

different aspect. These are the alleged "gifts" to the prostitute Roshan (page 34, appellants' book), and to Rani Taliwand Kuari, page 30, *id.* The latter extended to three mauzas only, and the deed of gift has not been produced. We have noticed above the circumstances which favour the theory that it was not an absolute and perpetual conveyance of this property to the Rani, the donee, but partook rather of the character of a life-settlement on her and *babuai* for the sons she had borne to the Rajah donor; but even if it were, one such exceptional instance would be wholly inadequate to establish the custom prayed in aid by the defendant.

As to the prostitute's gift, that conveyed to her "the *muâfi* rights and interests" in one village only, mauz Koharwa, as her *birt* property, for which she paid *malikana* to the Rajah, and it is needless to point out that this differed "*toto calo*" from the assignment in perpetuity under the deed which is assailed in the present litigation. We are of opinion, for the foregoing reasons, that this appeal fails, and should be dismissed with costs, and we do order accordingly.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Oldfield.

EMPRESS *v.* MAZHAR HUSAIN.

Public servant framing incorrect record—Forgery—Act XLV of 1860 (Penal Code), ss. 218, 463.

A public servant, in charge as such of certain documents, having been required to produce them, and being unable to do so, fabricated and produced similar documents with the intention of screening himself from punishment. *Held* that such fabricated documents not being records or writings with the preparation of which such public servant as such was charged, he could not legally be convicted under s. 218 of the Penal Code, nor, such documents not being forgeries, as they were not made with the intent specified in s. 463, could be legally convicted under s. 471.

THE appellant, Mazhar Husain, was a clerk in the office of the Nagina Municipality, and as such in charge of the municipal records. Two persons, Abdulla and Tarifunnissa, were charged with a breach of a municipal rule which prohibited the erection of buildings without the permission of the Municipality. The accused pleaded

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that written permission had been given them by the Municipality, and the appellant was therefore ordered to produce the two orders whereby permission had been given. Such permission had really been given, and one of the original orders was afterwards discovered; but owing to the careless way in which Mazhar Husain kept the documents under his charge, he failed to find the orders when required. To screen himself from punishment, he forged and produced two written orders purporting to be those required. He was committed to the Sessions Court for trial, charged under ss. 465 and 471, of the Indian Penal Code, and was convicted under ss. 218 and 471, and sentenced to two years' rigorous imprisonment. It was contended on his behalf (1) that as it was not any part of his duty to prepare or frame any record, but only to keep them safely when given into his custody, the conviction under s. 218 was illegal; and (2) that as there had been no intention to cause wrongful gain or loss to anyone, and only a desire to screen himself from punishment, no offence under s. 471, Indian Penal Code, had been committed.

Mr. Colvin, for the appellant.

The *Junior Government Pleader* (Babu Dwarika Nath Banarji) for the Crown.

OLDFIELD, J.—The conviction under ss. 218 and 471 of the Indian Penal Code cannot stand. The fabricated petitions are not records or writings with the preparation of which accused, being a public servant, was charged, so as to enable his offence of fabrication to fall within the meaning of s. 218; nor are the fabricated papers forgeries as defined in s. 463, as it cannot be held that they were made with the intent specified in that section, and in consequence there can be no offence under s. 471. The convictions and sentence are therefore set aside.

There is grave reason to suppose, however, that the papers have been fabricated by the accused, and if this was done with the intention stated in s. 192, he will be guilty of an offence under s. 193 of Indian Penal Code. It is directed that he be re-tried for an offence under that section. If the Court find accused guilty, the punishment already undergone will be considered in the sentence.