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ingredients, to amount to rioting (see *Samaruddin* v. *Emperor*(1)). As to this, of course, I can express no opinion. The only view I can take is that in the interests of justice it is necessary for the trial to terminate before these questions are investigated; and if substance is found in them the petitioners will have a sufficient remedy then. The Criminal Revision Petition is dismissed.

B.C.S.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Wallace.*

1927, May 4.

VANU RAMACHANDRIAH (ACCUSED), PETITIONER.*

*Indian Penal Code, sec. 161—Applicability of—If confined to doing an official act—Essentials of—Actual production of illegal gratification—Acceptance by person to whom offered—If necessary—Person offering on behalf of another but himself guaranteeing payment—If constitutes offence.*

Section 161 of the Indian Penal Code is not confined to cases in which the illegal gratification is taken for doing an official act, and it is an offence under that section for a public servant to accept any gratification other than legal remuneration as a motive or reward for rendering or attempting to render any service to any one with any public servant as such.

To constitute an offence under section 161, a firm offer to pay money being sufficient, it is not necessary that the illegal gratification should actually have been produced, nor is it essential that the person to whom the firm offer was made should have accepted it.

Where the accused, in order to secure for another, a municipal contract, the giving of which lay with the Chairman and Councillors of the Municipality, made an offer of a sum of money to the complainant, the Manager of the Municipal Council, as

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(1) (1913) I.L.R., 40 Calc., 367.

* Criminal Revision Case No. 110 of 1927.

what that other was willing to pay, if he secured the contract for him and the accused himself guaranteed payment of the money,

*Held*, that the conduct of the petitioner amounted to an offer of an illegal gratification to the complainant in his capacity as Manager of the Municipal Office, to use the influence he possessed in such capacity over the Chairman and the Councillors to procure the Municipal contract for that other and could not be interpreted as being merely a passing on of the offer of that other. *Emperor* v. *Amiruddin Sabhhoy*, (1922) 23 Crl. L.J., 466, *Upendranath Chowdry* v. *King Emperor*, (1916) 21 C.W.N., 552, *In re Venkiah*, (1924) 47 M.L.J., 662, referred to.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of Sessions of North Arcot at Vellore in Criminal Appeal No. 24 of 1926 (C.C. No. 17 of 1926 on the file of the Court of the Subdivisional Magistrate of Ranipet).

The facts necessary for this report appear in the judgment.

*V. L. Ethiraj* and *A. S. Sivakaminathan* for petitioner.

*Public Prosecutor* for the Crown.

## JUDGMENT.

The petitioner has been convicted of an offence under section 161 of the Indian Penal Code read with section 116. His contention is that on the facts found the offence has not been established.

The facts found are that on 15th November 1925 he, a Municipal Councillor of the Wallajapet Municipal Council, did in a letter written to the complainant, who was the Manager of the office of the same Municipality, say to him,

"The matter regarding the lock-up shed, Mr. Manicka Seshayya, is keen about it. Will you just try that job for him? I now here take my full privilege to you to say that he makes an offer of rupees two hundred to you in case he gets it. I shall stand surety for it if you can interfere in the matter and

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have it settled. If you can assure me he is prepared to deposit the amount."

The giving of a contract for this lock-up shed lay with the Chairman and the Councillors. I have no doubt what this letter means. The petitioner informs the Manager that if he uses his influence with the Chairman and Councillors to secure the contract for Manicka Seshayya, he will get Rs. 200 from Manicka Seshayya or, if not from him, then from himself, the petitioner. That is, in effect he says,

"I at any rate will see that you get Rs. 200 if you get the contract for Manicka Seshayya."

That is equivalent to an offer of Rs. 200 if he gets the contract for him. I am not able to support the contention that this is merely a passing on of an offer by Manicka Seshayya himself. It is clearly an undertaking by the petitioner himself that he will, if necessary, pay this Rs. 200 when the contract is obtained. I am clear therefore that this is an offer by the petitioner of an illegal gratification to the complainant in his capacity as Manager of the Municipal Office, to use the influence he possesses in such capacity over the Chairman and Councillors in order to procure this Municipal contract for Manicka Seshayya.

It is next contended that even so petitioner's conduct does not amount to an abetment of an offence under section 161, first, because even if complainant had accepted the bribe he would not have committed an offence under that section and therefore there cannot be any abetment of such an offence, secondly, that petitioner's conduct did not amount to a real offer, and thirdly that at the most his conduct amounted to a mere abetment of an attempt or an instigation of an abetment. He further raised the question whether the complainant is a public servant. That point however was never raised in the

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Courts below where it was not disputed that he was a public servant. Whether he is or is not is a question of fact and I am not prepared to let it be raised here for the first time, and I take it that the complainant is a public servant.

The essence of the first contention is that the complainant was not asked to do an official act since officially he has nothing to do with such a contract, but section 161 is not confined to cases in which the gratification is taken for doing an official act. The wording of the section is clumsy, but it does not appear to me to be so restricted. From that wording and omitting words which are superfluous for this argument, it is an offence if a public servant accepts any gratification other than legal remuneration as a motive or reward for rendering or attempting to render any service to anyone with any public servant as such. Now here on the facts if the complainant, the Manager of the Municipal Office and a public servant, had accepted the Rs. 200 as a reward for using his influence with the Chairman and Councillors as such to get a contract for Manicka Seshayya, which contract was in the gift of the Chairman and Councillors as such, I have no doubt that he would be guilty under section 161, whether or not the act which he did was an official act. Incidentally I can see no reason for supposing that what the Chairman and Councillors as a body do or can do officially, they do not do as a *public servant.*

As to the second contention, it is not necessary that the gratification need actually be produced. I have already held that petitioner was obviously making a firm offer to pay the complainant Rs. 200, if Manicka Seshayya got the contract through his good services. As to the third contention, the petitioner offered the gratification, and, although the complainant did not accept it, petitioner would still be guilty under section 116. See

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illustration (*a*) to that section. That illustration no doubt deals with an offer of a bribe to a public servant for showing favour in the exercise of his *official* functions. But the principle of the illustration obviously applies as much to the other purposes set out in section 161 as to doing or forbearing to do any official act.

It is pleaded that the charge framed was obscure, but so far from that being the case, it seems to me to set out clearly the exact conduct contemplated in the latter part of section 161 so as to bring the abetment by the petitioner under section 116. The charge runs that

"You offered illegal gratification of Rs. 200 to Rajam Ayyar, Manager, Municipal Office, Wallajapet, as a motive or reward for rendering a service to Manicka Seshayya with the Chairman and Councillors, to wit, to procure for Manicka Seshayya the contract of a lock-up shed."

It has been quite clearly framed with an eye to that part of section 161 which is applicable to the case.

Petitioner calls in aid a ruling of a Bench of the Bombay High Court reported in *Emperor* v. *Amiruddin Sabhhoy*(1), but there, as will be seen, there was no offer by the accused himself. He merely stated that someone else was willing to bribe. In the present case the petitioner himself made an offer in that he guaranteed the money if the favour was granted. The case in *Upendranath Chowdhury* v. *The King Emperor*(2) is distinguishable on the ground that the money taken there was not for rendering service with any public servant as such. The case *Venkiah, In re*(3) has been relied upon. But there the facts again do not show that the karnam took the money for rendering a service with any public servant as such and therefore the conviction could not stand unless it was proved that he took it for

(1) (1922) 23 Cri. L.J., 466. (2) (1916) 21 C.W.N. 552.
(3) (1924) 47 M.L.J., 662.

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doing an official act which was held not proved on the facts. None of these cases therefore are of any assistance to the petitioner. I therefore do not see that any error of law has been committed by the lower Courts and the conviction is proper and must stand.

I am asked to reduce the sentence, but having regard to the necessity for severely punishing attempts to foul the purity of official administration, I am not prepared to interfere. I therefore dismiss this petition.

B.C.S.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Curgenven.*

*In re* VEERABADRA PILLAI AND FIFTY OTHERS (ACCUSED), PETITIONERS.*

1927, May 3.

*Indian Penal Code, sec.* 143—*Assembly of five or more persons—maintenance by force or show of force a right* bona fide *believed in, and not enforcement of a right or supposed right—if an unlawful assembly.*

Where five or more persons assemble for maintaining by force or show of force a right which they *bona fide* believe they possess, and not for enforcing by such force or show of force a right or supposed right of theirs, they do not constitute an unlawful assembly punishable under section 143 of the Indian Penal Code.

*Pachkauri* v. *Queen-Empress*, (1897) I.L.R., 24 Calc., 686, *Silajit Mahto* v. *Emperor*, (1909) I.L.R., 36 Calc., 865, *Bagh Singh* v. *Emperor*, (1924) 81, I.C., 113, followed; *Ganouri Lal Das* v. *Queen-Empress*, (1889) I.L.R., 16 Calc., 206, not followed.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Subdivisional

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* Criminal Revision Case No. 873 of 1926.