

**Upendra Nath Choudhury Vs. Emperor**

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**Court :** Kolkata

**Decided On :** Aug-17-1916

**Reported in :** 39Ind.Cas.805

**Judge :** Lancelot Sanderson, C.J. and ;Smither, J.

**Appellant :** Upendra Nath Choudhury

**Respondent :** Emperor

**Judgement :**

Sanderson, C.J.

1. We think that in this case the safest course is to make the Rule absolute.

2. There is no doubt whatever that the Head Constable took the two rupees, but that is of course not sufficient to convict him of the offence with which he was charged. The offence with which he was charged was one under Section 161 of the Indian Penal Code, and in order to convict him of that offence, it must be proved that he accepted the two rupees 'as a motive or reward for doing or forbearing to do an official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person....'

3. Now Madan has given contradictory explanations of the condition upon which the Head Constable received the two rupees and the learned Sessions Judge has evidently come to the conclusion that his evidence cannot be relied upon. He says that Madan evidently was tampered with; and he is thrown back upon the evidence of Mr. Fairweather, and he says that if Mr. Fairweather's evidence is accepted the case against the accused is established. We do not think that the case which is a charge under Section 161 is established by Mr. Fairweather's evidence. If Mr. Fairweather's evidence is looked at, it goes to prove that the two rupees were given to the Head Constable not for the purpose of inducing him to do an official act or to show favour or disfavour to any person in his official capacity, but on the condition that the Head Constable would send for Madan's enemy and give him a thrashing. That cannot be said to be anything done by the Head Constable in his official capacity. It certainly would be showing disfavour to Madan's enemy but could not be showing disfavour in his official capacity. It would be doing something entirely outside his official functions. And, the result is that although the conclusion of this case may not be satisfactory to my mind, I think on the whole that it is safer in the interests of justice that this Rule should be made absolute and the conviction and sentence set aside. The bail-bond will be discharged.

Smither, J.

4. I agree.

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