

1877  
December 18.

## CRIMINAL JURISDICTION.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr Justice Spankie.*

EMPRESS OF INDIA v. KAMPTA PRASAD.

*Public Servant—Illegal gratification—Acceptance of present—Act XLV of 1860 (Indian Penal Code), ss. 161, 165.*

*K*, a police-officer, employed in a Criminal Court to read the diaries of cases investigated by the police and to bring up in order each case for trial with the accused and witnesses, after a case of theft had been decided by the Court in which the persons accused were convicted, and a sum of money, the proceeds of the theft, had been made over by the order of the Court to the prosecutor in the case, asked for and received from the prosecutor a portion of such money, not as a motive or reward for any of the objects described in s. 161 of the Indian Penal Code, but as "*dasturi*." Held that *K* was not, under these circumstances, punishable under s. 161 of the Indian Penal Code, but under s. 165 of that Code.

KAMPTA Prasad, a police-officer, was employed in the Court of a Magistrate to read the diaries of cases investigated by the police and to bring up in order each case for trial with the accused and witnesses. On a certain day he brought up, in the usual manner, a case in which one Chattra charged two persons with the offence of theft. These persons were convicted and sentenced, and a sum of money, some Rs. 3, the proceeds of the theft, was, by the order of the Magistrate, made over to Chattra, the prosecutor in the case, who then left the court-house. Immediately after his departure Kampta Prasad also left the court-house, without orders, there being no reason why he should have left it, and it subsequently transpired that he had asked Chattra for and had received from him a portion of the money made over to Chattra by the Magistrate. On these facts the Magistrate of the District convicted Kampta Prasad of an offence under s. 161 of the Indian Penal Code. On appeal by Kampta Prasad the conviction was set aside by the Sessions Judge, who observed as follows: "I think there is no reasonable doubt that the appellant took a small gratification of one rupee from a plaintiff in a criminal case. There is, however, no evidence whatever produced which proves or makes it even very probable that this gratification was given with any of the objects mentioned in s. 161 of the Indian Penal Code, under which section the appellant has been punished. The payment was made probably exactly as described by the giver, as '*dasturi*,' that is, a customary payment made

to a person clothed with a little brief authority irrespective of any return or consideration for the payment. Such an offence is probably punishable under s. 29 of Act V of 1861, and in this view of the case I alter the finding of the lower Court and modify its sentence, and order Kampta Prasad to be imprisoned under s. 29 of Act V of 1861 for one month from the 10th September last."

The case was reported for the orders of the High Court.

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 s. 161 of the Indian Penal Code. Under the terms of s. 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, &c., &c. 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 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 "*dasturi*," 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.

It appears to me that s. 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

1877

---

 EMPRESS OF  
INDIA  
v.  
KAMPTA  
PRASAD.

1877  
 THE  
 EXPRESS OF  
 INDIA  
 2.  
 KAMPTA  
 PRASAD.

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'ble Chief Justice may direct. I therefore send the case to the Registrar in order that it may be laid before the Hon'ble Chief Justice.

STUART, C.J.—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.

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 s. 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 s. 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 "*dasturi*." It appears to me to be too considerable for that, for it was nearly one-third of the whole sum recovered by Chattra. "*Dasturi*" is a customary payment very much less. It varies I believe throughout India from two to four pice on the rupee, and therefore *dasturi* 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 under s. 29 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."

But I also agree with Mr. Justice Spankie that such a case as this is covered by the terms of s. 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 con-

victed under 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.

1877

EMPEROR OF  
INDIA  
v.  
KAMPTA  
PRASAD.

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

## APPELLATE CIVIL.

1877

December 18.

*Before Mr. Justice Spankie and Mr. Justice Oldfield.*

HASAN ALI AND ANOTHER (PLAINTIFFS) v. MEEDI HUSAIN AND OTHERS  
(DEFENDANTS).\*

*Muhammadan Law—Inheritance—Minor—Justice, Equity, and Good Conscience—Act VI of 1871 (Bengal Civil Courts' Act), s. 24.*

*H*, being in possession of certain real property on her own account, and on account of her nephew and niece, minors, of whose persons and property she had assumed charge in the capacity of guardian, sold the property, in good faith, and for valuable consideration, in order to liquidate ancestral debts, and for other necessary purposes and wants of herself and the minors. *Held* that, under Muhammadan law and according to justice, equity, and good conscience, the sales were binding on the minors.

THIS was a suit for possession of certain shares in a dwelling-house and in certain villages, by cancelment of sales of the property. The plaintiffs were respectively the son and daughter of one Najib Husain, who died in 1857. At the time of his death the plaintiffs were minors, and, their mother being also dead, Husaini Bibi, their father's only sister, assumed charge of their persons and their property in the capacity of guardian. Najib Husain and Husaini Bibi had inherited from their father a dwelling-house and certain shares in six villages, which property was heavily mortgaged. On the 3rd January, 1862, the plaintiffs being minors at the time,

\* Special Appeal, No 860 of 1877, from a decree of M. Brodhurst, Esq., Judge of Benares, dated the 1st May, 1877, affirming a decree of Paudit Jagat Narain, Subordinate Judge of Jaunpur, dated the 4th June, 1875.