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*is dealt with in section 60 of the Code of Civil Procedure, and in the proviso to that section certain salaries of certain public officers or servants are attachable to a certain extent.* Section 2(17) describes who are the public officers who fall under the description of persons whose salaries are attachable." The learned Judges proceeded on the assumption that the proviso to section 60(1) *permits* attachment of property in the cases therein specified. It will be observed that the proviso merely exempts certain property from attachment, including part of the salary and allowances of public officers. If a property, salary or otherwise, does not fall within any of the clauses of the proviso, the general provisions contained in section 60(1) shall prevail, and the same shall be attachable.

In the circumstances discussed above, our answer to the reference is that if the judgment-debtor is a public officer, as defined in section 2(17) of the Code of Civil Procedure, his salary is exempt from attachment to the extent mentioned in clause *(i)* of the proviso to section 60(1) of the Code of Civil Procedure, and that if he is not such a public officer, it is not exempt from attachment to any extent.

## APPELLATE CRIMINAL

*Before Mr. Justice King and Mr. Justice Kisch*

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*April*, 11

EMPEROR *v.* CHAUBE DINKAR RAO AND OTHERS*

*Indian Penal Code, section* 161 *with* 116*—Abetment of taking illegal gratification by public officer—Public officer suggesting willingness to take a bribe—Intention not dishonest but merely to set a trap—Whether payment of the bribe in such circumstances is punishable—Indian Penal Code, sections* 107, 108*—Abetment, where the person abetted has no guilty intention but simulates it.*

While a suit was pending before a Subordinate Judge, he was approached by one *J* who told him that the plaintiff

*Criminal Appeal No. 696 of 1932, by the Local Government, from an order of J. Allsop, Sessions Judge of Cawnpore, dated the 14th of June, 1932.

would give him Rs.10,000 if he would decree the suit. The Judge at once turned him out of the house. A few days later, one *M*, who was a *pujari* of the plaintiff, came to see the Judge at his house. The Judge had reason to suspect him to be an emissary of the plaintiff for the purpose of offering him a bribe; and with the intention of setting a trap for the man the Judge himself suggested his willingness to take a bribe, and an amount and a date were settled. On the date fixed *M* and *D*, the son of the plaintiff, came with the money and handed it over to the Judge, whereupon they were caught by certain officers who had been concealed in the house by the Judge. *J*, *D* and *M* were put on their trial under section 161/116 of the Indian Penal Code and all of them were acquitted by the Sessions Judge. On appeal by the Local Government, *Held*—

As *J* did not offer any bribe, nor was he or claimed to be an agent or representative of the plaintiff, his statement, or expression of opinion, that the plaintiff would be willing to offer a bribe did not amount to an abetment of the offence under section 161 of the Indian Penal Code, and he was rightly acquitted.

*D* and *M*, the bribe givers, were guilty of abetment of an offence under section 161, although they only complied with a demand made by the public servant, and although the public servant had no guilty intention of receiving the money as a bribe.

Explanation 3 of section 108 of the Indian Penal Code makes it clear that the person abetted need not have any guilty intention in committing the act, so the fact that the Judge took the money without any guilty intention was immaterial, so far as the offence of abetment was concerned. The Judge, in taking the money, did not commit an offence under section 161 and the bribe givers, therefore, did not aid the commission; but they aided the Judge to commit an act, i.e. to take the money, which would be an offence if committed with the same intention as that of the bribe givers. They were, therefore, guilty of abetment of an offence under section 161, the abetment being not by instigation or by conspiracy with the Judge, but by aiding him in the commission of the act of taking the money.

Explanation 3 of section 108 of the Indian Penal Code applies to abetment generally and there is nothing to indicate

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that it applies only to abetment by instigation and not to other kinds of abetment.

The Government Advocate (Mr. *Muhammad Ismail*), for the Crown.

Sir *Tej Bahadur Sapru*, Dr. *K. N. Katju*, Messrs. *A. P. Dube* and *Saila Nath Mukerji* and Miss *L. W. Clarke*, for the respondents.

KING and KISCH, JJ.:—This is an appeal by the Local Government against the acquittal of Chaube Dinkar Rao, Pandit Jagat Narain and Pandit Madan Mohan who were charged with an offence under section 161 read with section 116 of the Indian Penal Code.

The principal facts of this case are undisputed. Mr. Brij Behari Lal was the Subordinate Judge of Etawah in the Mainpuri judgeship. We shall call him hereinafter "the Judge". There was a suit in his court between Narain Rao, the father of Dinkar Rao accused, and a man named Gur Narain. The Judge had recorded all the evidence and heard the arguments and was preparing his judgment when Pandit Jagat Narain accused came to his house, on the 4th of July, 1931, and told him that the plaintiff Narain Rao would be prepared to give him Rs.10,000 if he would decree the suit. The Judge felt insulted and turned Jagat Narain out of the house. The same evening the Judge met the Collector, Mr. Barlow, and told him about the suggested bribe of Rs.10,000. Next day Mr. Mathur, the Sessions Judge, came to Etawah to hold sessions and the Judge told him also about the offer of a bribe. That afternoon the Judge, Mr. Barlow and Mr. Mathur met at the Collector's house and talked about the incident. Mr. Barlow remarked that the plaintiff Narain Rao was a defaulter to the extent of about Rs.10,000 in the payment of land revenue and had declared his inability to pay, but he was nevertheless prepared to pay Rs.10,000 as a bribe. He suggested to the Judge that if the plaintiff or his representative wanted to offer the money as a bribe the

Judge should not stop him but should take the money so that it might be applied in discharge of the plaintiff's arrears of land revenue. The three officials seemed to think that it would be rather a joke to let the plaintiff offer the money as a bribe and then to take it in payment of the land revenue which the plaintiff professed to be unable to pay.

Pandit Jagat Narain never appeared on the scene again, but a few days later Madan Mohan accused, who is a *pujari* and who was a witness of the plaintiff in the suit, came to see the Judge at his house. After some preliminary remarks the Judge told him that Pandit Jagat Narain had approached him with the offer of a bribe on behalf of the plaintiff Narain Rao. Madan Mohan said that Jagat Narain had no connection with the plaintiff and had probably been sent by the defendant in order to prejudice the plaintiff. The Judge then signified by his manner that he was willing to consider the question of taking a bribe. Madan Mohan then said that the plaintiff could not pay so much as Rs.10,000 but would be willing to pay about Rs.8,000. The Judge held out for Rs.12,000 and said that he was prepared to see the plaintiff if the latter was willing to pay that sum.

Two or three days later Madan Mohan came again and said that the plaintiff was prepared to pay Rs.12,000 and asked when he should bring it. The Judge was anxious that the money should be paid in the presence of Mr. Mathur, who was returning to Etawah in a few days, and so he put Madan Mohan off once or twice and finally arranged that the money should be paid to him at his house on the 12th of July at about 9.30 p.m. as Mr. Mathur was expected to arrive at Etawah on that day. The Judge then arranged with Mr. Barlow and Mr. Mathur that the bribe givers should be trapped when they came to pay the money. The Judge sat in the verandah of his house while Mr. Barlow, Mr. Mathur and the Tahsildar hid themselves inside the rooms. At about 9.30 p.m. on the 12th of July, Dinkar Rao, the plaintiff's son,

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came along with Madan Mohan and said that they had brought Rs.10,000 and promised to pay the balance of Rs.2,000 within two days. Dinkar Rao produced Rs.10,000 in currency notes which he handed over to the Judge, who counted them and put them in his pocket. He then lighted a cigarette, which was a pre-arranged signal to Mr. Barlow, Mr. Mathur and the Tahsildar, who thereupon came out from the house. The Judge continued to play his part and pretended to be very much upset at the arrival of these gentlemen. When the Collector asked Dinkar Rao what he meant by paying this money to the Judge, he replied after some hesitation that he had paid it by way of a loan. The Judge, however, said that the money had been brought as a bribe and it was no use trying to conceal the truth, so Dinkar Rao threw himself at the Collector's feet and asked for pardon. The Collector then said that he wanted the money for land revenue due from Narain Rao, and got Dinkar Rao to give his consent in writing that the money should be taken on account of revenue and irrigation dues on behalf of his father Narain Rao. The Collector then made over the notes to the Tahsildar. Mr. Mathur reported the facts to the High Court, and the Collector also made a report to the Commissioner. The result was that the accused were put on their trial along with Narain Rao, but were all acquitted by the learned Sessions Judge. No appeal has been filed against the acquittal of Narain Rao, so we are only concerned with the other three accused.

The case of Jagat Narain can be briefly dealt with. He admits that he went to the Judge and told him that the plaintiff would pay Rs.10,000 if the suit were decreed, but denies that he went on behalf of the plaintiff. He makes out that he was really an emissary from the defendant and that his object in going was to find out whether there was any danger of the Judge's accepting a bribe from the plaintiff. The learned Government

Advocate has to admit that there is no evidence whatever showing that Jagat Narain had any connection with Narain Rao or Dinkar Rao or Madan Mohan. He is not related to any of them and does not appear to be a friend of theirs. His explanation that he was really acting in the interests of the defendant finds some support from the fact that he is related to the defendant, Gur Narain. It is also significant that as soon as Madan Mohan heard that Jagat Narain had approached the Judge with the offer of a bribe from the plaintiff, he stated at once that Jagat Narain could not have come on behalf of the plaintiff and that he probably came merely to prejudice the plaintiff. However this may be, we must take it that Jagat Narain was not acting in concert with the plaintiff or with Madan Mohan and that his conversation with the Judge on the 4th of July has no connection whatever with Madan Mohan's visit to the Judge a few days later. We agree with the learned Sessions Judge that Jagat Narain cannot be held guilty of an offence under section 161 read with 116. He did not offer a bribe. All that he said was that the plaintiff would be willing to give Rs.10,000 if the Judge would decree the suit. On these facts he might have been held to have instigated the Judge to send for the plaintiff and ascertain whether he was in fact willing to pay the money as alleged. This might amount to instigating the Judge to *attempt* to commit an offence under section 161 of the Indian Penal Code, but no charge has been framed on these lines. We think it is clear that Jagat Narain's statement that the plaintiff would be willing to offer a bribe does not amount to the abetment of an offence under section 161, as he did not offer any bribe. He did not even expressly claim authority to speak as an agent or representative of the plaintiff, and it seems likely that in fact he came without the plaintiff's knowledge or consent. Whatever his real position or intention may have been, we hold that his statement, or expression of opinion, did not amount to abetment of an offence under section 161.

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of the Indian Penal Code. At the most it only amounted to preparation for committing such abetment.

We now turn to the cases of Dinkar Rao and Madan Mohan. They undoubtedly consented to supply a sum of money to the Judge by way of illegal gratification and actually handed the money over to him. Their defence was that the money was given not as a bribe to the Judge but as a loan to a certain clerk named Ram Narain who was employed in the civil courts at Mainpuri. Some evidence has been adduced in support of this plea, but we do not think that the point is worth discussing in detail. Even according to their own account the loan was to be a mere pretence, as they knew that the money was really to be given to the Judge. The trial court rightly remarks: "The accused themselves admit that even if the money was advanced as a loan, the advance was made in order to please and accommodate the Subordinate Judge and it would matter very little whether the money was paid as a loan or as an undisguised bribe. In either case the payment would amount to an illegal gratification."

The trial court has acquitted Dinkar Rao and Madan Mohan on the ground that they cannot be held guilty of the abetment of an offence under section 161 of the Indian Penal Code, when they merely handed over the money in compliance with a demand from the Judge himself who never intended to take the money as a bribe. The learned Government Advocate has contested the finding that the Judge himself solicited a bribe, but we think that the trial court has taken a perfectly justifiable view. When Madan Mohan came to see the Judge, he never opened the question of bribery. It was the Judge himself who opened the question, and he has admitted that he indicated by his manner that he was prepared to receive a bribe. The mere fact that he did not ask for a bribe outright makes no difference. We take it that he certainly suggested to Madan Mohan that the offer of a

bribe would be acceptable. The question then is whether the accused, in complying with the Judge's demand for a bribe, were guilty of abetting an offence under section 161 of the Indian Penal Code although the offence was not committed in consequence of the abetment and although the Judge took the money without any guilty intention. The trial court has answered this question in the negative. We understand its view to be that if the Judge had accepted the money as a bribe (i.e. with a guilty intention) the bribe givers would be guilty of abetment, because they certainly would have aided the Judge to commit the offence of bribe taking. But as the Judge never intended to commit the offence of bribe taking, the bribe givers cannot be held to have *aided* him to commit that offence and therefore cannot be held guilty of abetting that offence.

The question is not free from difficulty, but we are unable to accept the trial court's view.

Section 107 of the Code explains that a person can abet the doing of a thing in three different ways, (1) by instigating a person to do it, (2) by conspiring with a person to do it, or (3) by intentionally aiding the doing of it. In the present case we agree that the accused cannot be held to have *instigated* the Judge to take a bribe because he had shown his willingness to accept a bribe, so there was no need to incite him or to urge him on to take a bribe. We also agree that the accused did not *conspire* with the Judge to commit the offence of bribe taking, as the Judge admittedly never consented to commit such an offence. Madan Mohan and Dinkar Rao, however, undoubtedly conspired together to offer the bribe to the Judge. This aspect of the case was not considered by the trial court. These two accused persons might therefore have been charged with conspiring together to offer the bribe. In other words they might have been charged with abetment (by conspiracy) of the abetment of an offence under section 161, but as they were not called

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upon to meet such a charge it is unnecessary for us to consider whether they might have been convicted on such a charge. On the charge as framed there was no abetment by conspiracy. Now remains the question of abetment by intentionally *aiding* the commission of the offence of bribe taking. Whether the accused are guilty of this form of abetment depends upon the interpretation of section 108 of the Indian Penal Code. This section enacts that "A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor." Explanation 2 shows that it is not necessary that the act abetted should be committed, and explanation 3 further states that it is not necessary that the person abetted should have any guilty knowledge or intention.

Applying the provisions of sections 107 and 108 to the abetment of bribe taking, we think it is clear that if the Judge had taken the money as a bribe (i.e. with guilty intention) then the bribe givers would have been guilty under section 109 of abetting an offence under section 161. They clearly would have aided the Judge to commit an offence under section 161 and the offence would have been committed with the aid which constituted the abetment. The trial court agreed to this conclusion and we express our opinion on this hypothetical case only because Sir *Tej Bahadur Sapru* has gone to the length of arguing that when a public servant solicits a bribe from a person then the latter commits no offence if he offers a bribe. The learned counsel was unable to explain how this contention could be justified by the language of the Code, but he relied upon the following extract from the explanatory notes made by the authors of the Code: "The person who, without any demand express or implied on the part of a public servant, volunteers an offer of a bribe, and induces that public servant to accept it, will be punishable under the

general rule as an instigator. But the person who complies with a demand, however signified on the part of a public servant, cannot be considered as guilty of instigating that public servant to receive a bribe. *We do not propose that such a person shall be liable to any punishment*, and, as this omission may possibly appear censurable to many persons, we are desirous to explain our reasons." It is interesting to note that the authors of the Code did not contemplate the punishment of a person who complies with a demand made by a public servant for a bribe, but it appears that their views were not accepted by the legislature. The Code does not give effect to their views. We are bound to give effect to the language of the statute and cannot give effect to draftsmen's views which were probably intentionally rejected by the legislature.

Turning now to the accepted facts of this case, we think that the bribe givers were guilty of abetment although the Judge took the money without any guilty intention. The bribe givers did not aid the commission of an offence, but they aided the Judge to commit an act (i.e. to take the money) which would be an offence if committed with the same intention as that of the bribe givers. Explanation 3 of section 108 makes it clear that the person abetted need not have any guilty intention in committing the act, so the fact that the Judge took the money without any guilty intention seems to be immaterial. His act would certainly have been an offence if committed with a guilty intention. As his guilty intention was immaterial we hold that the bribe givers are liable as abettors of an offence under section 161.

The trial court took the view that explanation 3 applies only to abetment by instigation and not to abetment by intentionally aiding. He pointed out that the illustrations to this explanation are all cases of instigation or of

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the commission of an offence by the so-called abettor through an innocent agent. We are not prepared to narrow down the meaning of this explanation as suggested. If the explanation had been intended to apply to abetment by instigation only, it would have been easy to substitute the words "instigated" and "instigator" for the words "abetted" and "abettor". It is clear, for example, that explanation 5 of section 108 applies only to abetment by conspiracy, but explanation 3 applies to abetment generally and there is nothing to indicate that it applies only to abetment by instigation and not to other kinds of abetment. The illustrations are obviously not intended to be exhaustive. In our opinion the bribe givers are not exonerated merely because the Judge took the money without any guilty intention. This view is supported by a decision of the Lower Burma Chief Court in *Emperor* v. *Nga Hnin* (1). In that case the accused persons handed a sum of money to a Magistrate as a bribe. The Magistrate at once called in witnesses and instituted a prosecution. The accused were acquitted on the ground that the Magistrate by his silence and conduct had induced the accused to offer him the bribe, so the accused could not be held guilty of instigating the Magistrate to receive the bribe. The learned Judge of the Chief Court pointed out that a person may abet not merely by instigation, but also by intentionally aiding, and made the following observations: "If a public servant solicits a bribe and the person solicited complies with the demand and hands him the money, he intentionally aids by his act, and therefore abets, the taking of the bribe by the public servant; the fact that the bribe was solicited at most renders the abetment less culpable than it would otherwise be." We are fully in agreement with this view. It must be noted that in this reported case also, although the Magistrate was held to have solicited the bribe, he clearly had no intention of receiving the money as a bribe, because he at once had

(1) (1917) 38 Indian Cases, 439.

the bribe givers arrested. If the public servant's intention, as the person abetted, is immaterial, we cannot escape the conclusion that the bribe givers are guilty of the offence of abetment, although they only complied with a demand made by the public servant, and although the public servant had no intention of receiving the money as a bribe.

It has been argued for Madan Mohan that he did not actually pay any money out of his own pocket to the Judge, and therefore he is not guilty of the offence charged. We are not impressed by this argument, because Madan Mohan negotiated the whole business with the Judge and with Dinkar Rao and was actually present when the bribe was given to the Judge. So we think he is as guilty of giving the money as Dinkar Rao who actually provided the money.

We hold, therefore, that Dinkar Rao and Madan Mohan are guilty of the offence charged, but the fact that the money was paid at the request of the Judge has an important bearing on the question of sentence. The learned Sessions Judge says that even if he had found them guilty, he would have passed a nominal sentence. We also think that only a very light sentence is called for. The accused acted on the suggestion of the Judge himself. They were tempted and caught in a trap. We agree with the trial court that the plan of tempting and trapping the accused was objectionable, and should not have been resorted to by an officer of the judicial department. We do not feel, however, that the bribe givers deserve much sympathy. They acted under no sort of compulsion, such as any fear that the Judge would show disfavour if not bribed. Finding that the Judge was apparently corruptible, they tried to win a weak case by dishonest means.

We dismiss the Government Appeal so far as Pandit Jagat Narain is concerned and confirm his acquittal. His bail bonds are cancelled. We allow the appeal so far as Dinkar Rao and Madan Mohan are concerned, set

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aside the order of acquittal and convict them of the offence under section 161 read with section 116 of the Indian Penal Code and sentence Dinkar Rao to a fine of Rs.200 or two months' simple imprisonment in default, and Madan Mohan to a fine of Rs.100 or one month's simple imprisonment in default. If the fines are paid the bail bonds are cancelled.

## APPELLATE CIVIL

*Before Mr. Justice Niamat-ullah and Mr. Justice Rachhpal Singh*

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*April*, 11

SUNDAR DEVI (PLAINTIFF) *v.* DATTA TRAYA NARHAR AND ANOTHER (DEFENDANTS)*

*Civil Procedure Code, section* 132; *order V, rules* 3, 4—Pardanashin *lady—Cannot be compelled to attend court either as a party or as a witness.*

The exemption of *pardanashin* ladies from personal appearance in court, granted by section 132 of the Civil Procedure Code, is a right which no court has power to refuse, and applies to the parties as well as to witnesses. A *pardanashin* lady cannot be compelled to attend the court, either as a party under order V, rule 3 or 4 of the Civil Procedure Code, or as a witness.

The words "personal appearance" used in section 132 mean personal attendance. If a *pardanashin* lady observing strict *parda* is ordered to attend the court, it means that she is "compelled to appear in public". Her face may be covered or she may be wearing a *burka*, but all the same she is compelled to appear in public if she is ordered to attend the court. This is against the spirit of section 132.

Mr. *A. Sanyal*, for the appellant.

Dr. *N. U. A. Siddiqi* and Mr. *Kedar Nath Sinha*, for the respondents.

RACHHPAL SINGH, J. :—This is a plaintiff's appeal arising out of a suit which she instituted against the

*First Appeal No. 433 of 1929, from a decree of Hari Har Prasad, Subordinate Judge of Jaunpur, dated the 5th of January, 1929.