

(1877) 12 AHC CK 0005

Allahabad High Court

Case No: None

Empress of India

APPELLANT

Vs

Kampta Prasad

RESPONDENT

---

Date of Decision: Dec. 15, 1877

Citation: (1875) ILR (All) 530

Hon'ble Judges: Robert Stuart, C.J; Spankie, J

Bench: Division Bench

Final Decision: Disposed Of

---

### Judgement

Spankie, J.

The Sessions Judge appears to me to be right in his view of this case in so far as it is affected by Section 161 of the Indian Penal Code. Under the terms of Section 161 of the Penal Code, the gratification must be taken by a public servant as a motive or reward for doing or forbearing to do any official act, or for showing, or forbearing to show in the exercise of his official functions, favour or disfavour to any person, etc., etc. But it is not pretended here that the one rupee paid to the accused was given to him as a motive or reward for any official act, or for showing or forbearing to show favour or disfavour in the exercise of his official acts. There was no agreement between the parties and indeed no previous connection. The accused was the person attached to the Deputy Magistrate's Court to bring up Police-cases for trial. He is the Police clerk in the Magistrate's office, and he was not the Police-officer who sent in the case nor connected with the Police-inquiry. The party who gave the rupee himself stated that it was asked for and taken as "dusturi," after the case had terminated and the accused persons had been convicted. The giver of the rupee had been the original prosecutor. It seems to me that the section requires that the gratification should be taken with the view of doing or forbearing to do an official act, or for showing or forbearing to show favour or disfavour in the exercise of official functions. It is not taken after the act has been done, and without some previous understanding. I do not find evidence in this case that the money was

promised and given as a reward for the accused's performance of his duty in Court.

2. It appears to me that Section 165 more nearly applies, and that as the accused was the subordinate of the Deputy Magistrate who had tried and closed the case, and asked for a reward, the one rupee, after the case was over, he is guilty of accepting "a valuable thing," and without reference to any particular motive or reward for doing or forbearing to do an official act. However, I am desirous that the record should go before a Bench, or that it should be heard before myself and another Judge, as the Hon<sup>ble</sup> Chief Justice may direct. I therefore send the case to the Registrar in order that it may be laid before the Hon<sup>ble</sup> Chief Justice.

Robert Stuart, C.J.

3. In accordance with Mr. Justice Spankie's suggestion I directed this case to be brought before the First Bench of the Court, consisting of Mr. Justice Spankie and myself, and the case has been attentively considered by me.

4. I believe that Mr. Justice Spankie remains of the opinion expressed in the note issued by him previously to the case being brought before us, and I quite agree with him that Section 161 of the Penal Code has no application to the facts, and I must express my surprise that the Officiating Magistrate should have so misconceived the law. The motive or reward explained in Section 161 has obviously no application whatever to such a case as this. But, on the other hand, I scarcely think that the one rupee which was given by, or possibly extorted from Chattra, can be regarded as in the nature of "dusturi." It appears to me to be too considerable for that, for it was nearly one-third of the whole sum recovered by Chattra. "Dusturi" is a customary payment very much less. It varies I believe throughout India from two to four pice on the rupee, and therefore "dusturi" in the present case should not have exceeded two annas, if it was proper for Kampta, the policeman, to accept anything of the kind, which I do not think it was. Probably the offence might come u/s 39 of the Police Act, Act V of 1861, for in taking the rupee Kampta appears to have clearly violated the Police instructions--see these on "gratifications."

5. But I also agree with Mr. Justice Spankie that such a case as this is covered by the terms of Section 165 of the Penal Code. The only question is whether the rupee here was a "valuable thing" within the meaning of that section. The value must, I think, be looked at with reference to the proportion it bears to the money or property of which it forms part, and here the rupee was rather less than a third of the whole sum obtained by Chattra from the Criminal Court. I therefore consider that in lieu of the conviction before the Judge, and of the sentence passed by him, Kampta may be convicted u/s 165 of the Penal Code, and that he should suffer four months' simple imprisonment. I would also order him to pay a fine of one rupee, and in default to suffer one month's additional imprisonment, such additional imprisonment to cease when the fine is paid or is recovered by process of law.

Spankie, J.

6. I concur with the Hon'ble Chief Justice on the propriety of the conviction u/s 165, and in the sentence proposed. The conviction of accused and sentence passed by the Sessions Judge u/s 29 of Act V of 1861 is annulled, and the prisoner is convicted u/s 165 the Indian Penal Code, and a warrant must issue accordingly.