

Burham Sahib Vs. Emperor

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Court : Chennai

Decided On : Jan-22-1930

Reported in : AIR1930Mad671; 126Ind.Cas.603

Judge : Pandalai, J.

Appellant : Burham Sahib

Respondent : Emperor

Judgement :

ORDER

Pandalai, J.

1. The petitioner was convicted under Sections 161 and 116, Indian Penal Code, of abetment of bribery by the Sub-Divisional Magistrate of Madura and sentenced to pay a fine of Rs. 200 and this conviction and sentence were confirmed on appeal by the learned. Sessions Judge of Madura. The present petition is by the accused to have the conviction and sentence set aside.

2. The learned Advocate for the petitioner argued in the first instance that of the witnesses who spoke to the petitioner's act only one had actually seen the offer of the money and the others had only seen him in Col. Harley's bungalow, that Col. Harley himself was unable to identify the petitioner and that his description of the petitioner as a Revenue Inspector was belated and that the whole case was due to

the influence of the petitioner's enemies who were friends of Col. Harley. This is an argument purely upon the evidence in the case and all these aspects of the evidence have been considered by both the Courts below. They have accepted the evidence and I am not in a position to say that their conclusion is incorrect, that the petitioner went to the house of Col. Harley, P.W. No. 1 and there offered him money to induce him to retain in hospital as an in patient a brother of the petitioner who had been injured in a fracas with the object, no doubt, of making out that the injury caused was grievous hurt and not simple hurt. With these conclusions, I agree.

3. The learned Advocate then raised the point that the facts established do not amount to an offence under Section 161 read with Section 116; and for this he relied upon the decision in *In re Venkatarama Naidu* 119 Ind. Cas. 315 : A.I.R. 1929 Mad. 756 : 30 L.W. 235 : 57 M.L.J. 239 : 30 Cr.L.J. 1055 : (1929) M.W.N. 695 : Ind. Rul. (1929) Mad. 955. In that case a Police Inspector had passed orders rejecting the application of Venkatarama Naidu to be enlisted as a Policeman. After he had rejected this application, Venkatarama Naidu offered Rs. 5 to the Inspector of Police to take him. The Bench held the Inspector had become *functus officio* in other words, his official duties had become spent so far as accepting Venkatarama Naidu as a Police man was concerned and that, therefore, according to decisions of Indian Courts there could no longer be in that matter any bribery of a public servant or abetment of such bribery. In my opinion that decision does not apply to the facts of this case. If I held that the facts were very similar, I should, as at present inclined, have thought it my duty to refer the question to a Bench because, in my opinion, the point requires re-consideration. But the facts of the two cases are entirely dissimilar. In this case Col. Harley was not *functus officio* as his duties and responsibilities to the patient still in the hospital were by no means over. It is true, that he had decided or proposed to discharge him the next day but the man was not discharged and if Col. Harley could have been illegally influenced it would still have been possible for him by reason of that influence to detain the patient further in the hospital than he was bound to do according to his official duties. That fact distinguishes this case from the facts of the decision relied upon. In my opinion the facts proved clearly come within Section 161 as they amount to an offer or of illegal gratification to a public servant as a motive or reward for

showing favour to a patient in the discharge of that public servant's official duties. As the offence was not completed by reason of the refusal of the offered bribe, the case comes strictly within Illus. (a), Section 116, Indian Penal Code, and is covered by it.

4. The petition must be dismissed.

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