 S. C. R. 748.

A to tell the public, which is fond of its religion, to elect the Swatantra Party, so that the slaughter of bullocks might be stopped and all people who are fond of their religion are also keeping away till 12-30 at night.

(4) Vijaykumarbhai has gone. A Brahmin minister must be there and hence Kantilalbhai is going to be a minister, hence vote for him. We must have at least one minister who is a Brahmin. Hence vote for Kantilalbhai. At the same time vote for Bhaikaka and H.M. Patel by putting your voting mark on the star."

The High Court held the first two passages read together to constitute "corrupt practice" on the ground that "they amounted to interference with the free exercise of the electoral right of voters by holding out threats of divine displeasure and spiritual censure." The High Court held that in these passages there was a direct causal relationship between the cow slaughter and the natural calamities and this clearly showed that the voters were told that if they did not want such natural calamities to visit them they should not vote for the Congress Party and thus avoid the divine displeasure which was responsible for these natural calamities. It seems to us that this is not a fair reading of these two passages. Cow slaughter is not mentioned in these passages except to say that sow slaughter is banned in Gujarat. The causal relationship, if any, exists between slaughter of 33,000 bullocks every day and natural calamities. This, in our view, cannot amount to constitute "corrupt practice" within s. 123(2) proviso (a)(ii). The law does not place any bar on describing a party as irreligious or saying that because that political party is irreligious natural calamities have resulted because of its disregard of religion.

We do not find anything objectionable in the third passage because here again it is only an appeal to elect the Swatantra Party because the people in that party are fond of their religion.

The last passage in Ex. 'K' clearly fell within the mischief of s. 123(3). The High Court in this connection observed :

"The reference to Vijaykumarbhai is to Vijaykumar Trivedi, who was a Brahmin and was a minister in the Gujarat Government till March 1967, and when this speech was delivered. The reference to Kantilalbhai is to the first respondent, who is also a Brahmin and the reference to Bhaikaka is to Bhailalbhai Patel, leader of the Swatantra Party and H.M. Patel is another leader of the Swatantra Party and what Shambhu Maharaj was asking in this connection was that it was necessary that there should be one Brahmin in the Gujarat State Ministry and if one Brahmin,

Vijaykumar Trivedi, was to leave the ministry, another Brahmin Minister, *viz.*, the first respondent should be first elected so that he might get a seat in the Legislature and thereafter become a minister, and thus it is clear that in the passage, Shambhu Maharaj was asking the people to vote for the first respondent because he was a Brahmin by caste. It has been stated as a categorical statement that there must be at least one Minister, who was a Brahmin. Under S. 123(3) of the Act, an appeal by any person to vote for any person on the ground of his caste or community is a corrupt practice, provided, of course, that such person has made such appeal with the consent of the candidate concerned. I will come to the question of consent a bit later on, but it is clear that in this particular passage an appeal was being made to the electors to cast their votes for the first respondent because the first respondent is a Brahmin and also because of the promise, which had been put forward in this passage, that there should be at least one Brahmin Minister in the Ministry. I may point out that so far as the petitioner is concerned, the petitioner is a Patidar and it is in the context of this background that an appeal is made in the name of caste of the first respondent and the people are asked to vote for the first respondent because he was a Brahmin."

It seems to us that the High Court is correct in drawing the inference that Shambhu Maharaj was asking his voters to vote for the first respondent because he was a Brahmin.

Shambhu Maharaj is reported to have adopted the same theme in Ex. 'P' when he said that "Vijaykumarbhai had gone out and Kantilalbhai is going to be the Minister."

Following three passages were objected in Ex. 'P', a speech made at Dangerwa :

"(1) The time of election has arrived. The Congress Party is carrying on its propaganda desparately but what I want to say is that if Swatantra Party comes into power then it will not turn your roof-tiles into gold. Only God gives happiness. There is frost, there is rust in the crops, there is excess of rains, there is a famine all these are due to the workings of God. Every day twenty four crores of cows are being slaughtered, then how God will tolerate that and how will you get happiness ?

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(2) Look at the Congressmen who are destroyers of Hindu Religion.

(3) Every year we get one or the other natural calamity like excessive rain, or failure of rain or earthquake. This happens because they ask for votes in the name of live bullocks, whereas they get the bullocks slaughtered. The symbol should be of butcher and except ruthless and hard-hearted Congress nobody else will get bullocks slaughtered."

B

It seems to us that the first and the third passages, read together, constitute an attempt to induce the electors to believe that they would become objects of divine displeasure if they voted for the Congress and thereby allowed cow slaughter to be continued.

C

Hidayatullah, C.J., in *Narbada Prasad v. Chhagan Lal*(1), observed :

"It is not necessary to enlarge upon the fact that cow is venerated in our country by the vast majority of the people and that they believe not only in its utility but its holiness. It is also believed that one of the cardinal sins is that of gohatya. Therefore, it is quite obvious that to remind the voters that they would be committing the sin of gohatya would be to remind them that they would be objects of divine displeasure or spiritual censure."

D

E

In the first and third passages of Ex. 'P', therefore there is clear implication that if you vote for the Congress who are responsible for 24 crores of cows being slaughtered then God will be displeased; in other words there will be divine displeasure and the voters will not get happiness.

F

The second passage does not seem to be objectionable and the High Court has not found it to be so.

The learned counsel for the appellant contends that very little weight should be attached to the speeches because the reports were not taken in shorthand but from notes and it is very difficult to be certain of what were the exact words used by Shambhu Maharaj. The High Court examined the speeches, Exs. 'I', 'J' 'K', 'L', and 'P', in connection with this question and came to the conclusion that common topics, common language and common approach existed in all the speeches, and this indicated that Shambhu Maharaj did deliver the speeches. Further, according to the High Court, the reports were submitted by different constables at different times and to different Police Stations, and the learned Judge found that there could possibly be no consultation between the various police constables who took down the state-

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H

(1) [1969] 1 S.C.R. 499.

ments, and that the totality of the effect emerging from different reports made the reports credible. A

We agree with the conclusions arrived at by the High Court. It is true that the exact words were not taken down by the various police constables, but the similarity of approach, appeal and the attack on the Congress is remarkable and in these circumstances it must be held that the police constables correctly reproduced the substance of the speeches. It is not necessary in these cases that exact words must be reproduced before a speech can be held to amount to "corrupt practice". B

The learned counsel further contends that the appellant's consent to these speeches had not been proved. We agree with the High Court that there is no force in this contention. The High Court observed : C

> "As shown in the handbill setting out the programme, the manuscript of which was written out by the first respondent himself in consultation with Maganlal Abram Patel, this tour programme had been arranged to bring success to the first respondent in his election contest. Shambhu Maharaj was touring these villages specifically so that the first respondent might succeed in his contest. Further it would be natural on the part of the first respondent to take advantage of being seen in the presence of a good speaker like Shambhu Maharaj. Some of the meetings of Shambu Maharaj appear to have been well-attended. It is highly probable that the first respondent accompanied Shambhu Maharaj. To my mind, therefore, it is clear that the first respondent had accompanied Shambhu Maharaj and was present in each of the meetings at Moti-Dav, Kherwa and Dangerwa when Shambhu Maharaj delivered speeches at these three villages.....In the instant case also, the first respondent, according to the conclusion that I have reached, was present at the meetings which were addressed by Shambhu Maharaj at Moti-Dav, Dangerwa and Kherwa and in each of these three meetings at least, according to the conclusions reached by me, Shambhu Maharaj in the course of his speeches had committed breaches of the provisions of s. 123(2) and s. 123(3) of the Act.....Under these circumstances, it is clear to my mind, judging by the manner in which the first respondent was touring with Shambhu Maharaj, the manner in which tour programme was arranged and judging from the fact that this tour was specially arranged to bring success to the first respondent, that the first respon- D E F G H

A dent did consent to the commission of the breaches of the proviso of s. 123(2) and s. 123(3) of the Act by Shambhu Maharaj."

We may add that many police witnesses depose that the appellant was present and it has not been shown to us that he dis-
B sociated himself with any of the remarks in the speeches.

In the result the appeal fails and is dismissed with costs.

Hegde, J. I agree that the statements contained in Exh. P amount to a corrupt practice under s. 123(2) of the Representation of the People Act and also agree that those statements were made with the consent of the returned candidate. Hence this
C appeal has to be dismissed but I am unable to agree that before a statement can be considered as an attempt to induce an elector to believe that he will be rendered an object of spiritual censure if he acts in a particular manner that statement must have been made by a person who is a religious head of the majority of the electors in the constituency concerned. What s. 123(2) requires
D is to induce or attempt to induce "an elector"—which means even a single elector—that he will be rendered an object of spiritual censure if he exercises or refuses to exercise his electoral right in a particular manner. But undoubtedly the inducement or an attempt to induce complained of should be such as to amount to a direct or indirect interference or attempt to interfere with the free exercise of electoral right. Whether a particular statement
E comes within s. 123(2) or not depends on various factors such as the nature of the statement, the person who made it and the persons to whom it is addressed. No doubt the nature of the statements in question is of utmost importance. They may exploit well accepted religious beliefs but that is not the only thing that comes within the mischief of s. 123(2). A respected reli-
F gious preacher may induce or attempt to induce the illiterate and superstitious voters who form the bulk of our voters that they will become the object of divine displeasure if they do not exercise their franchise in a particular manner. His statements may not have any support from the religious books but yet they may amount to a corrupt practice in law. I see no justification to cut
G down the scope of s. 123(2). It will not be in public interest to do so.

I am unable to agree that the appeal to vote (in Exh. K) for the appellant on the ground that he is likely to be a Minister as according to Shambhu Maharaj there should be at least one Brahmin Minister in the cabinet is an appeal to vote on the ground
H of the appellant's caste. There is no use hiding the fact that communal and regional representations in all our political institutions have become a must. Shambhu Maharaj merely gave expression to that fact from public platforms. One may not appreciate his

campaigning for that point of view but I am unable to agree that his statements in that regard amount to corrupt practice under s. 123(3). Those statements cannot be considered as an appeal to vote on the basis of the appellant's caste. The caste of the appellant has come into the picture incidentally. A

V.P.S. *Appeal dismissed.* B