

ALLAHABAD HIGH COURT

Ajudhia Prasad

Vs

Emperor

(Dalal, J.)

30.08.1928

JUDGMENT

Dalal, J.

1. Ajudhia Prasad Dhobi has appealed from his conviction under Section 161 read with Section 116, I.P.C., 111. (a) to Section 116 says: A offers a bribe to B a public servant as a reward for showing A some favour in the exercise of his official function. B refuses to accept the bribe. A is punishable under this section.

2. The Dhobi is not the actual A but he introduced the bribe giver to the Assistant Superintendent of Police Mr. Naqvi. Mr. Naqvi heard from a female servant what Ajudhia intended and made preparation to receive Ajudhia and the principal person Narain Das, who desired that the Assistant Superintendent of Police should use favour in the exercise of his official functions. The favour desired by Narain Das was that his brother's name may be removed from Register No. 8 of bad characters of the Jhansi Police-Station. There can be no doubt that Ajudhia and Narain Das appeared before the officer and offered a bribe which was not accepted. Learned counsel here has argued that the Assistant Superintendent was not in charge of this particular Register and in the exercise of his official function could not remove the name of any person from that register. The official therefore was not in a position to show favour to Narain Das and that, therefore, if the official had accepted the money he would not have been guilty of accepting a bribe and for that reason the bribe giver could not be guilty under the provisions of Section 116, I.P.C. In support of this view a ruling of the Madras High Court in *In re Venkiah* A.I.R. 1924 Mad. 851 was quoted, of which the head-note is; In a charge under Section 161 it must be shown that the accused took the bribe or a motive for doing an official act, that the charge against the Karnam was that he received a bribe from a villager on the understanding that he would get him some darkhast land. It does not constitute an offence under Section 161 as getting darkhast is not the official act of a karnam.

3. With all respect, in my opinion, the learned Judge appears to have overlooked 111 (c) to

Section 161 to which no reference is made in the judgment. That illustration is:

A a public servant induced Z erroneously to believe that A's influence with the Government has obtained a title for Z and thus induced Z to give A money as a reward for this service. A has committed the offence defined in this section.

4. In the Madras case the karnam induced the villager to believe that in the exercise of his official act he could obtain darkhast land for the villager. Having regard to the illustration, I should have held the karnam guilty under Section 161. Mr. Sanyal had an ingenious argument in reply. He was of opinion that what the illustration pointed out was that A, though he promised to exercise influence, did not exercise in fluence and yet he would be guilty. According to counsel A is the illustration was in a position to exercise influence with the Government to obtain a title. I am not aware of the existence of an official, whose official duty it is to exercise influence with the Government to obtain a title. With the desire we all have for titles, such an official would not be able to drive away crowds from his door. Such an illustration of an impossible official duty is purposely given to indicate the purpose of the legislation that, even where an act is not within the exercise of the official duty of a public servant, (such as the exercise of influence to obtain a title), if a public servant erroneously represents that the particucar act is within the exercise of his offilial duty he would be liable to conviction under Section 161, if he obtained a gratification by inducing such an erroneous belief in another person. The learned commentators of the book entitled. "The Law of Grimes" have also commented adversely on a case of this Court which is not reported anywhere *Kishan Lal*¹ notes. I cannot agree with the learned commentators. My opinion is in agreement with the opinion expressed in that case. All that is necessary to prove the offence is that a public servant had promised to show favour in the exercise of his official function, although he might in reality have no such opportunity.

5. The conviction is upheld. At the same time the sentence is very severe, firstly, having regard to the fact that Narain Das has been let off only with a fine. A very quaint reason has been assigned for this differentiation by the Magistrate. He says in his judgment that Narain Das wept and looked' sad. The Dhobi did neither. Possibly the Dhobi was not aware of the sensitiveness of the Court who tried him. As a rule Indians are very quick at weeping and knocking their heads on the ground. Secondly, "please walk into my parlour, said the spider to the fly" is a class of conduct at which my mind revolts. I reduce the sentence to rigorous imprisonment for one month.