

It may furnish grounds for a civil action if anybody was hit, but in the present case, nobody was hit. It cannot be said that the applicant's act was illegal.

The subordinate courts have themselves been doubtful of their finding. So they have taken refuge by raising a side issue. They say that the act of throwing a brick was rash and negligent because thereby the life of Dodhe, whom the applicant himself had left in the temple, was placed in danger. There was no such allegation made by the prosecution witnesses. The applicant, whose act was deliberate, must have taken good care to see that Dodhe was not hit by the bricks.

The conviction cannot be maintained. I set aside the order under section 562 of the Indian Penal Code.

Before Mr. Justice Dalal.

EMPEROR v. AJUDHIA PRASAD.*

Indian Penal Code, sections 161/116—Abetment of bribery—Offering bribe for doing something which the public servant has no power to do—Absence of such power immaterial.

It is sufficient to constitute an offence under section 161, read with section 116, of the Indian Penal Code that there was an offer of a bribe to a public servant, in the belief that he had an opportunity or power in the exercise of his official functions to show the offeror a desired favour, although the public servant had in reality no such power.

THE facts of the case sufficiently appear from the judgement of the Court.

Mr. A. Sanyal, for the applicant.

The Assistant Government Advocate (Dr. M. Waliullah), for the Crown.

*Criminal Revision No. 621 of 1928, from an order of H. J. Collister, Sessions Judge of Jhansi, dated the 4th of August, 1928.

1928

EMPEROR
v.
AJUDHIA
PRASAD.

1928

August, 30.

1928

EMPEROR
 v.
 AJUDHIA
 PRASAD.

DALAL, J. :—Ajudhia Prasad Dhobi has appealed from his conviction under section 161 read with section 116 of the Indian Penal Code. Illustration (a) to section 116 says :—“A offers a bribe to B a public servant as a reward for showing A some favour in the exercise of his official function. B refuses to accept the bribe. A is punishable under this section.” The dhobi is not the actual A but he introduced the bribe-giver to the Assistant Superintendent of Police, Mr. Naqvi. Mr. Naqvi heard from a female servant what Ajudhia intended and made preparation to receive Ajudhia and the principal person, Narain Das, who desired that the Assistant Superintendent of Police should use favour in the exercise of his official functions. The favour desired by Narain Das was that his brother's name might be removed from register No. 8 of bad characters of the Jhansi police-station. There can be no doubt that Ajudhia and Narain Das appeared before the officer and offered a bribe which was not accepted. Learned counsel here has argued that the Assistant Superintendent was not in charge of this particular register and in the exercise of his official function could not remove the name of any person from that register. The official, therefore, was not in a position to show favour to Narain Das and that, therefore, if the official had accepted the money he would not have been guilty of accepting a bribe and for that reason the bribe-giver could not be guilty under the provisions of section 116 of the Indian Penal Code. In support of this view a ruling of the Madras High Court, in *Pulipati Venkiah* (1) was quoted, of which the head-note is : “In a charge under section 161, it must be shown that the accused took the bribe as a motive for doing an official act, that the charge against the Karnam was that he received a bribe from a villager on the understanding that he would get him some *darkhast* land. It does not constitute an offence under section 161, as getting *dar-*

(1) (1924) 47 M.L.J., 662.

khast land is not the official act of a Karnam." With all respect, in my opinion, the learned Judge appears to have overlooked illustration (c) to section 161, to which no reference is made in the judgment. That illustration is:—"A, a public servant, induced Z erroneously to believe that A's influence with the Government has obtained a title for Z and thus induced Z to give A money as a reward for this service. A has committed the offence defined in this section." In the Madras case the Karnam induced the villager to believe that in the exercise of his official act he could obtain *darkhast* land for the villager. Having regard to the illustration, I should have held the Karnam guilty under section 161. Mr. *Sanyal* had an ingenious argument in reply. He was of opinion that what the illustration pointed out was that A, though he promised to exercise influence, did not exercise influence and yet he would be guilty. According to counsel, A in the illustration was in a position to exercise influence with the Government to obtain a title. I am not aware of the existence of an official whose official duty it is to exercise influence with the Government to obtain a title. With the desire we all have for titles, such an official would not be able to drive away crowds from his door. Such an illustration of an impossible official duty is purposely given to indicate the purpose of the legislation that, even where an act is not within the exercise of the official duty of a public servant (such as the exercise of influence to obtain a title), if a public servant erroneously represents that the particular act is within the exercise of his official duty he would be liable to conviction under section 161 if he obtained a gratification by inducing such an erroneous belief in another person. The learned commentators of the book entitled "The Law of Crimes" have also commented adversely on a case of this Court which is not reported anywhere: *Kishan Lal v. King-Emperor* (1). I

1928

 EMPEROR
 v.
 AJUDHIA
 PRASAD.

1928
 EMPEROR
 v.
 AJUDEHA
 PRASAD.

cannot agree with the learned commentators. My opinion is in agreement with the opinion expressed in that case. All that is necessary to prove the offence is that a public servant had promised to show favour in the exercise of his official functions, although he might in reality have no such opportunity.

The conviction is upheld. I reduce the sentence to rigorous imprisonment for one month.

APPELLATE CRIMINAL.

Before Mr. Justice Dalal.

EMPEROR v. JWALA AND ANOTHER.*

1928
 September, 24.

Indian Penal Code, sections 489A/511—Attempt at counterfeiting currency notes—Product must be capable of causing deception—"Counterfeit"—Indian Penal Code, section 28.

For a thing to be termed "counterfeit" according to the definition given in section 28 of the Indian Penal Code, there should be some sort of resemblance sufficient to cause deception. In a case of counterfeiting currency notes, where the ability of the accused persons and the capacity of the materials with which they worked were not such as to produce a currency note which would take in even the most ignorant villager: *Held* there could be no conviction under section 489A, read with section 511, of the Indian Penal Code.

THE facts of the case sufficiently appear from the judgement of the Court.

Appeal from jail.

The Government Pleader (Mr. Sankar Saran), for the Crown.

DALAL, J. :—Badri has been convicted of an offence of possessing instruments or materials for forging or counterfeiting currency notes, under section 489D. He

*Criminal Appeal No. 656 of 1928, from an order of L. V. Arnlagh, Sessions Judge of Shahjahanpur, dated the 5th of July, 1928.