

In Re: Venkatarama Naidu

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SooperKanoon Citation : sooperkanoon.com/774945

Court : Chennai

Decided On : Apr-09-1929

Reported in : (1929)57MLJ239

Appellant : In Re: Venkatarama Naidu

Judgement :

Murray Coutts Trotter, Kt., C.J.

1. This man was convicted and fined under the joint effect of Sections 116 and 161 of the Indian Penal Code in the following circumstances. He was anxious to become a policeman and by the orders of the District Superintendent of Police he presented himself before the Reserve Inspector who found that he was below the minimum height accepted for the Police and rejected his application. He thereupon tendered a five rupee note to the Officer, no doubt in the hope that the Officer would reconsider his decision and make a report to the District Superintendent of Police to that effect. The Officer had the man charged. He was convicted and he appeals.

2. The law relating to what I may shortly call bribery under the Penal Code is very curious. It is confined in effect to public servants or those who regard themselves as on the way to public service and the operative Section 161 refers 'only to the taker and not to the giver of the bribe, the latter of course being by far the worse of the two. The giver or the offerer of the bribe is only brought in under Section 116, Indian Penal Code, by the doctrine of abetment. I think that the state of the law is

very unsatisfactory. It seems absurd to say that a man abetted an offence which not only is not committed but with the whole transaction in relation to which he indignantly refused to have anything to do. By the cases in India, it is held that if the public officer has discharged his duty, whatever it may be, the person who attempts to bribe him, in circumstances such as the present, commits no offence whatever. I think this is the most unsatisfactory state of affairs, because it obviously leads to this, that if a man, in the vain hope of getting a public officer to reconsider a question as to which that public officer is *functus officio*, offers a bribe, he commits no offence by doing so and presumably the public officer would commit no offence by taking it. I think it is too late to go back on the decisions which have stood for a long time, but I do think that it is time that fresh legislation were introduced into the Code to make these most dangerous offences of giving or taking bribes punishable in much wider terms than are contained in the Code at present. Moreover, there is no provision for the bribing of anybody except a public official and no provision at all corresponding to what is known in England as Fry's Act (Prevention of Corruption Act, 1906 VI Edw. 7 c. 34). It is obvious that it is possible for a man to give bribes to the agent, say of a rival trader to induce him to reveal his master's secrets, or for the agent to take such bribes for the purpose, and go unscathed, and I think it is eminently desirable that the giver or offerer of a bribe to a public servant should be rendered punishable by a much less circuitous method than he is at present.

3. In the result, the conviction must unfortunately be set aside and the fine, if paid, will be refunded. But I desire these observations be forwarded to the Government of India for their consideration.

Pakenham Walsh, J.

4. I agree. As Section 161 stands at present the decision that no offence can be committed when the public officer is *functus officio* appears to me to be correct.