

**The Public Prosecutor Vs. V.S. Viswanathan and anr.**

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**Court :** Chennai

**Decided On :** Jan-17-1947

**Reported in :** (1947)1MLJ179

**Appellant :** The Public Prosecutor

**Respondent :** V.S. Viswanathan and anr.

**Judgement :**

**Yahya Ali, J.**

1. The appellate Magistrate who acquitted the respondents in these two appeals filed by the Public Prosecutor of the alleged offence of abetment of bribery came to the conclusion in view of certain admissions made by the Textile Officer P.W. 1, that the decision in Venkatarama Naidu, In re : (1929)57MLJ239 applied to the facts of this case. P.W. 1 stated that he has considered the application presented by the respondents for the grant of a permit for extra supply of yarn on its merits and had come to the conclusion that it had no merits. He had decided not to give additional yarn and apparently conveyed his decision to the concerned parties. The next day, the respondent in C.A. No. 35 of 1947, alone appeared before P.W. 1, and repeated his request for the permit and offered a bribe of Rs. 300. P.W. 1, the concerned officer, stated further that once he had rejected the application for special quota, he had never granted it on repeated applications. In view of these clear statements of the Textile Officer, the Bench decision referred to above

directly applies. There, Coutts-Trotter, C.J., observed:

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.

The learned Judge, Pakenham Walsh, J., agreed with this view. The appellate Magistrate was clearly right in feeling bound to follow the Bench decision of this Court. Offering a bribe is *per se* no offence under Section 160 of the Indian Penal Code; the respondents are sought to be implicated with the aid of Section 116 of the Indian Penal Code as abettors; in the circumstances of cases like this, it is difficult to conceive how such an act can, under the present law, amount to abetment of taking the bribe.

2. The learned Public Prosecutor contends that the case in *Venkaiarama Naidu, In re* : (1929)57MLJ239 was wrongly decided and requires reconsideration. The decision has stood all these years without any dissent. The more effective remedy would be, as proposed by the learned Chief Justice in that case, to bring comprehensive legislation with a view to render the giver of the bribe also substantively punishable and to extend its scope to other departments of national life on the lines of Fry's Act in England.

3. The appeals are dismissed.

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